No. 20-8060

IN THE

SUPREME COURT OF THE UNITED STATES

JULIA ANN POFF, PETITIONER

VS.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Julia Ann Poff, Pro Se
Reg.# 30835-479
Federal Medical Center-Carswell
P.O. BOX 27137
Fort Worth, Texas 76127

QUESTIONS PRESENTED FOR REVIEW

1. When a defendant files a "Petition for Writ of Habeas Corpus," alleging due process violations of the Fifth and Fourteenth Amendments, along with Sixth Amendment and Speedy Trial Violations in the pretrial stage, does that writ function as an Interlocutory Appeal tolling the clock and divesting the District Court of jurisdiction until resolution?

   A. Did the inattention and errors on the court violate Art. I, Section 9, also known as the "Suspension Clause," of the United States Constitution?

   B. Does a Habeas Corpus preserve issues for appeal under 18 U.S.C. Section 3162 and Fed. R. Crim. P. 11, or do they become moot when a defendant is forced to plead guilty?

2. Did the Government breach the plea agreement the Defendant was forced to sign, when they opposed acceptance of responsibility points when agreeing with the probation Officer to deny the points because of an affidavit filed in the previously filed and still pending Habeas Corpus case claiming actual innocence? Has the Appeals Court been prejudicial to the pro se petitioner by not following a Supreme Court precedent?

3. Does a waiver in a plea agreement give the Government permission to intentionally violate a defendant's due process rights in the preparation of the Presentence Investigation Report or at sentencing presenting fraud on the court?

LIST OF PARTIES

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

RELATED CASES

The original judgment of conviction in Case no. 4:17-CR-669 of Petitioner in the United States District Court for the Southern District of Texas was not reported and is attached hereto as Appendix "A."

On December 11, 2019 the Petitioner filed an "Emergency Petition for Writ of Mandamus," in the United States Court of Appeals for the Fifth Circuit under case no. 19-20862. It was denied on April 27, 2020 and is not reported. It is attached hereto as Appendix "B."

The original judgment of conviction of Petitioner was appealed to the United States Court of Appeals for the Fifth Circuit which dismissed the appeal sua sponte on November 23, 2020 under United States v. Poff, 2020 U.S. App. LEXIS 37230.

The incarcerated petitioner attempted to file a "Petition for Rehearing En Banc," on three different dates (12/8, 12/22, and 1/15), however the documents were not making it to the court. When they did arrive the Court refused to honor the "mailbox rule," and declared them untimely.

The original order of dismissal for the "Petition for

Writ of Habeas Corpus," in the United States District Court for the Southern District of Texas under case no. 4:18-cv-04450 was not reported and is attached hereto as Appendix "C." The appeal is currently pending in the United States Court of Appeals for the Fifth Circuit under case no. 20-20647.

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JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on November 23, 2020. The jurisdiction Of this Court is invoked under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment of the United States Constitution provides:

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

2. The Fifth Amendment of the United States Constitution provides:

> "No person shall be ... deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

3. The Sixth Amendment of the United States Constitution provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

4. The Fourteenth Amendment of the United States Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

5. Article 1, Section 9, Clause 2 of the United States Constitution states:

"The privilege of the writ of habeas corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it."

6. The rules involved and under review are Fed. R. Crim. P. 11(a)(2):

"(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea."

7. The rules involved and under review are Fed. R. Crim. P. 12(b)(2)

"(2) Motions that may be made at any time. A motion that the court lacks jurisdiction may be made at any time while the case is pending."

8. The rules involved and under review are Fed. R. Crim. P 48(b)

"(b) By the Court. The Court may dismiss an indictment, information, or complaint if unneccessary delay occurs in:

1) presenting a charge to the grand jury;
2) filing an information against a defendant; or
3) bringing a defendant to trial.

9. The statutes involved and under review are Title 18, United States Code Section 3162(a)(2) which states in part:

"Failure of the defendant to move for dismissal prior to the trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section."

10. The statutes involved and under review are Title 18, United States Code Section 3161(h)(1) and (h)(1)(c), which states:

"(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to --"

"(c) delay resulting from any interlocutory appeal

11. The statutes involved and under review are Title 18, United States Code Section 16(b) which states:

"(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

12. The statutes involved and under review are Title 18, United States Code Section 924(c)(ii) which states:

"(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years."

13. The statutes involved and under review are Title 18, United States Code Section 844(d) which states:

"(d) whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property."

14. The statutes involved and under review are Title 26, United States Code Section 5845 (f)(3) which states:

"a destructive device also includes any combination of parts either designed or intended for use in converting any device into a destructive device ... and from which a destructive device may be readily assembled."

15. The sentencing guidelines involved and under review are United States Sentencing Guidelines Section 2K1.3 (b)(3) which states:

"If the defendant (B) used or possessed any explosive material in connection with another felony offense; ... increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18."

16. The sentencing guidelines involved and under review are United States Sentencing Guidelines Section 3A1.2(b) which states:

"If subsection (a)(1) and (2) apply, and the applicable Chapter Two guideline is from Chapter Two, Part A (Offenses Against the Person), increase by 6 levels."

STATEMENT OF THE CASE

On or about October 3, 2016 someone mailed three (3) potentially explosives devices to: 1) Former President Barack Obama; 2) Governor Of Texas Greg Abbott; and 3) Acting Commissioner of Social Security Carolyn Colvin. Since a small box included in one of the packages had an address label addressed to Mrs. Poff on it, the family residence was raided the first time on October 7, 2016 at about 9:30 pm. The Poff family totally clueless as to what was going on was traumatized. Even though they immediately told law enforcement who was actually behind this crime, they instantly lost their Fifth Amendment rights and were told when and where to go. The whole family felt like they were on house arrest and followed everywhere even by helicopter. The family continued to cooperate with all law enforcement meeting all their demands. Even to the extent of being put in uncomfortable situations meeting male FBI agents alone in hotel rooms. Their children were scared and intimidated by FBI agents visiting them at school without their parents present or even notified. The FBI's presence around Mr. Poff's employer even caused him to lose his job of three (3) years causing a financial crisis to the family. This trauma, anxiety, and harassment lasted for 13 months, even though the agents knew the Poff family was not involved. While returning seized items the agents said, "Mrs. Poff, we know ya'll had nothing to do with this but we have to get a conviction or we lose our job."

On November 9, 2017 Mrs. Poff is arrested at home with her family without incident, other than becoming physically ill. Her first court appearance was Nov. 13th, when she finally learned what she was being charged with. Count 1 - "Injurious Materials as Non-mailable;" Count 2 & 3 - "Transportation of Explosives with the Intent to Kill, Injure, or Intimidate;" Count 4-"Supplemental Nutrition Assistance Program (SNAP) Fraud;" Count 5 & 6-" False Declaration in Bankruptcy." Mrs. Poff returns to court on Nov. 16th for her first arraignment and bond hearing. Of course maintaining her innocence she pled, "Not Guilty." Then she was forced to sit there in disbelief as lie after lie came out of an FBI agent's mouth, but yet none of it was about the crime itself. Statements like, "Poff had fake plates for handicap to get parking" and " even claimed that she had a service dog so she wouldn't have to pay a pet deposit." A simple search on the Texas Department of Public Safety would have revealed that Mrs. Poff received a handicap placard in either 2014-2015 under her name and driver's license number (Tx-14299859) and further research would have shown "Sarge" was registered as a service animal in Texas. He continued talking about the so called "fraud" that Mrs. Poff supposibly committed. However, the proof to all the lies being told was on her cell phone that was illegally seized and "conveniently destroyed" by the government after her arrest. So even though she had been free for 13 months, due to the perjury she was now a danger to the society and ordered detained. Her trial was set for January 8, 2018 in compliance with the Speedy Trial Act. Immediately she was punished along with her family by not being allowed to receive mail, including cards and pictures which violated their First Amendment rights and her Fifth Amendment right of "no punishment before an adjudication of guilt." The first "Motion for Continuance," was filed on Nov. 28th without Mrs. Poff's knowledge and granted on the 29th, giving a 90-day extension, resetting the trial to April 9, 2018. The first plea agreement was

Offered in January 2018 wanting her to plead to Count 1 & 2 of the indictment. She was told, "if you don't take this then the government is going to enhance your charges and file against your husband and children. They will say your daughters committed perjury even though they never did." Mrs. Poff discussed this with her family and with their continued support she declined the deal maintaining their innocence. Continuing to be punished and being denied adequate medical care (no medication or treatment for lupus), Mrs. Poff filed her first "Petition for Writ of Habeas Corpus," on March 8, 2018. In doing so the Government retaliated and filed the first superseding indictment on March 28, 2018 adding three (3) 924(c) charges to increase the penalty to basically a life sentence. A second "Motion for Continuance" is filed about two (2) weeks before the trial because the Government continues to refuse to give the defence discovery and Governor Abbott, a witness for the Government, who was running for re-election didn't want the trial until after the election to avoid negative publicity. This violated 18 U.S.C. Section 3161 and reset the trial over 7 months later to Nov. 12th. Mrs. Poff continues to maintain her innocence and again pleads, "Not Guilty" at her second arraignment. Mrs. Poff's attorneys finally honor her request to file for a new bond hearing on May 11th and it was almost instantly denied on May 25th, without a hearing. On May 15th without Mrs. Poff's knowledge an agreed protective order is signed preventing Mrs. Poff from seeing the discovery. Again, her attorneys tell her, "this is the only way the Government will allow us to see it." Another violation on her rights and continual punishment. Mrs. Poff's attorneys were not interested in taking this case to trial so they continued to try and force her to take the plea deal but she continued to decline. They filed a sealed "Motion to Withdraw as Counsel," on May 29th and at about the same time that Mrs. Poff sent her first letter to Judge Gilmore asking for new counsel and stating constitutional violations, the Judge ignored her letter. On June 1st new counsel was appointed. On June 5th, her first Habeas Corpus was dismissed saying "the 2241 was not the proper vehicle in which to file." Still with no discovery to work with her new attorney filed a "Motion to Immediately Compel Discovery," citing multiple amendments including, the fifth, sixth, and fourteenth on June 29th. This motion was ignored as well and didn't even get set for a hearing until May 14, 2019 almost one year later. Still not receiving her medication for Lupus, Mrs. Poff sent a second letter to Judge Gilmore on July 31st and again it was ignored. A third "Motion for Continuance" is filed and granted again resetting the trial again over 6 months to April 15, 2019. Mrs. Poff was taken to the emergency room on August 23, 2018 in a Lupus flare because she was still on no medication. She finally saw a Rheumatologist in September 2018 where she was then diagnosed with a complication of Lupus called "Raynaud's Syndrome" from not receiving her medication for 315 days. This has now also been linked to her recent diagnosis of heart disease that continues to be ignored. Mrs. Poff files her third letter to Judge Gilmore on October 29, 2018 again stating constitutional violations and again she is ignored.

Tired of being ignored, suffering daily in agony and pain, and unable to commit hybrid representation, Mrs. Poff files her second "Petition for Writ of Habeas Corpus," on Nov. 23rd seeking dismissal of her indictments for due process violations and violations of her sixth amendment and the Speedy Trial Act. Mrs. Poff's intention was also to preserve her issues as outlined in 18 U.S.C. Section 3162 and Fed. R. Crim. P. 11 since her attorneys would not file anything. Seeing what Mrs. Poff did, her attorneys file a sealed "Motion to Reopen the Bond Hearing," on December 21, 2018. The motion was denied on February 13, 2019 again without a hearing. Mrs. Poff's attorneys tell her the Government is demanding she dismiss her habeas corpus or they are going to file a second superseding indictment. Mrs. Poff refuses, so again they retaliate against her and on Feb. 28th file a second superseding indictment duplicating charges already filed. They also make their previous threat a reality and add her husband to the indictment but only under Counts 12 & 13, "False Declaration in Bankruptcy," since it was jointly filed. For the third time at her arraignment, she again pleads, "Not Guilty." The trial is set for May 6, 2019. Mrs. Poff has not heard anything regarding her habeas corpus so she sends a status letter to the court on March 7th. The same day the Government files a "Motion to Certify Case as Complex." On March 8th another "Motion for Continuance" is granted resetting the case another 5 months to October 7, 2019. After the arraignment Mrs. Poff and her family was punished again by being denied visitation with them. This really traumatized Mrs. Poff's nine (9) year old son who had been coming with his father every Sunday since her arrest to see his mommy, and now with no reason given, he was being denied. The prosecutor told Mrs. Poff's attorney, "We did that to punish Mrs. Poff." Why, what have we done to be punished for?

On April 30th in preparation for trial her attorneys file a budget request for approximately $500,000 to go to trial. The Judge denies most of their request denying Mrs. Poff the right to hire her own expert witnesses and a fair trial. The attorneys tell her that "there is no way you will get a fair trial and so if you don't take the plea deal the government is going to make you sit there until you do." At this same time finally an "Order to Answer" is sent out in her habeas corpus. Mrs. Poff tells her attorneys that she wants to wait until resolution of the habeas but the government wants it dismissed so they won't agree.

Mrs. Poff is forced to plead guilty on July 1, 2019 if she wants to see her family again, to Count 7 of the second superseding indictment, "Transportation of Explosives With the Intent to Kill, Injure, or Intimidate," involving the device sent to former President Obama. The verbal promises were that her husband's charges would be dismissed and that she would get better medical care if she had to do more time. However, the medical care has been worse, it has been almost two (2) years since she has seen a Rheumatologist. Mrs. Poff also accepted with the assumption that the sentencing guidelines would be 21-46 months. Mrs. Poff also believed that her constitutional issues were preserved by her habeas still pending. When the Presentence § Investigation Report was prepared is when the fraud and fabricated video was made known. Another violation of her due process rights. The video was given to the probation officer and after seeing it, he wanted to cross-reference the charge she was forced to plead to with "attempted murder," doubling the guidelines. This was never discussed with Mrs. Poff, and she had no idea this was even a possibility because had she known she would have never agreed to the plea.

So on November 18, 2019, Mrs. Poff was sentenced to the maximum of 10 years for a crime she continues to maintain her innocence in. Immediately, she filed an "Emergency Writ of Mandamus," over the due process violations but I she guesses the waiver gives the government the right to do what they want after that and there is no recourse of action to take. She was given a new court-appointed attorney for the appeal but she never met her and only spoke to her twice by phone. Mrs Poff was shocked when she filed an Anders brief in the case. Mrs. Poff filed her own brief pro se saying that the plea was coerced/forced by punishment and that the government breached it but the Court of Appeals dismissed it sua sponte. Mrs. Poff continued pursuing her habeas corpus case until it was dismissed as "moot," never giving her a "meaningful opportunity" to challenge not only her detention but the constitutional violations as well. The intentional delay in the case clearly violated the "Suspension Clause" of the United States Constitution. The two-year time period has caused a wrongful conviction, unconstitutional oppressive incarceration, continual inadequate medical care, and continued punishment of an innocent person. This has been a miscarriage of justice to her family and the society.

REASONS FOR GRANTING THE WRIT

The questions the Petitioner is presenting need to be addressed by this Court to stop the miscarriage of justice that is happening that concerns not only individuals but the society as well. Court-Appointed attorneys are failing to lookout for their client's rights, they aren't getting paid to deal with due process rights and speedy trial issues. Their goal is to get the client to plea to something whether they are guilty or innocent so they don't have to go to trial and they can move on to the next one to make more money. So if a defendant files a "Petition for Writ of Habeas Corpus," prose then it should not only stop the speedy trial clock but should stop all proceedings until the issues are resolved, as stated under Fed. R. Crim. P. 12(c)(3)(d) that states:

> "Ruling on a motion. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record."

Mrs. Poff tried to send letters to the Judge and they were ignored, she tried to get her attorneys to address the issues and they too ignored her. So then she did the only thing she could do and filed a petition with the court but they also ignored her for 175 days. In the meantime that gave the Government the green light to keep punishing her, keep threatening her and her family.

and denying her disperately needed medical care until they got what they wanted - A CONVICTION! Justice is no longer based on facts, evidence, and the truth; it is now based on fraud, perjury, and threats.

If Mrs. Poff's issues would have been timely addressed then she would have not pled guilty, she wouldn't have been convicted, her health would not be deteriorating, and she wouldn't be doing time for a crime she didn't do. She should be home with her family mourning the recent loss of her mother, and trying to put this nightmare behind her.

Question 1: THERE ARE SPLIT DECISIONS/OPINIONS ON A FEDERAL QUESTION THAT HAS NOT BEEN ANSWERED BY THIS COURT AND WAS IGNORED BY THE FIFTH CIRCUIT

"A jurisdictional error implicates a court's power to adjudicate the matter before it, such error can never be waived by parties to litigation." United States v. Peter, 310 F.3d. 709, 712 (11th Cir. 2002); United States v. Morgan, 346 U.S. 502, 98 L.Ed. 248, 74 S.Ct. 247 (1954). In following Fed. R. Crim. P. 12(b)(2), the Court of Appeals erred in not allowing Petitioner to bring a jurisdictional issue to their attention while her case is still pending.

After being unconstitutionally detained for 379 days and continually punished everytime she maintained her innocence and pled, "Not Guilty." Mrs. Poff filed a "Petition for Writ of Habeas Corpus," pro se under 28 U.S.C. § 2241 challenging the legality and constitutionality of her extended pretrial detention.

She went on to say that her Fifth and Sixth Amendment rights had been violated and moved for dismissal of her indictments under Fed.R.Crim.P. 48(b). The court erred in saying that she was only challenging her pretrial detention. Within her habeas she claimed actual innocence and referenced a previous ruling of this Court in Baker v. McCollan, 443 U.S. 137, 61 L.Ed.2d. 433, 99 S. Ct. 2689 (1979), which held "mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of "liberty" without due process of law." The entire Poff family has adamantly protested their innocence since October 7, 2016 the night of the first raid on their home and they were told about this crime.

In reality Mrs. Poff met none of the conditions outlined in 18 U.S.C. § 3142 (attached hereto as Appendix "D") and should have never been detained. Mrs. Poff later learned the alleged crimes (Counts 1-3) were considered "crimes of violence," under 18 U.S.C. § 16(b) which is why she was detained. However, there is no element of this crime which involves the "use, attempted use, or threatened use of physical force "against the person or property of another because it was a hoax." United States v. Evans, 478 F.3d. 1332 (11th Cir. 2007).

> "The charged criminal acts, ie... manufacturing a fake bomb and placing the device in a mailbox to be found by a United States Postal Service Employee, which the defendant knew could not result in injury to himself or another is not a "crime of violence," and the acts alleged do not involve a crime of violence." United States v.

Montoya, 486 F. Supp 2d. 996, 1002, 1004 (D. Ariz. 2007).
The Judge also failed to take into consideration that it took over one year to indict and arrest her and during that entire time she and her family cooperated with all law enforcement meeting all their demands. United States v. Lalonde, 246 F. 2d. 873 (6th Cir. 2007)("Defendant has not seized upon previous opportunities to flee to avoid persecution or incarceration and the opportunities have been many)."

Multiple continuances were granted in this case and the Judge never took into consideration that an innocent person was being detained. When Mrs. Poff asked her attorneys about her speedy trial rights, she was told, "the Judge has waived your rights." In Zedner v. United States, 547 U.S. 489, 500, 164 L. Ed. 2d. 749, 126 S. Ct. 1976 (2006) it states, "an accused may not prospectively waive the application of the act." So how can a Judge waive a defendant's constitutional rights especially without her knowledge? These actions among others clearly violated her rights, so she filed for the dismissal.

In deciding petitions for writ of habeas corpus, the Ninth Circuit analyzed 28 U.S.C. § 2243 and states:

> "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and recives prompt action from him within the four corners of the application. The ordinary rules of civil procedure are not intended to apply thereto, at least in the initial, emergency attention given as prescribed by statute to the application of the writ."

Buby v. United States, 341 F.2d. 585, 587 (9th Cir. 1965), cert dinied 384 U.S. 979, 16 L.Ed. 2d. 689, 86 S.Ct. 1877 (1966). See also VanBushkirk v. Wilkinson, 216 F.2d. 735, 737-38 (9th Cir. 1954) (habeas corpus "is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination"); McClellan v. Young, 421 F.2d. 690, 691 (6th Cir. 1970) (same); Glynn v. Donnelly, 470 F.2d. 95, 99 (1st Cir. 1972)("28 U.S.C. §2243 manifests policy that habeas petitions are to be heard promptly)." Plainly, "the writ of habeas corpus, challenging detention, is reduced to a sham if the trial courts do not act within a reasonable time." Jones v. Shell, 572 F.2d. 1278, 1280 (8th Cir. 1978). "Habeas corpus proceedings have an urgency and need of speedy resolution shared by few civil actions that require immediate judicial action." Preiser v. Rodriguez, 411 U.S. 475, 495, 36 L.Ed. 2d. 439, 453, 93 S.Ct. 1827, 1839 (1973); Peyton v. Rowe, 391 U.S. 54, 59, 20 L. Ed. 2d. 426, 430, 88 S.Ct. 1549, 1552 (1968). Does "immediate judicial action" include sitting on the docket for 175 days with no action taken on it? "A prisoner's pro se complaint must be screened by the court as soon as practicable after docketing." Martin v. Scott, 156 F.3d. 578, 579-80 (5th Cir. 1998). "A petitioner who states specific factual allegations, which if believed would entitle him to immediate release from illegal confinement, should not have to suffer a delay in either being heard or in obtaining the relief to which he is entitled, merely because a response is delayed without good cause or beyond the limits set by law." Witt v. State ex rel Eyman, 343 F.Supp. 392, 394 (D. Ariz. 1972), cited in Troglia v. Clanon, 378 F.Supp. 273 (N.D. Cal. 1974).

"The decision that the individual shall be imprisoned must always precede the application for a writ of habeas corpus and this writ must always be for the purpose of revising that decision, and, therefore, appellate in its nature." Ex parte Bollman and Ex parte Swartout, 8 U.S. 75, 2 L. Ed. 554 (1807). As observed in United States v. Brooks, 145 F. 3d. 446 (1st Cir. 1998): "like most rules, the rule that either the trial or appellate court — but not both — may have jurisdiction over a case at any given point." So if a habeas corpus is "appellate in nature," then Judge Gilmore should have lost jurisdiction on November 23, 2018 when Mrs. Poff filed her petition. When a court without jurisdiction convicts and sentences a defendant, the conviction and sentence are void from their inception and remain void.

Several circuits have also implied this finding that "an extraordinary writ such as a petition for a writ of habeas corpus was functionally equivalent to an interlocutory appeal, because an interlocutory appeal and a petition for a writ serve the same underlying purpose." United States v. Hohn, 8 F. 3d. 1301 (8th Cir. 1993)(quoting United States v. Davenport, 935 F. 2d. 1223 (11th Cir. 1991). In Davenport, the court held, "the petition for writ of habeas corpus in this case seeking dismissal of the indictment for violation of the Speedy Trial Act is an "other proceeding" analogous to an interlocutory appeal."" It also applies to applications for extraordinary writs." Guidelines Under the Speedy Trial Act, Judicial Council Speedy Trial Act Coordinating Committee, United States Court of Appeals for the Second Circuit, pg. 19 (January 8, 1979). "The Second Circuit's guidelines were frequently cited with approval during the congressional hearings regarding the amendment of the Speedy

Trial Act of 1979. See hearings before the Senate Judiciary Committee on the Speedy Trial Act Amendments, 96th Cong., S. 961 and S. 1028, May 2 and May 9, 1979 (S. 521-45), p. 81, 91, 131, 705. These guidelines were reprinted in the "Congressional Record" upon the motion of now President Biden when he Chaired the Senate Judiciary Committee's hearings, 125 Cong. Rec. 15475-15467 (June 19, 1979). These were later adopted by The Criminal law Committee of the Administrative Office Of the United States Court in "Guidelines to the Administration Of the Speedy Trial Act of 1974," in November 1984." So does the analogy between the two only exist to harm the petitioner by tolling the speedy trial clock or do they also receive the benefit as they should of resolution?

The Court held in United States v. Felton, 811 F. 2d. 190, 198 (3rd Cir. 1987)(inbanc), that "the purpose of § 3161(h)(1)(c) is to remove from the Speedy Trial Act calculation periods when the district court justifiably cannot try the defendant's case." This Court has recognized that interlocutory orders, such as denying a motion to dismiss an indictment, is immediately appealable in a criminal case because it "involves an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial." Flanagan v. United States, 465 U.S. 259, 266, 79 L. Ed. 2d. 288, 104 S. Ct. 1051 (1984). Mrs. Poff never got this right, had her habeas corpus been denied in a timely manner then she would have had the right to appeal which most definitely divest the trial court of jurisdiction. "The filing of appeal is an event of jurisdictional significance in that it confers jurisdiction on the Court of Appeals and divests the District Court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co. 459 U.S. 56, 74 L. Ed. 2d. 225, 103 S. Ct. 400 (1982). "The trial is automatically delayed until disposition of the appeal." Yates v. City of Cleveland, 941 F. 2d. 444 (6th Cir. 1991); Stewart v. Donges, 915 F. 2d. 572 (10th Cir. 1990)." Such a delay neccessarily lasts until the district court receives the mandate because the district court is without jurisdiction to act until the mandate is received." United States v. Long, 900 F. 2d. 1270, 1276 (8th Cir. 1990). "Once the mandate issues, jurisdiction over a criminal case automatically revests in the district court." United States v. Ruiz-Alvarez, 211 F. 3d. 1181, 1184 (9th Cir. 2000). To this day no mandate has ever been issued, the appeal is now pending under case no. 20-20647 and therefore the district court lacked jurisdiction to accept Mrs. Poff's forced/coerced plea and the ability to sentence her.

A. Suspension Clause:

"The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." Boumediene v. Bush, 553 U.S. 723, 739, 171 L. Ed. 2d. 41, 128 S. Ct. 2229, (2008). Not only has the petitioner been denied constitutional rights but she was also denied a "great constitutional privilege," as confirmed by Chief Justice Marshall. Ex parte Bollman. "The Privilege of the Writ of Habeas Corpus shall not be suspended..." U.S. Const. Art. I § 9.

The American Heritage Dictionary defines "suspend" as to "bar for a period of time from a privilege." What constitutes as a period of time, is it 30 days, 60 days, 100 days, or what about the 175 days which is what happened in Mrs. Poff's case? The Suspension Clause protects the rights of the detained by a means consistent with the essential design of the United States Constitution." It has always in history played a critical role in protection of human freedom and has been utilized by the judiciary as its fundamental instrument for lifting undue restraints upon personal liberty." Price v. Johnston, 334 U.S. 266, 92 L. Ed 1356, 68 S. Ct. 1049 (1948).

> "It ensures, that except during periods of formal suspension, the judiciary will have a time-tested device, the writ, to maintain the delicate balance of governance that is itself the surest safeguard of liberty. The clause protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account." (Kennedy, J., joined by Stevens, Souter, Ginsburg, and Breyer, J.J.)

"In consideration of the "fundamental importance" of the writ, Johnson v. Avery, 393 U.S. 483, 485, 21 L. Ed. 2d. 718, 89 S. Ct. 747 (1969), and the necessity that it provide an "efficacious remedy" for intolerable restraints," Fay v. Noia, 372 U.S. 391, 401 9 L. Ed. 2d. 837, 83 S. Ct. 822 (1963), this Court has cautioned and commanded that there is no higher duty than to maintain it unimpaired." Bowen v. Johnston, 306 U.S. 19, 26, 83 L. Ed. 455, 59 S. Ct. 442 (1939). In order that the writ not be impaired the Court emphasized its scope and flexibility and, therefore, the requirement that "it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." Harris v. Nelson, 394 U.S. 286, 291, 22 L. Ed. 281, 89 S. Ct. 1082 (1969). Mr. Justice Black wrote for this Court that the writ of habeas corpus:

> "...is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose -- the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." Jones v. Cunningham, 371 U.S. 236, 243, 9 L. Ed. 2d. 285, 83 S. Ct. 373 (1963).

Under 28 U.S.C. § 2243, the respondent must make a return within three days after being so ordered, with additional time of up to forty days allowed under Fed. R. Civ. P. 81 (a)(2), for good cause. Certainly, the time limits as set forth in these Sections must have some meaning? "Looking to congressional intent, some courts have held that the 40 days prescribed in Fed. R. Civ. P. 81 (a)(2) as the time in which an answer must be filed as a mandatory deadline not to be exceeded." Mattox v. Scott, 507 F. 2d. 919, 923 (7th Cir. 1974); Allen v. Perini, 291 F. Supp. 144 (N.D. Ohio 1970).

> "This enjoins the judge to proceed in a summary way to hear the cause and dispose of the petitioner,

it is difficult to see how the comparatively cumbersome and time consuming procedure of reference, report, and hearing upon the report, can be thought a more expeditious method than that prescribed by the Statute." Holiday v. Johnston, 313 U.S. 342, 85 L.Ed. 1392, 61 S.Ct. 1015 (1941).

Not directly sure whose custody she was in, Mrs. Poff listed both the U.S. Marshal Service and Warden Smith, as the respondents on her petition. On May 17, 2019 an "Order to Answer" was sent out to several people including the U.S. Attorney General, giving the respondent "60 days" in violation of Section 2243. It has been noted by several courts that the Attorney General's office "treats prisoner related actions with inattention." Simmons v. Dalsheim, 543 F. Supp. 729, 733 (S.D.N.Y) 1982; Salomon v. LaVallee, 465 F. Supp. 148 (2d. Cir. 1979); Buiz v. Cady, 660 F.2d. 340 (7th Cir. 1980). Even then 60 days comes and goes with no response. On August 5, 2019 Mrs. Poff files a "Motion for Appointment of Attorney and Request for an Evidentiary Hearing." "Allegations in a petition for habeas corpus, that include the factors Mrs. Poff has stated REQUIRE that a hearing be held to determine the facts, as in any case where a deprivation of constitutional rights is properly averred in the petition and the record itself fails to rebut the avermints." Palmer v. Ashe, 342 U.S. 134, 96 L. Ed. 154, 72 S. Ct. 191 (1951). The motion was denied on August 7th, when the Court discovered their error on failing to perfect service on Warden Smith. A "Supplemental Order to Answer," was issued giving another 60 days to answer while Mrs. Poff continued to be detained and punished. "To deny petitioner a trial on the merits and to deny him even the power to require the government to meet his allegations by an answer is a denial of justice and of due process of law." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 95 L.Ed. 817, 71 S.Ct. 624 (1951). After 12 weeks of being denied visits with her husband and son, and the denial of her rights to a fair trial by the biased Judge's refusal to allow the defense team the amount of money needed to hire expert witnesses on her behalf, Mrs. Poff was forced/coerced into taking a plea deal. With her habeas corpus still pending she truly believed that her constitutional issues were preserved. The Government then filed to dismiss it as moot, so in essence it was if she never filed which violated the Suspension Clause and again violated her due process rights.

B. Preservation of Issues:

This Court has observed that a fundamental miscarriage of justice can be shown "where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. 478, 496, 91 L.Ed. 2d. 397, 106 S.Ct. 2639 (1986). Exceptional cases include others like Moore v. Dempsey, 261 U.S. 86, 87, 67 L.Ed. 543, 43 S.Ct. 265 (1935); Mooney v. Holohan, 294 U.S. 103, 79 L.Ed. 791, 55 S.Ct. 340 (1935); and Bowen v. Johnston, 306 U.S. 19, 24, 83 L.Ed. 455, 59 S.Ct. 442 (1939), where the conviction has been in disregard

Of the constitutional rights of the accused, and where the writ was the only effective means of preserving their rights.

Mrs. Poff also filed her "Petition for Writ of Habeas Corpus," to preserve her issues for appeal and to move for dismissal under the Speedy Trial Act. Under 18 U.S.C. § 3162(a)(2), "failure of the Defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section." This section nor does Fed. R. Crim. P. 11 say exactly how or what procedure must be followed to preserve a constitutional claim. "A defendant's plea of guilty does not waive his previous constitutional claim." Class v. United States, 200 L. Ed. 2d. 37, 138 S. Ct. 798 (2018). "Fed. R. Crim. P. 11(a)(2) itself does not say whether it sets forth the exclusive procedure for a defendant to preserve a constitutional claim following a guilty plea." The difference is Mrs. Poff filed BEFORE her forced guilty plea. In fact the Government punished and retaliated against her for refusing to dismiss which contributed to the actions that forced her to plead guilty. Like Class, Mrs. Poff raised claims, which based upon existing record, would extinguish the Government's power to "constitutionally prosecute" the defendant if the claim were successful." United States v. Broce, 488 U.S. 563, 102 L. Ed. 2d. 927, 109 S. Ct. 757 (1989).

In fact pursuant to Fed. R. Crim. P. 11(a)(2), it states that a conditional plea is "reserved in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea." Doesn't a habeas apply to this rule?

It is in writing and denial gives the petitioner the right to have appellate court review. United States v. Vonn, 535 U.S. 55, 152 L.Ed. 2d. 90, 122 S.Ct. 1043 (2002). Mrs. Poff filed her habeas seeking "dismissal of her indictments," and even though she was forced to plead guilty that remedy is still available to her and her case should be argued on merits. No where in 18 U.S.C. § 3162 does it say that a speedy trial issue becomes moot when you are convicted or plead guilty unless you "fail to move for dismissal before." Many cases like United States v. Pringle, 751 F. 2d. 419 (1st Cir. 1984), the indictments were dismissed after they were convicted. "A petition for habeas corpus filed in a court by a prisoner serving a sentence cannot be summarily dismissed without a hearing where there is factual dispute as to the prisoner's treatment prior to his pretrial confession or guilty plea alleged to have been obtained by coercion." Herman v. Claudy, 350 U.S. 116, 100 L.Ed. 126, 76 S.Ct. 223 (1956). Mrs. Poff committed perjury on July 1st when she was forced to plead guilty, when the Judge asked her "Has anyone forced you to plead guilty?" It isn't like she could have been honest and said, "Yes," even if she would have the Judge wouldn't have believed her or ignored her. Then who knows what type of punishment she would have been forced to endure then. When the habeas was filed, Mrs. Poff had no idea that it would take almost two (2) years for disposition of what is supposed to be a "swift and imperative remedy." "A judge's delay of more than 14 months in hearing a prisoner's petition for a writ of habeas corpus was impermissable." Johnson v. Rogers, 917 F. 2d. 1283 (10th Cir. 1990);

Wilkerson v. Jones, 211 F. Supp. 2d. 856 (6th Cir. 2002). At this point, justice delayed was justice denied.

Question 2: THE COURT OF APPEALS ERRED IN DISMISSING THE APPEAL WHEN A PRIOR RULING IN THE COURT UNDER THE SAME CIRCUMSTANCES REVERSED AND THE COURT HAS BEEN PREJUDICIAL TO THE PRO SE PETITIONER AND REFUSED TO FOLLOW PRECEDENT OF THIS COURT

Consistency within the Courts should be mandatory, whether filed by an attorney or pro se and follow caselaw. This Court, in Santobello v. New York, 404 U.S. 257, 30 L. Ed. 2d. 427, 92 S. Ct. 495 (1971), held that when a prosecutor makes a promise in a plea agreement, he must keep that promise. In Mabry v. Johnson, 467 U.S. 504, 81 L. Ed. 2d. 437, 104 S. Ct. 2543 (1984), this Court suggested that when the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise, and hence his conviction cannot stand. Mrs. Poff should have never been forced to sign a plea agreement if the Habeas Corpus she filed would have been taken seriously and done in a timely fashion. Three (3) times, she stood before a Judge and said the words, "Not Guilty," and each time afterwards she was punished. Due process prohibits vindictiveness against a defendant for having exerted his constitutional rights. United States v. Nichols, 937 F. 2d. 1257, 1261 (7th Cir. 1991) (although claim of vindictive prosecution is waived if not raised in district court, it would be plain error, reviewable for first time on appeal, if prosecutor obtained superseding indictment for vindictive purpose of substantially increasing penalty). To show vindictiveness at the pretrial stage, the defendant must establish that the Prosecutor has a personal stake in the case or seeks self-vindication or where additional charges are brought in order to persuade the defendant to enter a guilty plea. United States v. Whaley, 830 F.2d. 1469, 1474 (7th Cir. 1987). Jobs were on the line and the media was waiting for a conviction, there was no way the Government would admit to their mistake of arresting an innocent person. Mrs. Poff's original indictment contained six (6) counts and then because she refused their plea deal it increased to nine (9) and then when she refused to dismiss the habeas corpus it went to 13. A maximum of 70 years went to a maximum of 260 years with a mandatory of 150 years. The Government wasn't seeking justice in this case, all they cared about was a conviction and didn't care how they got it. "Prosecutors must refrain from using improper methods calculated to produce a wrongful conviction." Berger v. United States *. 295 U.S. 78, 88, 79 L.Ed. 1314, 55 S.Ct. 629 (1935). There must be "fairness in securing agreement between an accused and a prosecutor." Santobello. Nothing in Mrs. Poff's case has been fair so why should the plea agreement be any different? In the agreement the Government promised not to "oppose the 3-points given for acceptance of responsibility."

During this time Mrs. Poff was actively continuing to pursue resolution in her habeas corpus. After there was no response filed in it, she filed a "Motion for Default Judgment and Release." On or about August 20, 2019 she filed an Affidavit in support of her motion continuing the claim of actual innocence, in her habeas. When the probation officer prepared the Presentence Investigation Report, he used that filing against her and stated that she should be denied the 3-points for acceptance of responsibility. On October 8, 2019 her attorneys made her ammend the affidavit by removing the word "I." The probation officer amended his recommendation. However, over a month later on November 13th when the Government filed, "United States Response Under Local Rule 32.6 and Response to Defendant's Objections to the PSR," they breached their promise of not to "oppose" by agreeing with the probation officer's original recommendation that Mrs. Poff should be denied the points.

> "The government concurs with the recommendation of the U.S. Probation Officer and believes the Defendant has failed on numerous occassions to demonstrate she has accepted responsibility. The Defendant should be denied the three-point reduction."

"The Government cannot resort to a rigidly literal approach in the construction of language." United States v. Crusco, 536 F.2d. 21 (3rd Cir. 1976).

> "Although a plea agreement occurs in a criminal context, it remains contractural in nature and is

to be analyzed under contract-law standards... Courts should consider not only contract principles but also insure that the plea bargaining process is "attended by safeguards to insure the defendant receives what is reasonably due in the circumstances." Santobello at 262.

In the Fifth Circuit a case filed by an attorney was ruled on by Justice Higginbotham, Justice Wiener, and Justice Benavides which concluded that the plea agreement was void, including the waiver of appeal contained therein, reasoning that

"it is certainly inconsistent with a defendant's reasonable understanding of a promise not to contest a reduction for acceptance of responsibility for the government to add its voice in support of the PSR recommendation that the defendant receive no such reduction." United States v. Keresztury, 293 F.3d. 750, 755-57 (5th Cir. 2002).

Mrs. Poff, filed pro se voicing this same scenario and quoted this case. But yet Justice Smith, Justice Stewart, and Justice Higginson from the same court dismissed her appeal sua sponte without consideration? Did they even read the reply she filed?

After this denial she continued facing prejudice from that Court when they refused to acknowledge or follow Houston v. Lack, 487 U.S. 266, 101 L.Ed. 2d. 245, 108 S. Ct. 2379 (1988). In Stoot v. Cain, 570 F.3d. 669 (5th Cir. 2009), the Court held, that under the federal "mailbox rule" that a document would be deemed filed on the date that it was submitted to be mailed "regardless of whether the pleading actually reached the court." The Court cautioned that "under such a rule, it is of course incumbent upon the petitioner to diligently pursue his petition." This must apply to everyone except Mrs. Poff because she followed the rule and still got denied?

Shortly after receiving the sua sponte dismissal of her appeal on December 2, 2020 Mrs. Poff that night filed a "Motion for Extension of Time to file a Petition for Rehearing En Banc." Not waiting for a ruling on her motion she prepared the petition. On December 8th, it was placed in the prison mailbox for mailing labeled "Special Legal Mail." During the COVID-19 pandemic they are on lockdown so the only way to mail anything is placing it in the mailbox on the wall. There is no log kept for outgoing mail and all incoming mail is opened before the inmate receives it.

On December 17th, a call was placed to Ms. Mendez at the Court of Appeals and the Petitioner is told that the motion for time had been granted until Dec. 31st but no petition had been received. The clerk suggested giving it a few more days.

The next call was Dec. 22nd to Mr. Henderson and again Mrs. Poff was told no petition had been received. She told him she would mail a second copy that night. So that night a second copy was put in the prison mailbox.

A third call on January 7, 2021 was placed to Mr. Henderson who again said nothing had been received. He suggested writing a letter to the court to let them know what is going on. That night the letter was placed in the prison mailbox.

A fourth call to Mr. Henderson on January 14th revealed nothing had been received. The clerk told her now she needed to file a "Motion to File Out of Time Petition for Rehearing En Banc." So Mrs. Poff prepared one.

On January 15th, she prepared a Priority Mail envelope addressed to the Court and containing 15 stamps on it. Inside was the motion, a third copy of the petition, and the Brief to file in the habeas appeal, she gave it to Mr. Blair, her case manager. She told him she needed one copy made of everything and then to mail originals to the court, and he agreed to do it.

A fifth call to Mr. Henderson on Jan. 22nd again revealed no documents had been received. Immediately she questioned Mr. Davison, her counselor and Mr. McNeary, the Unit Manager about where her documents were and why she had not received the receipt showing they were mailed? Mr. Blair was out of his office for two weeks. No one would respond and ignored her even when she started the administrative remedies procedures.

A sixth call to Ms. Mendez on Jan. 27th revealed still no documents have been received.

A seventh call to Mr. Henderson on February 1st revealed that the "Petition for Rehearing En Banc," dated December 8, 2020 had finally been received. He said he was "going to use my cover letter as the motion to file out of time." Being dated the 8th, Mrs. Poff believed that the petition would now be accepted. She was wrong.

On February 3rd, Mr. Davison appeared at her door and handed her a copy of all the documents given to Mr. Blair on January 15th. There was a copy of the receipt but it still only had Mrs. Poff's signature on it. When she questioned him about the mailing he turned around and walked away ignoring her.

An eighth call to Mr. Henderson on Feb. 9th revealed that the priority mail envelope had arrived with a postmark of Feb. 5th, so it set on his desk for over 20 days. She also learned that the court denied her motion because even though the letter was dated December 8, 2020, it wasn't received until January 29, 2021.

Mrs. Poff then prepared a "Motion for Reconsideration," outlining all these details and filed it with the court. A phone call to Mr. Henderson on March 5th revealed it was denied as well. He then informed her the Supreme Court petition would be due 150 days from November 23, 2020.

So by circumstances out of her control and after all the due diligence she could do, her efforts were denied. Has the Houston case been overruled? If not then why doesn't the Fifth Circuit have to follow it? United Parcel Serv. Inc v. Flores-Galarza, 318 F.3d. 323 (1st Cir. 2003)("our marching orders are clear: follow Supreme Court decisions until the Supreme Court overrules them")(quoting United Airlines Inc. v. Mesa Airlines, Inc. 219 F.3d. 605, 608 (7th Cir. 2000).

Certain categories of error intere fere with such basic and fundamental constitutional protections that they go to the structure of our criminal law system. These structural errors require that convictions, or sentences, be set aside without any examination of prejudice because, among other things, it would be impossible to determine the amount of harm. Mrs Poff has been incarcerated now for 40 months for a crime she had nothing to do with but her attempt to prove that has fallen on deaf ears. She turned to the Court of Appeals to voice her concerns about due process violations; speedy trial violations; a coerced/forced guilty plea; a breach of the plea agreement by the Government; prosecutorial vindictive misconduct including fraud and perjury; and then the sentencing done by a biased Judge based on fraud presented to the court. Again, all of this falls on deaf ears. So what rights does a defendant really have? In Mrs. Poff's case the answer is simple - NONE!

Question 3: THE COURT OF APPEALS ERRED IN DISMISSING THE APPEAL WHEN DUE PROCESS RIGTS AT SENTENCING WERE VIOLATED BY ~~FRU~~ FRAUDULENT EVIDENCE AND STATEMENTS

Does the waiver in a plea agreement have a secret clause giving the Government the right to intentionally violate due process rights with no reprecussions ... surely not?

The long-settled rule has been the knowing use by the prosecution of false evidence or perjured testimony is a denial of due process. Mooney v. Holohan, 294 U.S. 103, 79 L.Ed. 791, 55 S.Ct. 340 (1935); Giglio v. United States, 405 U.S. 150, 31 L. Ed. 2d. 104, 92 S.Ct. 763 (1972); and many others. The same rule applies if the prosecution allows false evidence to go uncorrected or allows the jury to be presented with a materially false impression. Napue v. Illinois, 360 U.S. 264, 3 L.Ed. 2d. 1217, 79 S.Ct. 1173 (1959); Alcorta v. Texas, 355 U.S. 28, 2 L.Ed. 2d. 9, 78 S.Ct. 103 (1957); Hamric v. Bailey, 386 F. 2d. 390 (4th Cir. 1967); and Link v. United States, 352 F. 2d. 207 (8th Cir. 1965). So if they can't present false evidence to a jury, then how can they give it to a probation officer in preparing a sentencing report, and in essence present it to a Judge?

"A prosecutor has a duty to insure that the Court has complete and accurate information concerning the defendant, thereby enabling the Court to impose an appropriate sentence." United States v. Block, 660 F.2d. 1086, 1091 (5th Cir. 1981). The substantive component of the Due Process Clause "bars certain arbitrary wrongful government actions regardless of the fairness of the procedures used to implement them." Foucha v. Louisiana, 504 U.S. 71, 80, 118 L.Ed. 2d. 437, 112 S.Ct. 1780 (1992)(quoting Zinerman v. Burch, 494 U.S. 113, 108 L.Ed. 2d. 100, 110 S.Ct. 975 (1990)). The government action in this case has been "so egregious, so outrageous," and most definitely shocked Mrs. Poff's contemporary conscience that she didn't think could be shocked anymore, but she was wrong. Estate of Phillips v. District of Columbia, 455 F.3d. 397, 403 (D.C. Cir. 2006)(quoting

County of Sacramento v. Lewis, 523 U.S. 833, 848, 140 L. Ed. 2d. 1043, 118 S. Ct. 1108 (1998)).

After she was forced to plead guilty a Presentence Report was ordered and prepared. When Mrs. Poff saw the fraud that was in it, she was appalled, how can the Government get away with something like this, doesn't the truth mean anything anymore? Unknown to Mrs. Poff or her attorneys the government created a fraudulent video and gave it to the probation officer who responded:

> "Agents constructed mockups of the IED's containing the same type of components as used in the actual devices and determined that had the ignition mechanism activated, the devices would have detonated. Further, agents constructed a mockup to imitate the device opened by Governor Abbott and placed the device on a table in front of a mannequin... The device detonated as intended causing a large incendiary flash and propelling fragments into the mannequin, that would have caused serious injury or death."

By seeing this the probation officer cross-referenced the charge Mrs. Poff was forced to plead to with "attempted murder," which doubled the sentencing guidelines and was something Mrs. Poff was told nothing about. A forensic laboratory examination report done by Senior Forensic Chemist Vincent J. Desiderio on November 22, 2016 states:

"Although this device contained a low explosive mixture, two sections of fuse, and matches as an ignition source, the device would not have functioned as designed because the matches would not have ignited due solely to contact with the sandpaper when the parcel was opened."

He goes on further to state:

" The Pall Mall cigarette box is not a significant source of confinement; therefore, if this device were to function it would not have produced an explosion."

The mockup created by the agents was fraud and fabricated and not the "Same type of components." Based on the expert's report the devices don't even meet the statutory definition of an "Improvised Explosive Device," as defined by the Texas Penal Code 46.01 which states:

"I.E.D. - means a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using non-military components."

The perpetrator of this crime used safety matches, which is a match that will ONLY ignite when struck on a specially prepared surface. His intention was not to hurt innocent people, but to get revenge against Mrs. Poff and her family which he succeeded in doing. The probation officer concurred in the filing of his addendum on November 15, 2019 but did not change his recommendation to the Judge.

> "To acknowledge the sandpaper in the friction mechanism of all three I.ED's the defendant constructed were not the red phosphorous bearing surface to light the safety matches and all three would not operate."

So it makes Mrs. Poff wonder, was this video shown to the Grand Jury, if so she was indicted based on fraud? A conviction must be reversed for violation of accused's due process rights when there is any reasonable liklihood that false testimony could have affected the judgment of a jury." Blackmon v. Scott, 22 F.3d. 560, (5th Cir. 1994); United States v. Agurs, 427 U.S. 103, 49 L. Ed. 2d. 342, 96 S. Ct. 2392 (1976). These devices don't even meet the definition of "destructive device" as outlined in 26 U.S.C. § 5845 (f)(3), which makes the indictment defective as well.

The sentencing guidelines for 18 U.S.C. § 844 (d) which is what Mrs Poff was forced to plead to can be found at U.S.S.G. § 2K1.3 by utilizing (b)(3) it would have given a base level of 18 and then add U.S.S.G. § 3A1.2(b) for an official victim for an additional 6 points and that equals 24. Then subtract 3 points for responsibility results in a 21 which is 37-46 months. When applying the First Step Act credits, she has already completed over 100% of the sentence.

However, by looking at the PSR, seeing a picture of an explosion the prosecutor kept waving at her and hearing false statements like:

> "The IED did not detonate because the Governor opened the "wrong" side of the box, bypassing the ignition mechanism."

The Judge was given anything but accurate information. She was biased and wouldn't listen to anything Mrs. Poff or her Attorney said. She called Mrs. Poff a "living monster" and sentenced her to the statutory maximum of 10 years using the guidelines for attempted murder.

A plea agreement and the waiver within are a form of contract, and if fraud is part of it then it should be null and void. Just like how this case began, a contract was executed, and the Poff family paid the agreed amount of money. Then the landlord decided he wanted more money and refused to give them the keys to the house. Some say they should have walked away but $2600 to them was worth fighting for, again not knowing fraud, perjury and threats would become a part of their daily lives. Trust is essential in plea bargaining, misrepresentation may yield temporary gain, but it will prove costly in the future and Mrs. Poff's conviction must be vacated.

CONCLUSION

For over four (4) years now, the Poff family has maintained their innocence in this crime. Mrs. Poff's actions that led to all Of this was filing legal lawsuits against her vindictive landlord and after receiving a $304K default judgment, he seeked revenge and retaliation.

The words written in the statutes, rules, and even the U.S. Constitution no longer mean anything. A judge can plainly ignore a cry for help from the inside and a prosecutor can continue punishing and threatening someone until they get what they want.

A new report by the National Registry of Exonerations, ("NRE") in Sept. 2020 stated "more than half of the cases where innocent people were wrongfully prosecuted and imprisoned over the last three decades involved misconduct by police and/or prosecutors." The two top types of misconduct are fabricated evidence and perjury. To view a defendant as a personal trophy, or as a stepping stone to career advancement regardless of whether or not they are guilty of the crimes charged, is inexcuseable.

Mrs. Poff utilized the writ of habeas corpus to stop the miscarriage of justice and preserve constitutional issues. She continues to seek reversal of her conviction based on a coerced guilty plea and dismissal of her indictments with prejudice for all the constitutional violations she and her family have suffered. Again, justice delayed is justice denied.

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Junia A. Poff

Date: March 18, 2021