

ORIGINAL

Supreme Court, U.S.  
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20-6173

No.: \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE  
UNITED STATES  
2020 TERM

\_\_\_\_\_  
IN RE  
TOMMIE H. TELFAIR  
"Petitioner"

\_\_\_\_\_  
**AMENDED**  
Complaint, In The nature of:  
HABEAS CORPUS ACT,  
Ad Subjiciendum, Audita Querela;  
And Pursuant to: 28 U.S.C. §§ 1651, 2106.  
\_\_\_\_\_

**By:** Tommie H. Telfair, natural born citizen of the United States and Citizen of the State of New Jersey by lifelong domicile at:  
17 Poe Avenue, 2nd Flr.  
Newark, NJ 07106

**Appearing:** (Sui Juris) In Propria Persona

**Authority:** 1st, 4th, 5th, 6th, 8th, 13th, and 14th Amendments of the constitution of the United States; also: Scott v. Sandford.

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QUESTIONS PRESENTED

- I. WHETHER CUMULATIVE VIOLATIONS AND FUNDAMENTAL ERRORS AS A "SOURCE" OF CONSTITUTIONAL INFRINGEMENT DEPRIVED PETITIONER OF THE 1ST, 5TH, 6TH, 13TH, and 14TH AMENDMENT RIGHTS SECURED BY THE CONSTITUTION?
  
- II. WHETHER PETITIONER OR THE GOVERNMENT'S AGENT(S) VIOLATED THE GENERAL CONSPIRACY STATUTES TANTAMOUNT TO EX POST FACTO LAWS; AND THE UNCONSTITUTIONAL APPLICATION OF THE STATUTORY ELEMENTS UNDER 18 U.S.C. §2, 21 U.S.C. §§841, 846?
  
- III. WHETHER CUMULATIVE VIOLATIONS AND FUNDAMENTAL ERRORS AS A "SOURCE" OF CONSTITUTIONAL INFRINGEMENT LED TO THE MISAPPLICATION OF 18 U.S.C. §2, 21 U.S.C. §§ 841, 846 CREATING SERIOUS CONSTITUTIONAL SEPARATION-OF-POWER CONCERNS WHICH ATTACH TO PETITIONER'S SENTENCE ABOVE THE STATUTORY MAXIMUM PENALTY AUTHORIZED BY CONGRESS?

LIST OF PARTIES

1. David E. Ortiz, herein (Warden or Respondent), has physical possession of Petitioner's human body at FCI Fort Dix, NJ 08640.

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STATUTES AND RULES

STATUTES

18 U.S.C. §2  
21 U.S.C. §841(a)  
21 U.S.C. §841(b)(1)(A)(1)  
21 U.S.C. §841(b)(1)(B)  
21 U.S.C. §846

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievance.

### AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### AMENDMENT V

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 an actual service in time of war or public danger; nor shall any person be subject for the same offense 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 processes of law; nor shall private property be taken for public use, without just compensation.

### AMENDMENT VI

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 defense.

### AMENDMENT VIII

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

### AMENDMENT XIII

Section 1: Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.



Section 2: Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

Section 1: 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 law.

### INTRODUCTION OF THE CASE

Petitioner presents an issue(s) of first impression and has previously sought redress to contest the judgment, sentence, and conviction through numerous filings including but not limited to: pretrial motions, interlocutory appeals, recall of mandate(s), writ of certiorari, §2255, second §2255, 59(e), multiple 60(b), §3582, and 5 attempts at §2241. Petitioner could not avail his innocence nor discharge.

Petitioner was hurled into the U.S. district court due to the "unlawfully procured" 'personal-jurisdiction' without 'prior notice,' nor 'service of process,' nor 'voluntary appearance.' Individuals acting under color of United States and New Jersey authority subject[ed] Petitioner to statutory elements that resulted in the unconstitutional imprisonment of Petitioner against his liberties. Miscarriage of Justice, cumulative violations, and fundamental errors denied to Petitioner due process, equal protection of the laws, and deprived him the rules designed to protect the rights of individuals "not to be tried (en masse) for the conglomeration of distinct and separate offenses committed by others." [T]his case presents "exceptional circumstances" where the need for remedy and redress by the Great Writ of Habeas Corpus is apparent.

### REASON FOR GRANTING THE WRIT

Petitioner's Constitutional rights seeking redress, remedy, and discharge have been subject to cumulative violations, deprivations of substantial rights, "complete miscarriage of justice," and fundamental error(s) from 2007 nearing 2021, for the crimes committed by undercover agents. Petitioner has been denied every other means to establish his innocence. Without the purpose of the Great Writ of Habeas Corpus, Petitioner will continue to be punished and imprisoned for the "overt acts" of undercover agents impersonating as drug traffickers

herein described.

Petitioner's Great Writ request urgently needs to be granted and he should be discharged from this unlawful imprisonment due to the miscarriage of justice inter alia. There are also constitutional reasons, "watershed rules" implicat[ing] the fundamental fairness, 'and accuracy' of the proceedings, intervening changes in defense (Ex Post Facto) created by Third Circuit precedent long after Petitioner's previous attempts at redress; and the Third Circuit's own interpretat[ion] involving statutory construction (i.e. §841(a)) in ways that rendered the Petitioner's conduct non-criminal providing collective or separate reasons warranting this outcome, including but not limited to: The Great Writ's application is not moot; it relates back to when Petitioner was (ab initio) unlawfully subdued; and this Great Writ of Habeas Corpus can be used to equitably redress this unconstitutional imprisonment, for which there is no other remedy save The Great Writ. Notwithstanding the fact(s), Petitioner's claims of innocence can be proven by the herein documentary evidences, which verifies his imprisonment remains unconstitutional, and one of the Great Writ's most classic functions is to release someone who is presently unlawfully imprisoned.

The natural solicitude of the law is to end expeditiously an unjust incarceration exerts a perhaps unacknowledged pressure for expansive review. The approach adopted by the courts is consistent with the case in Schulp and the rulings of the many circuits. Furthermore, it recognizes that "the injustice that results from the conviction of an innocent person has long been at the core of the criminal justice system". See: (e.g.) Schulp, 573 U.S. @ 325.

Indeed, "the conviction of an innocent person [is] perhaps the most grievous mistake the judicial system can commit", and thus, the contours of the innocence gateway must be determined with considerat[ion] for correcting "such an affront to liberty". See: Truax v. Corrigan, 66 L. Ed. 254, 257 U.S. 312; smith v. Texas, 58

L. Ed. 1129, 233 U.S. 630.

Petitioner avers that he is innocent of undercover agents' impersonation as drug traffickers. The Government "failed" to prove the existence of 18 U.S.C. §2, 21 U.S.C. §§841, 846; and that the underlying [conduct] by which Petitioner's conviction/judgment is premised upon does not comport with the necessary threshold statutory elements. Petitioner submits that had the impersonating agents not violated his rights to cover-up their own civil RICO conspiracy, and their own civil RICO racketeering resulting in the deprivation of Petitioner's constitutional rights, Petitioner would not have been convicted of the statutory offense due to agents' impersonation as drug traffickers.

Petitioner further submits that all lower courts have ignored or turned a blind-eye to these very serious issues tantamount to complete miscarriage of justice, cumulative violation and fundamental errors; and all lower courts have sanctioned the violations of established precedent when making any determination as to whether Petitioner's substantial rights to a fair and impartial proceedings have been violated tantamount to a "kangaroo court." The cumulative violation and fundamental errors are clear, that Petitioner and any other citizen of these United States by a "blink of an eye" can severely suffer from a fundamental miscarriage of justice at any time the courts deprive Petitioner and any similar situated citizen of their fundamental rights to due process and equal protection of the laws. This Honorable Court is asked to grant the Great Writ of Habeas Corpus to correct the unlawful imprisonment of Petitioner and order his immediate discharge.

#### NATURE OF THE ACTION

This is a civil action in the nature of the Great Writ of Habeas Corpus, inter alia, suing-out discharge and an order compelling the State of New Jersey to provide Petitioner equal protection of the laws and due process in protection

of his personal civil rights of liberty under the first fourteen (14) Amendment of the State and Federal constitutions that defeat State and Federal statutes and licensing laws authorizing the use of the full coercive police powers of the State to compel into involuntary servitude labor under secret classification of non-citizens within America; authorizing specifically minority citizens to be hurled into the U.S. District Court to be prosecuted as opposed to New Jersey citizens being prosecuted in their own State courts. Herein such authority has been given to prosecute State citizens in the U.S. District Court through the unlawfully procured personal jurisdiction, without prior notice, nor service of process, nor voluntary appearance in contravention to the principles of stare decisis, therefore, such use of statutory and licensing authority purport to possess lawful right(s) to subjugate Petitioner and other citizens is unconstitutional on its face.

#### JURISDICTION

Jurisdiction over this complaint and to issue extraordinary writs inheres in this Court under exclusive power of the Supreme Court of the United States statutory grant of jurisdiction for original proceedings of extraordinary writs exclusively in the highest of court(s). As the nations Supreme Court of justice and last resort, it is well settled that exclusive jurisdiction to first say what the law(s) is, how the law(s) apply, the constitutionality of statutes, and the authorizing of laws for operating involuntary servitude labor.

(E.g.) in case of desist, Justice Harlan had reasoned that one of the two principal functions of the Habeas Corpus was to "assure that no man has been incarcerated under a procedure which creates an impermissibly large risk that the innocent will be convicted," and concluded "from this that all 'new' constitutional rules which significantly improve the pre-existing fact-finding procedures are to be retroactively applied on Habeas review." See 394 U.S., at

#### SUPPLEMENTAL JURISDICTION

Title 28 U.S.C. §2106 authorizes the Court to vacate, as well as reverse, affirm, or modify any judgment lawfully brought before it for review. 28 U.S.C. §1651(a) provides that the Court may issue all writs necessary or appropriate in aid of its jurisdiction. Such writs are to be executed, under 28 U.S.C. §672, by the marshal of the court, who is authorized by 28 U.S.C. §549, when acting within a state, to "exercise the same powers which a sheriff of such state may exercise in executing the laws thereof." The power to enter judgment, and when necessary, to enforce it by appropriate process, has been said to be inherent in the Court's appellate jurisdiction. See: Stanley v. Schwalby, 162 U.S. 255, 279, 282, 40 L. Ed. 960, 968, 969, 16 S. Ct. 754; See also: Hart and Wechsaler, *supra*, note 21, at 420-21.

#### WRIT OF HABEAS CORPUS

The Writ of Habeas Corpus is an "extraordinary writ" and a new suit opening original proceedings. Civil action in the nature of this Great Writ sues-out the remedy which the law gives for the enforcement of civil right of personal liberty of the citizen. Resort to it sometimes becomes necessary, because of what is done to enforce laws for the punishment of crimes, but the judicial proceeding in the nature of the Great Writ of Habeas Corpus is not to inquire into the criminal act which is complained of; but rather into the right to liberty, notwithstanding the act claimed against the citizen.

In the present case, the citizen Mr. Telfair was subdued by plain clothed individuals under armed threat, taken by force to a private, unnoticed building in manacles, and then sold, commerce leased, or convict leased, to unnoticed individuals claiming to possess New Jersey's full police powers and authorized by

New Jersey to do selling of its citizens into involuntary servitude labor service.

The plain clothed individuals purport to be vested with a secret grant of New Jersey's coercive power of government to traffic in involuntary servitude labor and kidnapping under statutes and secret licensing laws allowing convict-leasing maintained within the now FCI in the County of Burlington and throughout the State of New Jersey. As aggrieved citizen being subject by supposed operation of these so called statutes and licensing laws authorizing plain clothed individuals the coercive police powers of the State of New Jersey in the trafficking of its citizens for "convict-leasing" in the disguised trade-service for involuntary servitude labor. Petitioner-Citizen has no other remedy save the Great Writ.

This Highest Court of last resort has jurisdiction to issue the Great Writ of Habeas Corpus and to have the Attorney General make return showing the constitutionality of the statutes and licensing laws authorized and followed throughout the State in allowing "convict-leasing" in the disguised trade-service for human involuntary servitude labor of Petitioner and other citizens born in New Jersey and the United States.

#### NO OTHER REMEDY

Petitioner herein has no other remedy, as his subduction and imprisonment, plus the derivative subduction and imprisonment of his family members, was done by plain clothed individuals to cover up their own civil RICO conspiracy and their own civil RICO racketeering, through the unlawfully procured "personal-jurisdiction" without service of process, nor voluntary appearance, nor opportunity to be heard before sale, trade, or convict-leasing of him and his family members into involuntary servitude labor. The involuntary servitude labor is now permanent and has remained from January 23rd, 2007 to date, and is

District Court, and the separate government to compel, inter alia, the prosecution of Petitioner, and New Jersey's citizen, into involuntary servitude labor, which is unconstitutional and repugnant to the first fourteen (14) Amendments to the Federal and State constitution making the practice of convict-leasing, human trafficking, and subjugation unconstitutional on its face.

Moreover, New Jersey's own government have sanctioned or turned a blind-eye to the selling, leasing, or trading practices as a result of a separate government (being especially enforced upon minority citizens) wielding New Jersey's judicial and police power(s), depriving New Jersey's own citizens of the first fourteen (14) Amendments to the Federal and State constitution. See: (e.g.) Plessy v. Ferguson, 163 U.S. 537, 16, S. Ct. 1138 41 L. Ed. 256 (1896); a state can of course assign certain consequences to a violation of its criminal law. But the state cannot single out one identifiable class of citizen(s) for punishment that does not apply to everyone else, with moral disapproval as the only asserted state interest for the law. See also: Plyer v. Doe, 457 U.S. at 239; Shelly v. Kraemer, 334 U.S. 20. The fundamental question for the courts is to determine the constitutionality of Federal and State policies [allowing] a separate government "personal-jurisdiction" without prior notice, nor "service of process", nor "voluntary appearance", to police and prosecute New Jersey's citizen(s) before the U.S. district court(s)?



### LEGAL STANDARD

This case [also] concerns the "actual innocence" gateway to federal habeas review applied in Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995), and further explained in House v. Bell, 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006). In those cases, a convincing showing of actual innocence enabled habeas petitioners to overcome a procedural bar to consideration of the merits of their constitutional claims.

In Herrera v. Collins, 506 U.S. 390, 404-405, 133 S. Ct. 853, 122 L. Ed. 2d 203 (1993)... We have recognized, however, that a prisoner "otherwise subject to defenses of abusive or successive use of the writ [of habeas corpus] may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence." Id. (citing Sawyer v. Whitley, 505 U.S. 333, 112 S. Ct. 2514, 120 L. Ed. 2d 269 (1992)). See also Murray v. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986) ("[W]e think that in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of actual innocence.")

### CASE SUMMARY

The government's case-in-chief was premised upon a buyer seller relationship between DEA agents and their own (CW(s)). The prosecution presented its case to the jury "converted" into a conspiracy, the jury was [never] instructed on drug weights, nor on Mens Rea, nor Conspiracy. The government's insufficient evidence and facts led to a "general verdict" in Telfair's "coram non judice" trial which deprived Telfair's "coram non judice" trial of fundamental fairness and Due Process. The government incorrectly believed that it could attribute the buyer

seller relationship between DEA agents and its (CW(s)) to Telfair through § 2, § 841, and § 846, which led to duplicity in count two of Telfair's indictment in contravention to the constitution.

Telfair's previous counsel's deficiency, law enforcement misconduct, prosecutorial misconduct, and the unconstitutional use of Telfair's cellphone, inter alia, led to Telfair's "coram non judice" proceedings under § 2, § 841, and § 846. The evidence in Telfair's "coram non judice" trial was insufficient to allow a rational juror to find that Telfair possessed [ANY] grams of heroin at a single time with the intent to distribute because the government's evidence was premised on its incorrect belief that it could combine weights from multiple distributions, discontinuous possessions during the indictment period, and the buyer seller relationship between the government's agents and their own (CW(s)). The Government [failed] to prove the existence of § 2, § 841, and § 846. Therefore, the duty of the court(s) is to determine whether the government has adduced sufficient evidence respecting [EACH] element(s) of "each" of the offense charged to permit jury consideration. See: United States v. Collins, 415 F. 3d 304, 2005 U.S. App. LEXIS 13981 (4th Cir. 2005) (Court MUST give 'Pinkerton' instructions to establish vicarious liability for sentencing under BOTH statute and guideline); Also, see: (Third Cir. Jury Inst. 7.01 and 6.21.841-5). Both Pinkerton and Collins were 'not' applied in Telfair's unlawful proceedings.

- - - - - RACQUE SANCHEZ - - - - -

704 Fed. Appx. 38

In a sufficiency of the evidence challenge, the United States Court of Appeals for the Third Circuit reviews the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt. Under this particularly deferential standard,

the Third Circuit must be ever vigilant not to usurp the role of the jury by weighing credibility and assigning weight to the evidence, or by substituting its judgment for that of the jury, the Third Circuit must sustain the jury's verdict if there is substantial evidence, viewed in the light most favorable to the government, to uphold the jury's decision.

To prove a conspiracy to distribute drugs in violation of 21 U.S.C. § 846, the government must show: (1) a shared unity of purpose between the alleged conspirators; (2) an intent to achieve a common goal; and (3) an agreement to work together toward that common goal. The conspiracy must be shown beyond a reasonable doubt, via direct or circumstantial evidence.

#### HISTORICAL FACTS

In January 23, 2007, Petitioner was subdued solely on the pretense of information provided to law enforcement involved into the arbitrary arrest of two individuals, later identified as Catherine Sanchez and Jennifer Filpo, located in the residence at 185 Parker Street, in Essex County, New Jersey. (collectively, "The Individuals").

On September 5, 2006, law enforcement from Newark New Jersey Police Department responded to a report of gunfire near 185 Park Street. upon arriving near the residence, law enforcement observed Individuals standing in front of the house and indicated that they reside there. the Individuals then escorted the officers inside the residence, at which time the officers [alleged] they observed bullet holes in the back and front door of the residence, and on the front door of the refrigerator. Upon opening the refrigerator, the officers purportedly discovered a plastic container holding approximately 130 grams of a substance which field tested positive for the presence of cocaine base and heroin. At which time, the Individuals were placed under arrest. In a post-arrest statement, the Individuals

indicated that the heroin, etc., located in the refrigerator at 185 Parker Street, and confiscated by law enforcement, belonged to the Petitioner. Petitioner was not present in the residence at the time of the incident.

On September 8, 2006, the Honorable Patty Schwartz signed a criminal complaint and issued an alleged warrant for Petitioner's arrest. on January 23 Petitioner was subdued as a result of the unlawful alleged arrest warrants. However, while detained in pre-trial detention, at the Hudson County Correctional Center (HCCC), Petitioner moved the District Court for a "polygraph test," to prove that the Individuals were not forthcoming or truthful about the information they provided regarding his involvement in the heroin conspiracy charge as alleged. Thereafter, Petitioner was successful in passing the polygraph test, once Petitioner passed the polygraph test, the Individual's recanted their allegations. Such that, the information they provided to law enforcement pertaining to Petitioner's involvement in the case, were wholly false and incorrect.

On August 16, 2007, the Individuals appeared before Judge Cavanaugh and pled guilty to a one-count indictment charging that from April 2006 through or about September 2006 in Essex County they knowingly and intentionally conspired and agreed with others (not Petitioner) to distribute and posses with intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. §§ 846 and 841(a)(1)(b)(1)(B). On April 26, 2010, Filpo was sentenced to 60 months imprisonment. On June 7, 2010, Sanchez was sentenced to 36 months probation. Despite the fact that the conspiracy charges brought against Petitioner involving the Individuals were desolved, law enforcement continued to unlawfully detain Petitioner at the HCCC. Rather than release Petitioner free of charges, law enforcement erroneously brought new conspiracy charges against him by which they instigated, fabricated, and manufactured while Petitioner was still detained or confined at HCCC.

The new charges brought against Petitioner alleged that, from in or about

November 2005 through January 2007, in Essex County, in the District of New Jersey, Petitioner knowingly conspired to possess with intent to distribute one kilogram or more of heroin in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A).

For probably cause purposes to bring the new charges against Petitioner, law enforcement falsified that during an "unrecorded" post arrest interview with agents involved in the case, Petitioner admitted that he acquired quantities of heroin from an individual named "Carlito", later known or identified as Carlos A. Antigua. According to law enforcement, Petitioner provided them with a T-Mobile cell phone by which he used to contact Antigua. The Cell phone, according to agents, contained a pre-programmed phone number stored under the listing, "Carlito." Petitioner's cell phone provider at the time was NOT T-Mobile, but was infact Virgin Mobile. This was another falsification by the government.

Law enforcement further falsified that between January 24, 2007 and January 31, 2007, the cell phone Petitioner provided them received calls from Antigua. At which time, the agents answered the phone and actually made contact with Antigua in an undercover capacity to negotiate future heroin transactions. that is, 100 - 2.5 gram bricks of heroin for \$180 per brick. Antigua was later placed under arrest. Although the amount of heroin was negotiated, there is no evidence that any heroin transactions occurred between the agents and Antigua.

On August 16, 2007, Antigua appeared before Judge Cavanaugh and pled guilty to a one count information, charging that on or about January 31, 2007, in Essex County, in the District of New Jersey he knowingly conspired with others (again, not Petitioner) to possess with intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. §§ 846 and 841(a)(1)(b)(1)(B). On March 1, 2011, Antigua was sentenced to 35 months imprisonment. How is Petitioner the only "alleged" conspirator sentenced above 100 grams? During the entire time period the alleged undertaken criminal activities occurred between agents and Antigua, Petitioner was always detained or confined at HCCC. Petitioner had absolutely no knowledge or

contact with the agents, Individuals, nor Antigua. See: (Tr. Trans. pgs:340-482, Feb. 18, 2010).

### BACKGROUND AND PLEADINGS

In February 2010, Petitioner was unlawfully convicted by a jury of conspiracy to distribute and possess with intent to distribute 1,000 grams or more of heroin, in violation of 21 U.S.C. §§ 841(a) and 841(b)(1)(A)(1), also of distribution and possession with intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. §§ 841(a) plus 841(b)(1)(B); and duplicitously included in count two 18 U.S.C. §2. See: Judgement of Conviction, United States v. Telfair, Crim. no. 08-0757 (D.N.J. Nov. 23, 2011, DE 95). Petitioner was sentenced to 240 months imprisonment. See: Id. The U.S. Court of Appeals for the third Circuit affirmed Petitioner's conviction and sentence. See: United States v. Telfair, 507 F. App'x 167, 179 (3rd Cir. 2012). Petitioner's request for a Writ of Certiorari to the United States Supreme Court was denied. See: Telfair v. United States, 571 U.S. 866 (2013). Rehearing denied, 571 U.S. 1105 (2013).

#### **Chronological Filing:**

- A. 28 U.S.C. §2241 (DE 1)
- B. Supplemental Pleading §2241, (DE 1-4)
- C. Dismiss Feb 13, 2019
- D. Conviction affirmed (2012)
- E. Rehearing denied, 571 U.S. 1105 (2013)
- F. Filed 28 U.S.C. §2255 (2013), (DE 1)
- G. §2255 denied Feb. 17, 2016 (DE 37)
- H. COA denied June 19, 2018 (DE 74)
- I. File 28 U.S.C. §2241 denied Aug. 19, 2013

J. File reconsideration denied Dec. 1. 2016  
K. Supreme Court denied May 15, 2017  
L. September 2016 filed a second §2241 denied Aug. 30, 2017  
M. 2017 filed another §2241 denied 2017  
N. November 2017 ending in May 2019 35/3582 denied Sep. 4, 2019  
O. April filed a fourth §2241, denied June 21, 2019  
P. October 2019, filed fifth §2241 with request for bail, and Supplemental Briefs denied.

----- ROWE -----

In Comparison:

The Government charged Rowe with violating 21 U.S.C. §841(a)(1) by two means: distributing heroin, and possessing it with intent to distribute. The Government further charged that the violation involved 1,000 grams or more of heroin, but provided the jury with two options for a finding on drug weight: 1,000 grams or more, and 100 grams or more. under §841(a)(1)(A)(i), a violation of §841(a) involving 1,000 grams or more of heroin requires a mandatory minimum penalty of ten years' imprisonment and sets a maximum penalty of life imprisonment. Under §841(b)(1)(B)(i), a violation of §841(a) involving 100 grams or more of heroin requires a mandatory minimum penalty of five years [2019 U.S. App. LEXIS 10] imprisonment and sets a maximum penalty of forty years' imprisonment. Because the weight involved in a violation of §841(a) increases the statutory penalty, it is an element of the offense that must be proven beyond a reasonable doubt. See: Alleyne v. United States, 570 U.S. 99, 103, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013) ("Any fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt."). Therefore, the question presented here is whether

the evidence was sufficient to allow a jury to find that Rowe violated §841(a) by distributing 1,000 or more grams of heroin, or by possessing with intent to distribute 1,000 or more grams of heroin.

----- TELFAIR -----

Petitioner avers that based on the precedent in Alleyne, 570 U.S. 99, 103. 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013); and in conjunction to the NEW Third Circuit's precedent in Rowe: Telfair's First Count of 1,000 or more grams under §2, §841, and §846, the underlying "conduct" by which Telfair's 1,000 or more grams conviction/judgment is premised upon does not comport with the necessary threshold STATUTORY-ELEMENT requirements under §2, §841, nor §846. ROWE, 919 F. 3d 752 (3rd Cir. 2019).

The evidence adduced at Telfair's "coram non iudice" trial significantly establishes that the conduct which triggered the statutory elements under §2, §841 and §846 for the 1,000 or more grams count was instigated by agent's impersonation between DEA agent(s) and their own witnesses NOT involving Telfair's participation. (See: Trial Trans. Feb. 18, 2010 pgs 340-486).

The Agents in Telfair's case, in an undercover capacity impersonated as drug traffickers to their own witnesses instigated the 1,000 or more grams count in the 3rd set of the indictment (i.e. 08-cr-0757-DMC) all while Telfair was being imprisoned in Hudson County Correctional Center under the original indictment (i.e. 07-cr-0272-DMC) for a total of 58 months.

Telfair was imprisoned by undercover agents on Jan. 23, 2007 through Nov. 2011, as to indictment No.: 07-cr-0272-DMC involving 100 or more grams in the first set of indictments. After a short period of time imprisoned in HCCC, the 100 or more grams was desolved when the second set of indictments took the place of the first indictment. Telfair's first indictment was superseded by the 1,000



or more grams under indictment No.: 07-cr-0272-DMC. the Conduct of undercover agents led to duplicity in count two of Telfair's indictment; which led to the unlawful and procedurally unreasonable sentence violating Telfair's Due Process.

Again, while Telfair was being imprisoned under indictment No.: (07-cr-0272-DMC), the agents impersonated as drug traffickers to their own witnesses, then indicted Telfair in a third set of indictments (i.e. 08-cr-0757-DMC). The indictment(s) is constitutionally defective due to duplicity also the 1,000 or more grams being the conduct of undercover agents to their own witnesses; and the 100 or more grams was superseded in the second set of indictments thus cannot be utilized as a second count in the third set of indictment under a new indictment number.

Telfair was imprisoned for 58 months in HCCC. While imprisoned undercover agents conduct led to Count 1, the 1,000 or more grams and Count 2, the 100 or more grams, plus aiding and abetting. The government did not adduce sufficient evidence respecting the statutory elements for: Count 1, for the 1,000 or more grams, nor Count 2, for the 100 or more grams plus aiding and abetting, of the offenses charged to permit jury consideration. The government did not present [any] evidence of: Knowingly. distribution, possession, nor "Mens-Rea" involving Telfair. See: (Trial Trans. Feb. 18, 2010, pgs:340-482 included herein).

#### PROCEDURAL HISTORY

In Telfair's case the District Court relied on information "lacking sufficient indicia" of reliability to determine Telfair's offense level(s), nor did [ANY] of th government's witness testimony fill the evidentiary gap(s). The government's presentation of the evidence rested upon an incorrect understanding of whom, committed the offenses which violated the statutory element under §841, §846, and §2 charged in the third set of indictments; the District Court abused

its discretion by failing to correct the error(s) by jury instructions; and the general verdict in Telfair's case does NOT assist [a]ny Court in understanding how the jury EVER arrived at its determination. Telfair's trial jury was misled which led to Telfair being tried before a "kangaroo" court. See: Caraballo-Rodriguez, 726 F. 3d at 431. Also see: (Trial Trans. pgs 340-482).

While it is axiomatic that the jury's verdict is premised on an expectation that jurors "are instructed extensively as to what evidence they can consider, how to consider it, and the relevant legal principles." Id. That did NOT happen here in Telfair's case, and the logic of Caraballo-Rodriguez (919 F. 3d 762) provides additional support for Telfair's claim(s).

#### POINT ONE OF ARGUMENT: THE CLAIM IS REITERATED

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##### INTERVENING CHANGES IN LAW(S)

Petitioner avers, based on the new precedent in Rowe, that he cannot be guilty of conspiracy to distribute unless there is proof that he possessed grams on a single occasion. In Rowe, the defendant was charged in a one-count indictment with distribution and possession with intent to distribute 1,000 grams of heroin in violation of 21 U.S.C. §841(a)(1) and (b)(1)(C). The court of appeals held that the evidence was insufficient to meet the 1,000 gram threshold. Each unlawful "distribution" is a separate offense, as opposed to a continuing crime, and the government conceded that it did not present evidence of any single distribution involving 1,000 grams. 919 F. 3d 752 Id. at \*4. Unlike distribution, possession with intent to distribute a controlled substance is a continuing offense, i.e. a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy." 919 F. 3d 752 Id. at \*5. In Rowe, the government conceded and the court held that the drug quantity threshold cannot be met by

combining multiple distributions and discontinuous possessions during the indictment period. Id. The evidence in the case was insufficient to allow a rational juror to conclude that the defendant possessed with intent to distribute 1,000 grams of heroin at any one time. 919 F. 3d 752, Id. at \*6

Rowe did not involve a conspiracy conviction and did not purport to overrule binding Third Circuit precedent about how to calculate drug quantity for a conspiracy conviction. As explained in Hardwick v United States, No. CV 12-7158 U.S. Dist. LEXIS 158905, 2018 WL 4462397, at \*14 (D.N.J. Sep. 18, 2018):

[i]n drug conspiracy cases, Apprendi requires the jury to find only the drug type and quantity element as to the conspiracy as a whole, and not the drug type and quantity attributable to each co-conspirator. The finding of drug quantity for purposes of determining the statutory maximum is, in other words, to be an offense-specific, not a defendant-specific, determination. The jury must find, beyond a reasonable doubt, the existence of a conspiracy -- the defendant's involvement in it, and the requisite drug type and quantity involved in the conspiracy as a whole.

United States v. Whitted, 436 F. App'x 102, 105 (3rd Cir. 2011) (quoting United States v. Phillip, 349 F.3d 138, 142-43 (3rd Cir. 2003), vacated and remanded on other grounds sub nom. Barbour v. United States, 543 U.S. 1102, 125 S. Ct. 992, 160 L. Ed. 2d 1012 (2005)). Because the drug quantity for the crime of conspiracy is an offense-specific determination involving the quantity involved in the entire conspiracy, it necessarily follows that those drugs need not be possessed by any one conspirator at one specific time. United States v. Woodley, No. 13-113, 2016 U.S. Dist. LEXIS 111274, 2016 WL 4523924, at \*5 (W.D.Pa. Aug. 22, 2016) (citing United States v. Garvey, 588 Fed. Appx. 184, 188 (3rd Cir. 2014) ("With respect to the amount of controlled substance, a finding must be made as to the drug type and quantity involved in the conspiracy as a whole, not the quantity attributed to each co-conspirator").

### Conspiracy

To sustain a conspiracy conviction under 21 U.S.C. §846, the government must prove beyond a reasonable doubt the following three elements: "(1) a shared unity of purpose, (2) an intent to achieve a common illegal goal, and (3) an agreement to work toward the goal, which [the defendant] knowingly joined."

United States v. Claxton, 685 F. 3d 300, 305, 57 V.I. 821 (3rd Cir. 2012)

(alteration in original) (quoting United States v. Boria, 592 F.3d 476, 481 (3rd Cir. 2010)). the second element requires the government to prove that the defendant has actual knowledge of or was willfully blind to the specific unlawful objective contemplated by the conspiracy. United States v. Caraballo-Rodriguez, 726 F.3d 418, 425 (3rd Cir. 2013) (en banc) (citations omitted). When the object of a conspiracy is the distribution of a controlled substance, the government must "introduce drug-related evidence, considered with the surrounding circumstances, from which a rational trier of fact could logically infer that the defendant knew a controlled substance was involved in the transaction at issue." Boria, 592 F. 3d at 481.

#### Possession with intent to Distribute and distribution

To convict a defendant of possession with intent to distribute a controlled substance in violation of 21 U.S.C. §841(a)(1), the government must prove beyond a reasonable doubt that the defendant "(1) knowingly possessed a controlled substance with (2) the intent to distribute it." United States v. Iglesias, 535 F. 3d 150, 156 (3rd Cir. 2008) (quoting United States v. Bobb, 471 F.3d 491, 497 (3rd Cir. 2006)). Possession may be actual or constructive and proven by direct or circumstantial evidence. Id. (citing Bobb, 471 F. 3d at 497). A defendant constructively possesses a controlled substance if he or she "ha[s] the power and intent to exercise both dominion and control over the object he or she is charged with possessing." Id. (quoting United States v. Garth, 188 F. 3d 99, 112 93rd Cir. 1999)).

See: United States v. Little, 314 F. Supp. 3d 647, 660 (E.D.Pa. 2018) (citing 21 U.S.C. §§841(a)(1), (b)(1)(C); Third Circuit Model Criminal Jury Instructions §6.21.841B). To "'distribute' means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical."

United States v. Rowe, 919 F. 3d 752, 759 (3rd Cir. 2019). Section 802 defines "deliver" and "delivery" as "the actual, constructive, or attempted transfer of a controlled substance or a listed chemical." 21 U.S.C. §802(8); Rowe, F. 3d at 759.

POINT TWO OF ARGUMENT: The Claim is Reiterated

Petitioner avers that the government [failed] to prove the existence of §2, §841, §846; and that the underlying [conduct] by which Telfair's conviction/judgment is premised upon DOES NOT comport with the necessary threshold STATUTORY ELEMENTS. The Petitioner is innocent of the [conduct] of agent's impersonation as drug traffickers to their own (CW(s)). See: (Trial Trans. pgs: 340-486. Feb 18, 2010).

----- PETER WOODLEY -----  
1023 U.S. Dist. LEXIS 181019

Woodley filed a motion to dismiss Count One of the indictment charging him with conspiracy to distribute heroin, in violation of 21 U.S.C. §846. According to the defendant, the government's allegations are based on conversations between him and a (CS) concerning the distribution of heroin. The Defendant argued that the government cannot prove a conspiracy between him and a government informant, and there is no evidence that anyone other than an informant participated in the conspiracy, thus Count One must be dismissed,

The defendant was correct that one cannot be convicted of conspiring only with a government agent or informant. In Sears v. United States, 343 F. 2d 139, 142 (5th Cir. 1965), the Fifth Circuit established the rule that "as it takes two to conspire, there can be no indictable conspiracy with a government informer who secretly intends to frustrate the conspiracy." See also: United

States v. Corson, 579 F. 3d 804, 811 (7th Cir. 2009) ("[a] defendant is not liable for conspiring solely with an undercover government agent or a government informant."); United States v. Lively, 803 F. 2d 1124, 1126 (11th Cir. 1986) holding that the district court's failure to instruct the jury concerning the inability of the government informant to conspire with another person was reversible error in the prosecution for conspiracy to distribute cocaine, where alleged co-conspirator who received cocaine from the defendant became a government informant during the course of the conspiracy.

In this case, Count One of the indictment alleges that the defendant participated in a heroin distribution conspiracy between December 2001 and August 2012. According to the government, members of the conspiracy included the defendant and the CS. After completion of the conspiracy, the CS began to cooperate with the government in its investigation of the defendant, who supplied heroin to the CS during the conspiracy. The cooperation of the CS eventually led to the defendant's arrest in March, 2013. At that point, the CS and defendant were not participating in a conspiracy, and the defendant was not charged with conspiring to distribute heroin at that time.

Contrary to the defendant's position, the CS apparently did not become a government informant until after the time period of the conspiracy alleged in the indictment, thus the dismissal of Count One is not warranted. See: United States v. Cousar, 539 Fed. Appx. 83, 2013 U.S. App. LEXIS 17862, 2013 WL 4517099, at \*2 (4th Cir. 2013) (holding that the evidence in a case involving a conspiracy to distribute crack cocaine did not warrant an instruction on a defense that the defendant could not be guilty of conspiring only with a government informant where the defendant entered the charged conspiracy with the co-defendant before the co-defendant become an informant). Accordingly, the defendant's motion to dismiss Count One of the indictment will be denied at this time, with leave for defendant to renew his motion if the government fails to

prove at trial that he participated in a conspiracy with any individuals other than a government informant during the time period alleged in Count one.

----- TELFAIR'S TRIAL -----

TRANSCRIPT OF TRIAL PROCEEDINGS  
February 18, 2010 pgs: 340-482

Pages 346-348 :

MR. PEDICINI:

Judge, I raised that objection on the hearsay issue because I'm a little confused about the theory of the Government. I know they're going to have this witness who is going to say this is what I'm saying, and he's talking to the agents about Hass. Obviously Hass is, allegedly, my client. And at what point is my client involved in -- I'm not sure what conspiracy we're talking about.

THE COURT:

How about it?

MR. MAHAJAN:

Well, Judge, I thought we had decided that we -- we argued this the other day. Obviously --

THE COURT:

No. No. I didn't rule on this.

MR. MAHAJAN:

Well, we talk about the other day that simply because Mr. Telfair's not able to complete the transaction, the way this comes up is that the agents answer Mr. Telfair's phone after he tell them, that's my heroin supplier calling, and these calls are where he thinks it's a representation of Hass, he thinks --

THE COURT:

But none of that has come out clearly in this case --

THE COURT:

-- as to what he did. I have to agree with Mr. Pedicini. At the moment, all we're going to hear is some agent acting like he's someone else, a purchaser, that apparently was in some way introduced or come about because of some relationship with Hass.

THE COURT:

But what if it was my phone and somebody did that and acted off and did something on his own? How does --

Pages 349-350, line 24-25:

THE COURT:

But there is a heresay objection, and I agree with Mr. Pedicini that I don't see the link. I think it's unfair to the Defendant to figure out what to do with this. Quite frankly, I think you have a crystal-clear, clean case from what I can hear what this witness did vis-a-vis the Defendant, and I think these tapes are going to do nothing but muddy the water, I think they're unfairly prejudicial, and I'm not going to allow it under these circumstances. If you want to bring in the agent and let the agent say what he said in his discussion with Mr. Telfair --

**MR. MAHAJAN:**

But it's not discussions with Mr. Telfair; it's discussions between the witness and the agent.

**THE COURT:**

But you're one step too far removed, and unless you can show me a case that says you can do that -- and I don't want to hear about this other part of a conspiracy because I'm not at all clear about that conspiracy. I agree with the defense counsel's arguments.

**Pages 351-355:**

**THE COURT:**

But you've got him talking to somebody else.

**THE COURT:**

So what? They're having a discussion out of the presence of the jury between themselves. What's he going to do? Is he going to cross-examine both of them at once as to what was being said? I find this to be unfairly prejudicial under the circumstances.

**THE COURT:**

I think it's going to be confusing, and I just think it's unfair to the Defendant under these circumstances.

**Page 351, line 19:**

**MR. MAHAJAN:**

Okay, Judge, while we're here, there's a video that shows the transaction between the agents and the cooperator...

**THE COURT:**

I'm having a problem with this one step removed. If there was evidence that this person was sent by this Defendant, that there was some kind of a connection, that you have admission by this person; but the mere fact that he's an agent acting because he thinks that's what was going on, that's where the disconnection is. I just think this is totally unfair to the Defendant, and under these circumstances, I just can't see -- it's just unfair. I'm not going to allow it...

**THE COURT:**

But I think under these circumstances -- and depending on what comes out on cross-examination, he has to be careful.



**THE COURT:**  
That might lead to something else,

**Page 353, line 23:**

**MR. MAHAJAN:**  
Now, you had conversation, you say, with an agent who you thought was Mr. Telfair's cousin: is that right?

**Page 354, line 23:**

**MR. MAHAJAN:**  
Do you recall the date on which you first met the agent? If I'm not mistaken, the 30th of January. And how long before that had you been in contact with Mr. Telfair regarding the transaction. I would say since August, until I was arrested. This transaction specifically that you had the meeting on January 30th, 2007, right? Yes, sir. Had you spoken to Mr. Telfair in January of 2007 regarding the transaction?

**Page 353, line 12-25:**

**MR. PEDICINI:**  
I have an objection to this whole line. I hate to do this, but -  
-

(THE FOLLOWING TAKES PLACE AT SIDEBAR)

**THE COURT:**  
This is one of the reasons -- I don't know -- I know that you have a theory here -- no, no, let em finish --

**THE COURT:**  
-- and I know you gentleman have prepared. I'm advising you that this is coming out very muddled, --

**THE COURT:**  
-- very UNCLEAR. I think it was just indicated, because I didn't understand what you were trying to ask him...

**Pages 356-358:**

**MR. PEDICINI:**  
Here's the objection, Judge. I don't know what -- first of all, Mr. Telfair was arrested on January 23rd.

**THE COURT:**  
Correct.

**MR. PEDICINI:**  
This individual -- this conspiracy, I submit, is over at the time he's arrested.

**THE COURT:**  
Well, we've already talked about that.

**MR. PEDICINI:**

All right. Now, you have conversations coming at a point in time when Mr. Telfair is in custody, and we're somehow trying --

**Page 356, line 14-16:**

**THE COURT:**

I'm going to let this jury go in for their break. Hold on.

(THE FOLLOWING TAKES PLACES IN OPEN COURT)

**Page 357, line 2-23:**

**THE COURT:**

Okay. The jury s out. Mr. Pedicini, what's your objection.

**Mr. Pedicini:**

Judge, first of all, I'm confused as to what conspiracy we are now engaged in trying to prove.

**THE COURT:**

I am also.

**MR. PEDICINI:**

And my concern is, in an effort to prove it, you're going to have statements that I submit are hearsay statements outside the confines of 801(d)(2)(E) in an effort to further implicate Mr. Telfair. Mr. Telfair was in custody since January 23rd. This whole set of circumstances occurred on January 30th and 31st of 2007. It seems to me that the conspiracy involves the witness, Mr. Antigua, and the agents. And we know the agents' statements can't be used as co-conspirator statements because they're not members of the conspiracy.

So I'm just very confused about where we're going with this, and it's just coming out very muddled. And the theory, I DON'T UNDERSTAND the relevance of this. I don't understand how it's admissible under any hearsay exception I can think of, AND I DON'T EVEN THINK IT'S THE SAME CONSPIRACY THAT'S CHARGED IN THIS INDICTMENT.

**Page 359:**

**THE COURT:**

I think, you know, there comes a time -- I recognize that the Rules of Evidence are rules of inclusion, not exclusion; but I always have to worry here about what's FAIR, about the ability of defense counsel to in any way counter or intelligently cross-examine someone for impeachment or whatever purpose when there are hearsay or out-of-court statements made by the nondeclarant. That's the whole purpose of hearsay, it's trustworthiness and reliability, And, quite frankly, I am having a difficult time understanding -- there seems to be a disconnect between that what you're doing and -- because the agents in there and the Defendant. And there's a gap. And I think from everything I've heard so far, for the same reason I said at sidebar, that the audio was inappropriate under 403, I think this is the same

thing, plus hearsay.

**MR. PEDICINI:**

So you can't conspire with an agent. And if you can't conspire with an agent, it's not an 801(d)(2)(E) exception to the hearsay rule.

Pages 360-265:

**MR. PEDICINI:**

But you can't -- but you see, then it impacts on Mr. Telfair, because it's Mr. Telfair's name that's being mentioned, Hass. If this was a statement made in furtherance of the conspiracy involving my client, it still would be a problem given the time frame of the arrest and the contents of the phone call of this witness talking to an agent who is obviously pretending to be my client. Now, if my client was on the other end, it would be a different story.

**THE COURT:**

The problem I'm having is, there is a disconnect between this defendant and the conversation.

**THE COURT:**

Well, except that the Defendant now steps out of the picture because he's arrested, and we have an agent step in --

Pages 362-365:

**THE COURT:**

How do I know that the Defendant wouldn't have changed his mind at that point and never gone through with this? How do I know he wasn't puffing? How did I know any of this?

**THE COURT:**

I think the prosecution is making an error in pursuing this for the reasons that I said at sidebar. I think you're flirting with a real problem here. And I'm having great difficulty under these circumstances. And I understand those rules. But there seems to be a problem with this.

**THE COURT:**

You see, my problem is, the Agent isn't a conspirator. He's acting like one. That's where I'm having a difficult time. If it was another conspirator, if it was the cousin, that would be different. I'd understand what you're doing. But you've got someone playing a part that's really not involved in the conspiracy, and yet you want to give him the credit for that so that he can get around the rules that otherwise would not allow this person to testify.

**THE COURT:**

You know what? You know what? I'm going to tell you what I'm going to do. I'm going to let you do it, if that's what you want to do, and we'll see what happens in Philadelphia. That's the way I look at it now.

MR. Mahajan:

We have great respect for your Honor's view on the evidence, Your Honor, and sometimes getting what we want is the worst medicine...

NOTE: The cumulative affects of trial error(s) invaded the province of the jury's fact finding function, violating Petitioner's 5th and 6th Amendment Rights. See: (Feb. 18, 2010 Trial Trans. pgs: 356-365).

POINT THREE OF ARGUMENT: The Claim is Reiterated

Petitioner previously challenged [ALL] predicate offenses for the career offender enhancement §4B1.1; and the additional point within his PSR; and his drug weight(s) inter alia. Petitioner believes his imprisonment is further unlawful/unconstitutional because he is not a legitimate career offender pursuant to the Supreme Court's opinion in Johnson v. United States, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). Petitioner's sentence violates the Sixth Amendment by including enhancements and facts not found by a jury. The fundamental error(s) led to depriving Telfair's "coram non judice" proceedings of due process.

At sentencing the government failed to submit to the Court and PSR the certified documents to establish Petitioner's "prior" criminal history as objected to within previous counsel's sentencing Memorandum's footnotes. Petitioner maintains that when the record is not clear due to, inter alia, the government's failure to produce Shepard documents the court must assume that the conviction(s) rested upon the least of the acts in the statute. Petitioner's prior convictions do not have the required element(s) of FORCE necessary to fit within ACCA's force clause, rendering his mandatory sentence unlawful.

Sixth Amendment concerns and procedural fairness... Mathis, 136 S. Ct. at 2252-53. **First**, the Sixth Amendment requires that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the

prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Appendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Since the maximum penalty is increased whenever a court later uses a prior conviction to trigger the ACCA enhancement, it would "raise serious Sixth Amendment concerns" the court went "beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense." Mathis, 136 S. Ct. at 2252. **Second**, "an elements-focus avoids unfairness to defendants." Id. at 2253. "Statements of 'non-elemental fact' in the records of prior convictions are prone to error precisely because their proof is unnecessary," which means "[a]t trial, and still more at plea hearings, a defendant may have no incentive to contest" them. Id. (citation omitted). These types of factual inaccuracies "should not come back to haunt the defendant many years down the road by triggering a length mandatory sentence." Id.

In a typical case, then, a sentencing court performing a categorical-approach analysis "cannot go beyond identifying the crime of conviction" and reviewing the statutory definition. Mathis, 136 S. Ct. at 2252. But there is an exception. "[I]n a narrow range of cases," the "categorical approach... may permit the sentencing court to go beyond the mere fact of conviction" and the statutory text, Taylor, 495 U.S. at 60-2, and also consult the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented," Shepard v. United States, 544 U.S. 13, 16, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005). This limited universe of court records, which has been extended to include jury instructions, see Descamps, 133 S. Ct. at 2281, has been termed "Shepard documents." The purpose of this "modified" approach, and its accompanying license to review any available Shepard documents, is to provide sentencing judges with a tool to determine reliable not what specific conduct was the basis for a particular crime as a factual matter, but rather what type of conduct is generally represented by an underlying conviction

as a legal matter. But because the modified approach is accordingly intended only to "serve[] the limited function" of "help[ing] effectuate the categorical analysis," Id. it retains the categorical approach's single purpose: to figure out the precise elements of the crime of conviction. Sheppard, 544 U.S. at 26.

In line with that limited function, the modified approach also has limited applicability: a sentencing court may use it only if the underlying conviction was under a so-called "divisible" statute. Descamps, 131 S. Ct. at 2281-82. A divisible statute "sets out one or more elements of the offense in the alternative." Id. at 2281, and in the "typical case brought under the statute, the prosecutor charges one of those alternatives, and the judge instructs the jury accordingly,": Id. at 2284. Returning to the example of a state burglary statute encompassing both lawful and unlawful entry, consider a situation where, instead of merely sweeping more broadly than generic burglary, the statute was specifically phrased to prohibit "the lawful entry or the unlawful entry" of a premises with intent to steal. See Mathis, 136 S. Ct. at 2249.

Petitioner avers that he is actually/factually innocent, and that his sentence is procedurally unreasonable violating his Sixth Amendment right(s) to trial by jury; and violating his Fifth Amendment right(s) to due process, which led to Petitioner being imprisoned for violations of the laws committed by agents. See: (Feb. 18, 2010 Trial Trans. pgs: 340-465).

#### IN COMPARISON

----- ROWE/TELFAR -----

Third Circuit review of the sufficiency of the evidence is plenary, but "we must consider the evidence in the light most favorable to the government and affirm the judgment if there is substantial evidence from which any rational trier of fact could find guilt beyond a reasonable doubt." United States v. Benjamin, 717 F. 3d 371, 376 (3rd Cir., 2013) (citations and internal quotation marks omitted). Our task therefore is to determine "whether the Government has adduced sufficient evidence respecting each element of the offense charged to permit jury consideration." United States v. Miller, 527 F. 3d 54, 63 (3rd Cir., 2008) (citations omitted).

The Government may rely on direct and circumstantial evidence to make its case to the jury. United States v. Caraballo-Rodriguez, 726 F. 3d 418, 425 (3rd Cir., 2013). While it is axiomatic that reasonable inferences can support a verdict, they "must bear a logical or convincing connection to establish fact." Id. (citations and internal quotation marks omitted). In the end, "[t]he question is whether all the pieces of evidence against the defendant, taken together, make a strong enough case to let a jury find [the defendant's] guilty beyond a reasonable doubt." Id. at 432 (quoting United States v. Cooper, 567 F. 2d 252, 254 (3rd Cir., 1977)).

The Government charged Rowe with violating 21 U.S.C. §841(a)(1) by two means: distributing heroin, and possessing it with intent to distribute. The Government further charged that the violation involved 1,000 grams or more of heroin, but provided the jury with two options for a finding on drug weight: 1,000 grams or more, and 100 grams or more. Under §841(b)(1)(A)(i), a violations of §841(a) involving more than 1,000 grams or more of heroin requires a mandatory minimum penalty of ten years' imprisonment and sets a maximum penalty of life imprisonment. Under §841(b)(1)(B)(i), a violation of §841(a) involving 100 grams or more of heroin requires a mandatory minimum penalty of forty years' imprisonment. Because the weight involved in a violation of §841(a) increases the

statutory penalty, it is an element of the offense that must be proven beyond a reasonable doubt. See Alleyne v. United States, 570 U.S. 99, 103, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013) ("Any fact that, by law, increases the penalty for a crime is an element that must be submitted to the jury and found beyond a reasonable doubt."). Therefore, the question presented here is whether the evidence was sufficient to allow a jury to find that Rowe violated §841(a) by distributing 1,000 or more grams of heroin, or by possessing with intent to distribute 1,000 or more grams of heroin.

At trial, the Government did not present evidence of a single distribution involving 1,000 grams or more of heroin. The prosecutor mistakenly believed that distribution of 1,000 grams could be proven by combining several distributions that, in total, involved 1,000 grams of heroin. Rowe challenged this approach in his post-trial motion. The District Court confirmed that the Government was mistaken, and the Government concedes the same before this Court. However, the District Court found that because Rowe was also charged with possession with intent to distribute, a continuing offense, the jury's general verdict could stand. We disagree. As we will now explain, the Government did not present sufficient evidence of possession with intent to distribute 1,000 grams of heroin.

Possession with intent to distribute is actual or constructive possession over a controlled substance, United States v. Crippen, 459 F. 2d 1387, 1388 (3rd Cir. 1972) (per curiam), by a defendant who "ha[s] in mind or plan[s] in some way" to "deliver or transfer possession or control" of the controlled substance to another. Third Circuit Model Criminal jury Instruction §6.21.841-5. Constructive possession requires the power and intention at a given time to exercise dominion or control over a thing." Benjamin, 711 F. 3d at 376 (quoting United States v. Garth, 188 F. 3d 99, 112 (3rd Cir. 1999)). Proof that a defendant associated with a person who controls a drug is insufficient to prove constructive possession. Garth, 188 F. 3d at 112.



Unlike distribution, possession with intent to distribute is a continuing offense. United States v. Zidell, 323 F. 3d 412, 422 (6th Cir., 2003) (collecting cases) "A continuing offense is continuous, unlawful act or series of acts set afoot by a single impulse and operated by an unintermittent force, however long a time it may occupy." United States v. Midstate Horticultural Co., 306 U.S. 161, 166, 59 S. Ct. 412, 83 L. Ed. 562 (1939) (citation omitted). (e.g.) In Benjamin, we looked at another possession statute-felon in possession of a firearm-and held that continuity is interrupted by "relinquishment of both actual and constructive possession of the gun before it is reacquired." 711 F. 3d at 378 (citation and alteration omitted). Applying our reasoning in Benjamin to §841, we conclude that possession of 1,000 grams of heroin begins when a defendant has the power and intention to exercise dominion and control over all 1,000 grams, and ends when his possession is interrupted by a complete dispossession or by a reduction of that quantity to less than 1,000 grams.

The Government's evidence supporting the 1,000-gram verdict was premised on its incorrect belief that it could combine weights from multiple distributions and discontinuous possessions during the indictment period. The Government acknowledged its error at oral argument, Oral Arg. at 18:32, but asserted that even so, it had presented sufficient evidence to support a reasonable inference that at some point during the indictment period, Rowe possessed at least 1,000 grams of heroin with intent to distribute or possessed over time, and instead sought to determine whether Rowe possessed a 1,000-gram quantity of heroin at least once during the indictment period, the Government's evidence was not sufficient to permit any rational juror to make such a finding beyond a reasonable doubt. See: (Feb. 18, 2010 Trial Trans. pgs: 340-482) herein.

----- KELLY FACTOR -----  
892 F. 2d 255

A conviction must be vacated when (1) there is a variance between the indictment and the proof presented at trial and (2) the variance prejudices a substantial right of the defendant. United States v. Schurr, 775 F. 2d 549, 552 (3rd Cir., 1985). This rule is designed to protect the right(s) of the defendant "not to be tried en masse for the conglomeration of distinct and separate offenses committed by others." Kotteakos v. United States, 328 U.S. 750, 775, 90 nL. Ed. 1557, 66 S. Ct. 1239 (1946).

Where a single conspiracy is alleged in the indictment, there is a variance if the evidence at trial proves only the existence of multiple conspiracies. United States v. Smith, 789 F. 2d 196, 200 (3rd Cir.) Cert. denied, 479 U.S. 1017 S. Ct. 668 (1986). Telfair meets this threshold.

----- Telfair -----

In Telfair's case the district court [failed] to instruct the jury on Pinkerton principles, and Kelly factor(s) which led to Petitioner being convicted for the crimes committed by agent's impersonation as drug traffickers while Petitioner was in pretrial; whereas there could [only] be a legitimate conviction if the Government proved a single conspiracy charged in the indictment was not some other separate conspiracy. See: (Feb. 18, 2010 Trial Trans. pgs: 340-485).

The essence of a conspiracy is an agreement. United States v. Nolan, 718 F. 2d 589, 595 (3rd Cir. 1983). In the case of Telfair, his conspiracy proven by the record, trial transcript, that Telfair's unlawful conspiracy under indictment No.: 08-cr-0757-DMC-KM is the conduct between Agent and its own witnesses NOT involving Telfair. The Government [needed] to prove that Telfair agreed with at least one of the persons named in the indictment, that they, or one of them, would perform an unlawful act. The question for the Court in this regard is whether Telfair can be a party to the conspiracy involving the agents and their witnesses; and whether

the conspiracy alleged in the indictment broke up into separate conspiracies beginning in indictment No.: 07-cr-0272-DMC through 08-cr-0757-DMC-KM. See: (Feb. 18, 2010 Trial Trans. pgs: 340-485) herein.

Aggrieved citizen aver neither deliberate indifference to the public knowledge of subjugation of citizens to involuntary servitude with alien enemies of the state and nation within the County of Burlington, N.J., nor the tacit approval that the license persons doing the involuntary servitude commerce depend for continuous operation; no affirmative nor acting on behalf of the State's police powers and Attorney General's clear mandatory duty to enforce the 13th and 14th Amendment's immunity for citizens against slavery and involuntary servitude labor where not from accusation of a crime and duly convicted thereon can make constitutional and lawful statutes and licensing laws or State customs, under color of law or usage that authorize the kidnapping of aggrieved citizen as set forth herein upon sworn and verified facts and subjugation of him permanently to involuntary servitude labor solely by classifying and/or stigmatizing him in public or in private records by disguising him as a foreign born alien enemy or criminal captured at war on terrorism and drugs.

Accordingly, aggrieved citizen seeks redress and remedy as prayed herein.

DECLARATION IN LIEU OF CERTIFICATION

I, Tommie H. Telfair, under penalty of false swearing pursuant to: 28 U.S.C. §1746, declare that the foregoing documentary evidence and documentary facts regarding [t]hese Habeas, inter alia, related matter(s) are true, correct, and complete to the best of my abilities.

Dated: 9/11/00

By: Tommie H. Telfair  
Tommie H. Telfair  
In Propria Persona

P R A Y E R

WHEREFORE, upon the foregoing Complaint suing out in the nature of extraordinary writ in original proceedings redress and remedy to unlawful private individuals kidnapping, convict leasing, and transaction selling and/or leasing aggrieved citizen to FCI, or private Alien Enemy Prison(s) licensed by State statutes and ordinances making the subjugation of intra state and out of state kidnapped citizens to involuntary servitude labor as to and physically along with foreign born captured enemy and criminal aliens under War on Terrorism and Drugs, prays as follows:

1. **THAT:** This Honorable Court open original summary judicial proceedings and issue Order commanding the Respondent make the return showing the: power, standing, jurisdiction, and authority followed by the Government to vest in private individuals the full judicial and coercive police powers of the State of New Jersey for kidnapping and imprisoning its citizens to secretly or privately in FCI, or alien enemy prisons as to and physically along with captured foreign born enemy aliens captured at War within America and its allies in the War on Terrorism and Drugs. Upon named Respondent's delays, refusal, or failure this Honorable Court immediately enter summary judgment AGAINST Respondant.

2. **THAT:** Upon the named Respondent refusal or failure to make the return discharge of aggrieved citizen from secret or private captivity, and subjugation to involuntary servitude labor inside the FCI, or private alien enemy prison within this State, [t]his Honorable Court demand DISCHARGE of said Petitioner; and for any other remedy and redress this Court in the interest of justice and the public welfare deem necessary. See: (Summary of Claims).

Date: 9/11/20

By: Tommie H. Telfair  
Tommie H. Telfair  
In Propria Persona

CERTIFICATE OF SERVICE

I, Tommie H. Telfair, declare that a copy of the foregoing pleadings for these Habeas Corpus moving matter(s) were mailed to:

Supreme Court  
Of The United States  
Clerks Office

Due to COVID-19 Petitioner is subject to lockdown, quarantines, and hardship limiting Petitioner's abilities, and access to legal functionality.

Date: September 11<sup>th</sup>, 2020

By: Tommie H. Telfair  
Tommie H. Telfair  
In propria persona  
FCI Fort Dix  
P.O. Box 2000  
Joint Base MDL, NJ 08640

*Again on: 10/13/20*  
*Tommie H. Telfair*

Sworn Oath And Verification

I, Tommie Hassan Telfair, being of the age of the Majority and competent to make this Oath and Verification, give this affidavit in sworn testimony, being fully depose and state as follow;

1. **THAT:** I am a natural born citizen of the United States and a citizen of the State of New Jersey by lifelong permanent domicile.
2. **THAT:** The foregoing complaint is true and correct and that I have personal knowledge and experience of its truthfulness and correctness.
3. **THAT:** Wherever the foregoing refer to any other source other than personal knowledge and experience that I believe that the source to be true and correct.

SUBSCRIBE AND SWORN BEFORE ME THIS 11th day of September, 2020.

agw on:

10/13/20

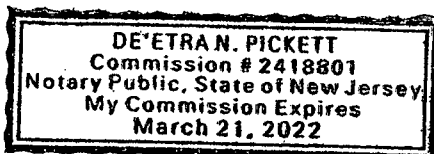
Tommie H. Telfair

SEAL

De'etra Pickett

Notary:

In and For The State of  
New Jersey ; my commission  
expires 3/21/2022.



Tommie H. Telfair  
Reg. no.: 28440-050  
Bldg: 5752  
FCI Fort Dix  
P.O. Box 2000  
JBMDL, NJ 08640

October 16th, 2020

Supreme Court  
Of The United States  
Office of the Clerk  
1 First St., NE  
Washington, DC 20543-0001

RE: AMENDED HABEAS CORPUS  
REQUEST FOR COUNSEL

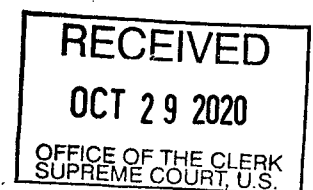
Dear Honorable Clerk,

PLEASE TAKE FURTHER NOTICE, of the following fact(s). I am the above mentioned Petitioner presently before the Honorable Court seeking to sue out an Amended Habeas Corpus inter alia. As have been previously explained, due to the 'present' conditions of confinement in conjunction to COVID-19, Petitioner's abilities to litigate pro-se are prejudicially hindered.

The typewriters are dysfunctional, the staplers are inadequate, and it's nearly impossible to obtain copies required to service either the court(s) or any adversary. Enclosed with this request is Petitioner's **ONLY** additional copy being provided to the Court for its use; and for serving any possible named adversary to these Habeas Corpus proceedings.

Due to the increase in COVID-19 infections throughout the FBOP, Petitioner anticipates further restrictions, lockdowns, and quarantines impeding Petitioner's abilities to continue pro-se litigation in these Habeas Corpus matters.

Petitioner requests the appointment of counsel for these moving matter(s); and asks the Honorable Clerk to serve the possible named adversary resulting from, the anticipated restrictions, lockdowns, or quarantines due to COVID-19 inter alia.



Enclosure

Sincerely,

By: Tommie H. Telfair  
Tommie H. Telfair  
In Propria Persona