

20-6591

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

NOV 20 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JOSE DELORES VANEGAS

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSE DELORES VANEGAS

(Your Name)

D. RAY JAMES CORR. FAC., POST OFFICE BOX 2000

(Address)

FOLKSTON, GEORGIA 31537

(City, State, Zip Code)

(Phone Number)

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DEC - 7 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO ACCEPT THE PETITIONER'S CLAIMS WITHOUT CONDUCTING THE PROPER SPECIFIC FACT-FINDINGS IN ORDER TO DETERMINE THE TRUTH OF THE PETITIONER'S CLAIMS OF GOVERNMENT'S GROSS PROSECUTORIAL MISCONDUCT.

II

WHETHER A CONVICTION SECURED IN VIOLATION OF THE FOURTH AMENDMENT AND FIFTH AMENDMENT DUE PROCESS CLAUSE, AND FEDERAL LAWS SHOULD BE REMANDED BACK TO THE LOWER COURT FOR FURTHER PROCEEDINGS

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

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

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 25, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search 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."

The Fifth Amendment to the United States Constitution commands, in pertinent parts that,

"No person shall be held to answer a capital or otherwise infamous crime ... nor be deprived of life, liberty or property without due process of law ..."

The Sixth Amendment to the United States Constitution commands, in pertinent parts that,

"In all criminal prosecutions, the accused shall enjoy the right to a speedy trial ... and to be informed of the nature and cause of the accusation ... to be confronted with witnesses against him ... to have compulsory process for obtaining witness in his favor ... have the assistance of counsel for his defense."

Title 18 United States Code Service, Section 2703(c)(1)(A), 3117.

Title 28 United States Code Service, Section 2255.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

The Federal Bureau of Investigation ("FBI") got wind of the conspiracy in autumn 2011 when local police arrested two individuals in possesion of cocaine concealed in wooden frames and plaques. As the investigation progressed, the FBI identified Samuel Benitez-Pineda as distributor. This led investigators to tap Benitez-Pineda's phone. The phone taps led then to Vanegas. From the intercepted calls, the FBI suspected Vanegas was purchasing cocaine from Benitez-Pineda and distributing it to others.

The FBI through a warrantless search of Vanegas subscriber cell phone information. Government failure and neglect to sought the required Court Order pursuant to Title 18 United States Code Section 2703(c)(1)(A), directing AT&T to provide records, subscriber information of user cellular number (---) -----, Vanegas cell phone number.

Subsecuent to the warrantless search of Vanegas subscriber information, the FBI armed with the information obtained illegally begun a warrantless search and seizure of Vanegas cell phone "real-time cell site data," GPS tracking, conversion of a cell phone into a "tracking device."

Once again, the FBI fail and neglect to sought the required Court Order pursuant to Title 18 USC § 3117 to grant or authorize disclosure of prospective "real-time cell site data," and the required search warrant pursuant to Fed. R. Crim. P. Rule 41 Probable Cause, for monitoring, i.e. search and seizure of Vanegas cell phone cell site data.

The agents conducted surveillance on Vanegas. The data frequently placed Vanegas within the apartment complex listed on subscriber information for his cell phone.

On May 1, 2012, FBI agent Kenneth Smith conducted physical surveillance of Vanegas

2012

after the real-time cell site data placed Vanegas cell phone within six meters of an address in Bowie, Maryland. Agent Smith's conducted a "spoofed" telephone call with Vanegas while he was under surveillance. During the "spoofed" call, Vanegas identified himself as "Jose," which is Vanegas' first name. Surveillance photographs taken of Vanegas during the "spoofed" call were compared to prior arrest photographs of Vanegas and confirmed to be the same person.

Although the Government secured a warrant for Vanegas arrest on May 8, 2012, the government could not secure a "search warrant" for Vanegas residence. Where no information on the records support or link Vanegas criminal activity to his residence.

On May 10, 2012, eight (8) Special Agents of the Federal Bureau of Investigation, ("FBI"): Special Agent, Michael T. Adkins, SA Matthew K. Heise, SA Peter Fediszen, SA Dave Scott, SA David DeFilippis, SA Garret Nabors, SA Trudie Magnusson, and SA Scott Stref went to 5535, in Arlington, Virginia to effect the arrest of Vanegas.

However, the FBI did not had independent, reliable information, or corroboration as to Vanegas physical address. The records once again are silent as to Agents conducting physical surveillance at Vanegas apartment complex, other than surveillance through Vanegas location-based services, real-time cell site data, that placed Vanegas within the apartment complex located at 5535, in Arlington, Virginia.

At approximately 6:05 a.m. SA "Adkins", leader of the arresting team, and SA "Heise" knocked at the door at apartment ("702"), not Vanegas apartment, the tenant at apartment 702, male gender, opened the door, and the arresting team stormed their way into the apartment with drawn weapons and conducted a warrantless sweep of apartment 702. The agents identified the apartment 702 tenant as the wrong suspect.

Subsecuently, Vanegas', the Petitioner, was arrested in the 7th floor main hallway approximately 20 meters of his apartment door, apartment ("704").

While SA Adkins and Heise were effecting the arrest of Vanegas right outside of his apartment, the remaining members of the arresting team stormed their way into Vanegas apartment, and with drawn weapons conducted a warrantless sweep of the premises. Finding: Vanegas' wife, Vanegas step-daughter and Vanegas minor daughter, subsequently securing Vanegas family in the apartment living room.

After conducting the sweep of the apartment where no weapons, contraband, fruit of crime, or other items illegally possessed was found, Vanegas was brought into the apartment by agent Adkins and Heise. But, before removing the arrestee, Vanegas, from the apartment the agents interrogated Vanegas about any firearm possession, if he own any firearm. Vanegas in response to the custodial interrogation informed the agents that he own a hand gun that was stored and secured in a closet. At that point no Miranda warning was given, or the agents informed Vanegas of any possession of the arrest warrant or the charge against Vanegas for his arrest, even though Vanegas repeatedly asked agent Adkins and Heise what was the cause of his arrest, but the agents deliberately neglect to give Vanegas any information as to the arrest warrant.

Immediately after the arrestee, Vanegas, informed the agents that he possessed a firearm that was stored and secured on a closet, at approximately between 06:15 - 06:20 a.m. agents Adkins and Heise proceeded to remove Vanegas from his apartment. Needs to be noted that at that point no "consent" was given to the agents to enter the apartment or to remain in the apartment. The remaining agents inside of Vanegas apartment: SA Peter Fediszen; SA Dave Scott; SA David DeFilippis; SA Garret Nabors, SA Trudie Magnusson; and SA Scott Stref remained in Vanegas apartment after Vanegas removal from the premises, illegally seizing Vanegas family. All agents were carrying their service weapons, agent David DeFilippis was holding a fully automatic machine gun keeping Vanegas family under surveillance while the rest of the team engaged in rummaging through the apartment in order to discover incriminating evidence, and

subsecuently searching the apartment living room closet, Vanegas personal closet, where the agents found and retrieve Vanegas firearm, and drug paraphernalia.

While the agents were searching Vanegas apartment, Vanegas were being transported to (ACPD), Arlington County Police Department to be interviewed by agents Adkins and Heise.

The agents continue to keep Vanegas uninformed as to the existance of the arrest warrant and the charges therein. At 7:20 a.m. Vanegas was advice of his Miranda rights for the first time, Vanegas not fully understanding the significance of a waiver of rights agree to speak with the agents without an attorney, and at the same time signed a FD-26 form "consent to search." Obviously, agents Adkins and Heise did not informed Vanegas that the remaining agents at Vanegas apartment had already begun and engaging in searching and seizing evidence at Vanegas apartment.

The illegal search and seizure conducted at Vanegas apartment yielded a numerous cuantity of items, including: Vanegas firearm; iPhone that was seized in the living room; and drug paraphernalia. The evidence were photographed, bagged and labeled, and subsecuently transported to the FBI (WFO) Washington Field Office, Norther Virginia residency.

At the FBI (WFO), Norther Virginia residency, agent "DeFilippis" without a search warrant or Court Order pursuant to Fed. R. Crim. P. 41(c) authorizing the agents to search and seizure electronically stored information, on May 10, 2012 at 09:57 a.m., through the use of a "Cellbrite" machine, a electronic device to download and copy cell phones data, agent DeFilippis downloaded and copied entire Vanegas cell phone content, (i.e. contacts names and phone numbers, and text messages stored on the phone harddrive, even previously deleted data and text messages). See Appendix D.

A relevant fact thaths needs to be noted on this case is: First, altough there was a binding precedent in the Fourth Circuit, United States v. Murphy, 552 F3d 405, 411

(4th Cir. 2009), which allowed "police officers," not Federal Agents, to retrieve records and text messages from suspected narcotics offenders search-incident-to-arrest, now overruled in Riley v. California, 573 US ____ (2014). Murphy did not control the warrantless search of Petitioner's cell phone and two (2) SD Media Memory cards where: The cell phone was not in possession of the arrestee, Vanegas, at the time of Vanegas arrest, the seizure of petitioner phone and subsequent search and seizure of the cell phone content, and SD Media Memory cards was not a search-incident-to-arrest. A search incident to arrest must be conducted contemporaneously with the arrest. See New York v. belton, 453 US 454 (1981). In Chimel the justification for the search incident to arrest are absent when the search is remote in time from the arrest. The search and seizure of petitioner cell phone content was conducted at a federal building hours latter after Vanegas arrest. A search of luggage was not lawful as a search incident to arrest when the evidence had already been transported to the federal building. See United States v. Chadwick, 433 US 1 (1977). None of the justification for a search-incident-to-arrest were present; Second, "the search of a cell phone conducted by Federal Agents cannot be justified as a search incident to a lawfull arrest," the reading of United States v. Wall, LEXIS 103058, US Dist. for the Southern District of Florida, make it clear that "[t]he DEA policy on rummaging through cell phone during the booking process cannot immunize an otherwise unconstitutional search." 2008 US Dist. LEXIS 103058

Third, and lastly, but most importantly. The illegal search cannot be saved by the "good faith exception," where: The Government had time to secure a search warrant but choose not to do so. On January 4, 2012, United States Magistrate Judge Theresa C. Buchanan of the Eastern District of Virginia issue warrants authorizing the search and seizure of the contents of the cellular telephones seized from Melcy Yalexsy Guevara-Barrera at the time of his arrest on October 21, 2011, as well as the cellular telephones

telephones inside the safe in Barreras' residence. (Barreras', Petitioner co-defendant), (The applicant for the search warrant was: FBI Special Agent and Case Agent, Mark Remily, (WFO) Northern Virginia residency, CR7 Squad). Thus, the agents were fully aware of the requirements of the search warrant pursuant to Fed. R. Crim. P. Rule 41(c). The Federal Rules of Criminal Procedure are carefully tailored ground rules for fair and orderly procedures in administering criminal justice. Rule 41 embodies standards which conform with the requirements of the Fourth Amendment.

A federal search in violation of the Rule affords an accused the right at trial to the exclusion of evidence thereby obtained. There is no question that the search in this case did not conform with Rule 41. This challenge is sustainable, and Petitioner would be entitled to relief, for the fruits of the search and seizure was relevant and material.

II. PROCEDURAL HISTORY

i. The Government charged Vanegas with conspiracy to distribute cocaine under Title 21 USC § 841(b)(1)(A) and possession of a firearm in furtherance of a drug trafficking crime under 18 USC § 924(c)(1)(A). Vanegas pleaded not guilty.

ii. The Government provided Discovery to trial counsel for the defense, pursuant to a Court Order.

However, the government did not turned over in discovery to Vanegas attorney for the defense, not a single Court Order and/or any search warrant pursuant to Title 18 USC § 2703(c)(1)(A) directing AT&T to provide records, subscriber information of Vanegas cell phone number. And the required Court Order pursuant to Title 18 USC § 3117 and the required search warrant granting the government to obtain, search and seize Vanegas "real-time cell site data." Thus, trial counsel for the defense failed and neglect to conduct a meaningful review and examination of Discovery materials.

iii. Vanegas Request of New Counsel for the Defense

On July 27, 2012 Vanegas requested before the District Court new counsel be appointed

to represent him. The District Court informed Vanegas that he can retain new counsel, but, at this time, his request for new counsel is denied.

On September 13, 2012 Vanegas, for a second time, through a letter to the Court requested new counsel be appointed. The District Court denied its request.

On January 4, 2013 Vanegas appeared with trial counsel for the defense. Came on for status re: request to remove counsel from his representation of defendant. Argument heard and the Court denied the request for appointment of new counsel. Court will go forward with the jury trial set for January 14, 2013.

iv. Pre-Trial Motions. Trial Counsel for the Defense Neglect and Failure to File Motion to Suppress Pursuant to Fed. R. Crim. P. Rule 12.

Even though, trial counsel for the defense was apprised of the information described on part I. FACTUAL BACKGROUND, information that was related verbally by Petitioner - Defendant to trial counsel for the defense on a series of interviews held at ("ADC"), Alexandria Detention Center, Alexandria, Virginia. Where the defendant described: (1) The arrest executed outside of Vanegas apartment; (2) Warrantless sweep of Vanegas apartment; (3) Agents questioning/interrogating Vanegas about firearm possession without ministering the proper Miranda warnig; (4) Unlawful seizure of Vanegas family members. Vanegas wife, Vanegas step-daughter and Vanegas minor daughter, and illegal stay of agents in Vanegas apartment after the wrrantless sweep, i.e., no consent to either enter the apartment or stay; (5) Warrantless search of Vanegas closet in order to locate and secure Vanegas firearm, no consent given to search. Search of Vanegas closet right after Vanegas departure from the premises at or around 6:15 - 6:20 A.M..

v. The Trial

Through trial counsel for the defense failure to file an motion to suppress and his failure to correct the records, trial counsel enabled the Government to introduce and ripe the fruits of their illegal obtained evidence, unchallenged evidence and

testimony elicited by FBI agents. Fruits of the illegal FBI agents and Assistants US
District Attorneys actions.

That is, FBI (SA) Adkins, leader of the arresting team. Which testified under Oath falsely, and submitted a FD-302, written report seven (7) day after the arrest, where (SA) Adkins stated the following: (1) That the arrest of the Defendant was executed inside the residence; (2) and that rest of the arresting team, six (6) SA's remained at the defendant residence pursuant to a "voluntary consent to search." But, as noted above, (SA) Adkins assertions were false to both statements. No objection whatsoever by trial counsel for the defense.

Testimony by (SA) DeFilippis. Who testified falsely, stating that defendant wife granted the agents the right to search Vanegas personal closet located in the living room. Where the agents located and seized Vanegas firearm and drug paraphernalia, and some other damning evidence. However, agent DeFilippis testified truthfully as to the search and seizure of the warrantless download and copy of Vanegas digitally content of his cell phone and two (2) SD Memory Cards.

Subsequently, the government also introduced a government key witness to its case. Carl T. Walsh Jr., "Walsh," also known as "CT", whose identity was made known to FBI agents and district attorneys through the illegal search and seizure of Vanegas cell phone content, which revealed text messages between Vanegas and "Walsh," the text messages were also admitted at trial as evidence. No objection by trial counsel.

The Government also introduced the testimony of (SA) Smith, Kenneth Smith. Who testified falsely as to the Court Order granting the government to search and seize Vanegas "real-time cell site data," GPS tracking of Vanegas cell phone. As noted, Court Order was never granted. No objection by trial counsel for the defense..

After a two-day trial at which the government introduced its numerous "ill-gained" evidence, the government rested its case. On January 15, 2013 the jury found Vanegas

guilty of distributing 500 grams or more of cocaine and possession of a firearm in furtherance of a drug trafficking crime.

III. POST-TRIAL PROCEDURAL HISTORY

At sentencing, Vanegas for the first time argued that the evidence taken from his cell phone was illegally obtained and the testimony elicited from Carl T. Walsh Jr. was "fruit of the poisonous tree."

The District Court sentenced Vanegas to sixty months on the conspiracy to distribute cocaine charge and sixty months on the on the firearm charge, which by statute must run consecutively to the drug charge. Vanegas appealed his conviction.

In Defendant's direct appeal, appeal counsel's did not assert a Fourth and Fifth Amendment claims. Vanegas Fourth and Fifth Amendments claims were not raised in the US District Court proceedings by trial counsel for the defense through a motion to suppress prior to trial under Fed. R. Crim. P. Rule 12.

On direct appeal Vanegas could not pursue separate Pro Se claims. Therefore, Vanegas appeal counsel, appealed on grounds of the firearm charge, and the sufficiency of the evidence supporting Vanegas conviction as well as a related jury instruction which the Court provided at trial. The US Court of Appeals for the Fourth Circuit rejected Vanegas' appeal and affirmed his conviction. See United States v. Vanegas, 560 F Appx 191 (Mar. 2014).

Vanegas filed for a petition for certiorari to the United States Supreme Court in which he argued that the search of his cell phone without a warrant was in violation of the Fourth Amendment as interpreted by the Supreme Court in Riley v. California, 573 US __, 134 S Ct 2473 (2014).

On October 14, 2014 The Supreme Court simultaneously granted Vanegas' petition for certiorari and remanded his case to the Fouth Circuit "for further consideration in light of Riley v. California." See Vanegas v. United States, 135 S Ct 377 (2014).

Upon remand, the Fourth Circuit again affirmed Vanegas' conviction. The Court Concluded that because trial counsel for the defense failed to timely file a motion to suppress the fruits of the search of vanegas' cell phone pursuant to Fed. R. Crim. P. Rule 12, he waived the suppression argument that he raised upon remand. See United States v. Vanegas, 560 Fed Appx 191, 2014 US LEXIS 4405 (4th Cir. VA., 2014).

The Court of Appeals for the Fourth Circuit also found that Vanegas' through counsel for the defense failure lacked "good cause" to excuse the waiver, thus rendering the mandate in Riley inaplicable in remand. See Appendix C.

Vanegas' petitioned the Supreme Court for certiorari with respect to the Fourth Circuit's second affirmance on August 27, 2015. The Supreme Court denied Vanegas' second petition on October 6, 2015.

Exhausted Attempt to Relief Through Title 28 USC § 2255

On October 7, 2016 Petitioner filed his motion pursuant to Title 28 USC § 2255 and his exhibits. Civil case opened, entered: October 12, 2016.

Twelve (12) month after a inordinate amount of time that petitioner motion was pending before the habeas Court, petitioner filed a letter/motion requesting the status of his pro se § 2255.

Fifteen (15) month latter, after petitioner initial filing of his § 2255 motion, the habeas Court being fully advise in its premises pursuant to Rule 4 governing § 2255 directed the United States to file a response. Entered: January 31, 2018.

On April 2, 2018 the respondent, the government, filed response in opposition to petitioner pro se § 2255. Entered: April 2, 2018.

On May 23, 2018 Petitioner filed its memorandum in support of its motion, traverse and exhibits to respondent motion in opposition.

Subsecuently, due to the fact that several evidentiary desputes arised after government assertions and contentions grounded on false statements and false evidence

in trial

in their response in opposition to petitioner motion § 2255, on November 2018, petitioner filed its motion for a evidentiary hearing.

Once again, inordinate amount of time for adjudication by the reviewing habeas Court. After petitioner motion under § 2255 had been pending in the Courts dockets for about Thirty (34) month without being adjudicated, on or about August 10, 2019 petitioner filed a motion to expedite pursuant to Title 28 USC §§ 1657 & 2243 to hasten petitioner motion under § 2255 to be adjudicated.

Due to unreasonable delay by the reviewing habeas Court in rendering a decision on petitioner motions, the petitioner on March 2, 2020 filed his petition for Writ of Mandamus before the United States Court of Appeals for the Fourth Circuit in order to compel the District Court to adjudicate petitioners motions.

Subsequent to petitioner filing for a writ of mandamus, on March 23, 2020 Twenty-one day thereafter of petitioner filing for a writ of mandamus to compel, and forty-one (41) month after petitioner initial filing of its § 2255 motion, the habeas Court ruled denying: Petitioners motion under § 2255; Motion to set a evidentiary hearing; Motion to expedite under §§ 1657 & 2243 as moot. And Expressly declined to issue a certificate of appealability, ("COA"). Order entered: March 23, 2020.

The habeas Court denied petitioner motion for a evidentiary hearing, even though, petitioner papers inexpertly drawn but they do setforth allegations that his conviction is based on the wanton Due Process violations employed by FBI agents and district attorneys, the government, to obtain his conviction. And that Vanegas trial counsel for the defense was remiss and grossly ineffective to assert the petitioners constitutional rights under the United States Constitution, and federal laws. Thus, depriving Vanegas of his constitutional right to effective assistance of counsel..

However, petitioner filed his notice of appeal to the District Court Order.
Entered: April 6, 2020.

On May 13, 2020 the petitioner filed his brief of appellant before the United States Court of Appeals for the Fourth Circuit. Where the appellant presented two (2) issues:

ISSUE I.

WHETHER THE DISTRICT COURT ERRED BY FAILING TO ASSES TRIAL COUNSEL FOR THE DEFENSE OVERALL PERFORMANCE THROUGHOUT PETITIONERS CASE WITHOUT APPLYING A HEAVY MEASURE OF DEFERENCE TO COUNSEL'S JUDGMENT WHERE TRIAL COUNSEL POOR PERFORMANCE (1) DEPRIVED VANEGAS' OF HIS LIBERTY WITHOUT DUE PROCESS; HIS GUARANTEED SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE; AND (2) TRIAL COUNSEL COMBINED INVESTIGATIVE PERFORMANCE WAS SO POOR AND PREJUDICIAL THAT IT DESTROYED VANEGAS' MOST FUNDAMENTAL OF RIGHTS; THAT IS, HIS RIGHT TO A FAIR TRIAL.

ISSUE II.

THE DISTRICT COURT ERRED BY NOT GRANTING PETITIONER'S AN EVIDENTIARY HEARING WHERE THERE IS A FACTUAL DISPUTE, THE HABEAS COURT MUST HOLD AN EVIDENTIARY HEARING TO DETERMINE THE TRUTH OF THE PETITIONER'S CLAIMS.

On August 25, 2020 The United States Court of Appeals for the Fourth Circuit denied a certificate of appealability and dismissed the appeal.

As the District Court, and the United States Court of Appeals for the Fourth Circuit has foreclosed all petitioner's attempts for relief of its illegal imprisonment, the petitioner now plead its case before this Honorable Court.

REASONS FOR GRANTING THE PETITION

I. Where the lower courts had abused its discretion by refusing to accept the petitioner's meritorious claims without conducting the proper specific fact-findings in order to determine the truth of the petitioner's claims of governments gross prosecutorial misconduct where FBI agents engaged in conducting numerous surreptitious warrantless searches and seizures; and prosecuting district attorneys knowingly and intentionally using the same FBI agents to elicit false and perjured testimony to deprive the defendant - petitioner, (hereinafter, "Vanegas"), of his constitutional rights under the United States Constitution Amendments Fourth and Fifth, and federal laws; and where trial counsel for the defense was remiss and grossly ineffective by rendering a poor performance depriving Vanegas' of his liberty without due process and his guaranteed Sixth Amendment right to effective assistance, and where trial counsel combined investigative performance was so poor and prejudicial that it destroyed Vanegas' most fundamental of rights, that is, his right to a fair trial. Thus, this Honorable Court has the jurisdiction to issue a Writ of Certiorari, vacate petitioner's conviction and remand the case to the lower court for further specific and proper fact-findings as to petitioner's claims.

II. The petitioner's respectfully note before this Honorable Court that his claims are firmly grounded on the Supreme Court holding of Kimmelman v. Morrison, 477 US 365, 383, 106 S Ct 2574 (1986); Mooney v. Holohan, 294 US 103, 112, 55 S Ct 340; Brady v. Maryland, 373 US 83, 83 S Ct 1194.

In Kimmelman, the United State Supreme Court held that the Sixth Amendment does provide a remedy for counsel's failure to argue a Fourth Amendment defense. The Supreme Court rejected the suggestion that criminal defendants should not be allowed to vindicate through federal habeas review their right to effective assistance of

cc: [redacted]

counsel where counsel's primary error is failure to make a timely request for the exclusion of illegally seized evidence--evidence which is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant. The Supreme Court never intimated that the right to counsel is conditioned upon actual innocence. The constitutional right of criminal defendants are granted to the innocent and the guilty alike. Consequently, the Supreme Court declined to hold either that the guarantee of effective assistance of counsel belong solely to the innocent or that it attaches only to matters affecting the determination of actual guilt.

A remedy for counsel's failure to argue a Fourth Amendment defense is inconsistent with holding that a defendant is not prejudiced by, and therefore has no Sixth Amendment grievance concerning, a failure to suppress illegally seized evidence.

The Supreme Court had established that conviction secured by use of perjured testimony known to be such by prosecuting attorneys, is lacking in due process. Also, a defendant is denied due process when the government fails to correct law enforcement officials false testimony, especially where false testimony is material and probably affected judgment of jury.

As this Honorable Court stated in Mooney v. Holohan ruling. Where the Court ruled on what nondisclosure by prosecutor violate due process:

"It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in true is but used as a mean of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a result by intimidation."

In Brady v. Maryland this Court stated:

"We now hold that the suppression by prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution."

III. The decision of the United States Court of Appeals for the Fourth Circuit in petitioner's instant case is in sharp contrast with the holding of the United States Court of Appeals for the Seventh Circuit in Owens v. United States, 387 F3d 607; 2004 US App LEXIS 21641. Where, the petitioner inmate sought review of a judgment from the United States District Court for the Southern District of Indiana, Indianapolis Division, which denied his 28 USCS § 2255 motion to set aside his drug conviction and sentence on the ground that his trial lawyer was ineffective in arguing a motion to suppress evidence seize pursuant to a warrant to search petitioner's house.

The Court of Appeals for the Seventh Circuit agreed that petitioner's counsel was ineffective in arguing what should have been a successful motion to suppress the evidence found in petitioner's home because the warrant was based on a barebones affidavit that did not establish probable cause. Counsel argued that the house did not belong to petitioner when in fact it was petitioner's house. This argument enabled the Government to successfully argue that if it was not petitioner's house, his rights had not been violated by the search. Petitioner's appeal met the threshold obstacle of the court's prior decision in Holman, which held that a failure to make a Fourth Amendment objection to the admission of evidence could not amount to ineffective assistance of counsel if the evidence was reliable. The court, however, concluded that Holman v. Page, 95 F3d 481 (7th Cir. 1996) should be ^{overruled} because it was inconsistent with the case law of other circuits and because it was inconsistent with decisions of the United States Supreme Court.

The Court reversed the judgment and remanded the action for further proceedings.

CONCLUSION

Petitioner respectfully prays that the Court grant the petition for a writ of certiorari, vacate petitioner's conviction and remand the case to the lower court for

further specific and proper fact-findings as to petitioner's claims.

Respectfully submitted,

Date: November 20, 2020

PRISON MAIL-BOX RULE

Petitioner - Applicant Jose Delores Vanegas, a layman proceeding pro se, respectfully invoke "prison mail-box" rule in Houston v. Lack, 487 US 266 (1988), so that the instant Application for Writ of Certiorari may be deemed filed on the 20th day of November 2020 when it was first deposited in the prison mail-box,

By: /s/
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