Cover page

No. 21-5719

ORIGINAL

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Edward Zinner — 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 Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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cc

September 9, 2021

QUESTIONS PRESENTED FOR REVIEW

1. When prosecutors conspire with known conflicted defense counsel pre-indictment, and devise a scheme to deprive two targets in a criminal investigation of their Constitutional right to Due Process of Law and conflict free lawyers in a forthcoming criminal proceeding, then execute the scheme arranging known conflicted lawyers to represent the diverging interests of the two subjects while concealing the scheme and the conflicts from the subjects and the District Court, then further the scheme committing fraud on multiple habeas Courts to cover up their fraud on the Criminal Court in violation of 18 U.S.C. §§ 241, 242, does this conduct fall outside the scope of the AEDPA for purposes of a Hazel Atlas claim of fraud on a habeas court requiring the District Court to review the case on its merits IN THE FIRST INSTANCE as found by the Tenth Circuit citing Gonzalez v Crosby, 545 U.S. 524, 528, 125, S. Ct. 2641, 162 L. Ed. 2d 480 (2005)?

2. Does the Government's failure to admit or deny allegations set forth in a true Rule 60 motion or petition in the nature of coram nobis, when ordered by the District Court to file a reply as required by Rule 8, Federal Rules of Civil Procedure, constitute an admission by the Government per Rules 8(b)(2) and 8(b)(6)? And can a District Court OR the Government, hide behind the AEDPA to cover up a deprivation of Constitution rights that results in a gross miscarriage of justice by executing fraud on multiple habeas courts to cover up fraud upon a Criminal Court?

PARTIES TO THE PROCEEDING

Petitioner Edward Zinner, pro se, respectfully petitions the United States Supreme Court for writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES - SUPREME COURT CASES CITED

TABLE OF AUTHORITIES - FEDERAL COURT CASES CITED

TABLE OF AUTHORITIES - STATUES CITED

FEDERAL RULES OF CRIMINAL PROCEDURE

FEDERAL RULES OF CIVIL PROCEDURE

RULES OF PROFESSIONAL CONDUCT

UNITED STATES CONSTITUTION

PETITION FOR WRIT OF CERTIORARI

a) Edward Zinner, pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

b) The decision of the Court of Appeals is not published; however, a copy of the opinion is attached as Appendice - A.

c) The decision of the District Court is published at 2020 U.S. Dist. LEXIS 169108, Sept. 16, 2020. (Error Coram Nobis-Denial) a copy of the opinion is attached at Appendice - B

OTHER RELEVANT OPINIONS

d) Another relevant decision of the District Court can be seen at 1998 U.S. Dist. LEXIS 1393, Feb. 6, 1998. A copy is attached as Appendice - C. (Rule 60(b) Motion---DENIED)(1998)

e) Another relevant decision of the District Court is unpublished, but a copy of the decision is attached as Appendice - D. (Rule 60(d)(3) Motion ---DENIED)(2019)

f) Another relevant decision of the District Court for the Eastern District of Virginia is published at 2014 U.S. Dist. LEXIS 184266 and an unpublished opinion at 608 Fed. Appx. 167, 2015 U.S. App. LEXIS 11466 July 2, 2015.

g) Another relevant case is pending in the United States District Court for the Eastern District of Virginia which can be seen at Pacer, Civ. No. 4:19-cv-32.

JURISDICTIONAL STATEMENT

h) This Court has jurisdiction pursuant to 28 U.S.C. § 1254 which gives the United States Supreme Court jurisdiction to review cases in the Court of Appeals. 200 L. Ed. 2d 376__US__Ayestas v Davis, Dir. TEX DEPT. of CRIM. JUSTICE. The Supreme Court may review denial of a certificate of appealability (COA) by lower courts. Hohn v United States, 524 U.S. 236, 141 L. Ed. 2d 242, 118 S. Ct. 1969 (1998).

RELEVANT CONSTITUTIONAL, STATUTORY AND SUPREME COURT AUTHORITIES

i) The issues before the Court involve the United States Constitution and its 5th, 6th, and 14th Amendments with respect to the intentional deprivation of those rights under color of law by federal prosecutors who acting in concert with defense lawyers, committed felony fraud upon the District Court to carry out a scheme intended to deprive Petitioner of those rights. This case also encompasses the Tenth Circuit's holdings in In re, Pickard, 661 F.3d 1201, 1215-16 (10th Cir. 2006) in which the Court conducted an in-depth analysis of this

Court's holdings in Gonzalez v Crosby finding that the Government may not commit fraud on a habeas court, then hide behind the AEDPA just because it similarly deceived the trial court. The Third Circuit has not directly addressed the issue as stated by Judge Padova in his 2019 opinion attached. Fraud on the Court exists in this case as that term is defined at law by this Court and every other Circuit that has addressed the issue.

CONSTITUTIONAL PROVISIONS

j) The Equal Protection Clause of the Fourteenth Amendment states in relevant part: [N]or 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.

k) The Due Process Clause of the Fifth Amendment provides in relevant part: No person shall be...deprived of life, liberty, or property, without due process of law.

l) The Equal Protection Clause applies to the Government through the Fifth Amendment's Due Process Clause, Bolling v Sharpe, 347 U.S. 497, 499-500 (1954).

m) The Assistance of Counsel Clause of the Sixth Amendment states in relevant part: In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.

STATUTORY PROVISIONS RELATING TO THE DEPRIVATION OF CONSTITUTIONAL RIGHTS

n) The federal crime of suborning perjury is statutorily defined: "Whoever procures another to commit any perjury is guilty of subornation of perjury and shall be fined under this title or imprisoned not more than five years or both." 18 U.S.C. § 1622.

o) The federal crime of depriving a citizen of a Constitutional right is statutorily defined. Section 241provides that: If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States, or because of having exercised the same...shall be fined under this title or imprisoned not more than ten years, or both...

p) Section 242 provides that: Whoever, under color of law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States, or to different punishments, pains, or penalties...shall be fined under this title or imprisoned not more than one year or both...

STATEMENT OF THE CASE

1. This Petition arises from the United States Court of Appeals for the Third Circuit's summary denial of Petitioner's Appeal from the District Court's denial of his Petition for writ of error coram nobis. The underlying case involves a conspiracy to deprive Petitioner of Constitutional rights including his right to a conflict free lawyer in a criminal trial and his right to due process in habeas proceedings. The scheme was carried out by officers of the Court criminally obstructing the judicial process which deceived the District and Appellate Courts, thereby depriving Petitioner of his said rights in violation of 18 U.S.C. §§ 241, 242. The request for writ of error coram nobis was an effort of last resort in an attempt to obtain relief from decades of legal and financial devastation that followed the unlawful and unconstitutional 1995 conviction including ongoing consequences that continue as of this writing. The Government has never admitted or denied its criminal conduct when filing COURT ORDERED responses to multiple habeas Petitions in violation of Rule 8, Fed. R. Civ. P., thus the merits of multiple habeas pleadings and new evidence, discovered in 1999, proving the Government's conspiracy to employ conflicted defense lawyers in a criminal scheme to deprive Petitioner of Constitutional rights, have never been adjudicated. Consequently, neither the District Court nor the Court of Appeals have ever addressed the merits of the case, i.e., the denial of a conflict free lawyer in the criminal matter and prosecutors have effectively covered up their felony deprivation of Petitioner's Constitutional rights via fraud on the District Court in habeas proceedings, thereby thwarting Appellate Courts from addressing the merits hiding behind the AEDPA to do so. Thus, the Constitutional deprivations from which Petitioner has suffered since 1995 through this writing, remain unaddressed. Simply put, the Government executed frauds on multiple habeas courts as that term is defined at law where Petitioner was seeking relief via §

2255 and true Rule 60 motions; and, the Government, through its fraud on those courts, covered up a parallel fraud on the criminal court in the underlying matter, thereby, creating insurmountable procedural hurdles for Petitioner that have precluded his obtaining relief to which he has been entitled since 1995. Petitioner has no adequate remedy at law.

2. Petitioner's attempts to have the merits of the case including key evidence concealed by the government reviewed by habeas and/or Courts of Appeals, have been quashed by inter alia the Government continuously filing pleadings void of response to the allegations and evidence at issue, i.e., AUSA Foa's Disqualification Motion/Plea Agreement "package." The Government sought and obtained judicial relief from their obligation to respond to the appeal now before this Court. This was by design so that no record would exist relevant to fraud on the court and attorney conflict allegations both of which formed the factual predicate for all the underlying habeas proceedings. Should this Court grant a Writ of Certiorari, the Government will for the first time have to answer for its criminal conduct. The Government committed fraud on the habeas Courts by executing a criminal scheme to commit and suborn perjury during Rule 60(b) evidentiary hearings while continuing to conceal key evidence that was also concealed from the Criminal Court, i.e., Foa's illegal "Package" which cannot exist at law because it is an oxymoron at law. Without question, a plea agreement for a co-defendant that requires his testimony against Petitioner, cannot be attached to a motion to disqualify Petitioner's former counsel from representing the co-defendant for unwaivable conflicts of interest with Petitioner, thus the Government cannot frame any legal basis for such a "package" to even exist, let alone a legal justification to support its contents. The documents are diametrically opposed to the Constitution's Amendments V, VI, XIV and federal law, thus cannot exist at law. When Petitioner raised the same conflicts of interest the Government set forth in its own motion to

disqualify Sidney Freidler from representing Mark Waldron Jr., during Rule 60(b) evidentiary hearings, the Government, instead of disclosing its hidden "package" and admitting there were in fact, "unwaivable" conflicts AND a secret deal with defense counsel to conceal the conflicts, deceived the Court falsely claiming that "Petitioner made it all up because he doesn't like his sentence" and that "it's a figment of Mr. Zinner's imagination," (Hr. Tr. Nov/Dec 1997) despite the fact that the Government AND defense counsel were unquestionably in possession of AUSA Foa's "package" which proves beyond any doubt, that Petitioner's attorney conflict and fraud on the court allegations were truthful, factual and correct. Consequently, the habeas Court was deceived by the perjury, suborning of perjury and concealing of key evidence (Foa's "Package) and that constitutes fraud on the Court within the meaning of the law (See Gonzalez v Crosby, 545 U.S. 524, 528, 125, S. Ct. 2641, 162 L. Ed. 2d 480 (2005). While suborning of perjury by an officer of the Court is always fraud on the court, courts have also held where perjury hides a material fact or key piece of evidence intended to deceive the court, does constitute fraud on the court. See Alarcom Pay Television, LTD, 2000 U.S. App. LEXIS 172 No. 98-56298 (Jan. 4, 2000). The Government and defense counsel suborned perjury of one another in evidentiary hearings held on a true Rule 60 motion while concealing the very key evidence it concealed from the trial court, evidence that would have proved the use of conflicted counsel to extract guilty pleas from their clients as alleged in the § 2255 proceedings. The perjury scheme was by design to deceive the habeas court to believe that no conflicts existed and to cover up the deprivation of Constitutional rights inflicted upon the Petitioner through deception of the Criminal Court in the underlying matter. This certainly impinged upon the Court's ability to function in its normal capacity of adjudicating cases fairly which constitutes fraud on the Court as defined by this Court in Hazel-Atlas Glass Co. v Hartford-Empire Co.,

322 U.S. 238, 248, 64 S. Ct. 997, 88 L. Ed. 1250 (1944). In Hazel Atlas, an attorney fraudulently obtained a patent and submitted it to the Court. This case is far worse in that the Government deceived the Court into permitting conflicted lawyers to represent criminal defendants with adverse interests and concealed the conflicts and key evidence from the Court that if disclosed, would have caused the Court to protect the Constitutional rights of the defendants as required by Rule 44 F.R.Crim.P., and the 6th Amendment. Foa's "package" provides clear proof that the Government and defense counsel intended to and did in fact, deprive the defendants of Constitutional rights. The Government's concealed "package" begins with a fax as follows:

> Fax Cover Sheet: To: Sidney Freidler, FROM: Pamela Foa: 25 pages to follow--3/6/95: Contents:
>
> This Package will come through in 2 faxes. 1st fax will be Motion/Exhibit "A." 2nd fax will be plea agreement. Both faxes total 25 pages. If you do not receive all pages, please call Kelly @ 215-451-5431. Thank you. (See Appendice-E)

This information is telling. The fax was sent on March 6, 1995, the Rule 11 hearing was March 10, 1995. Foa's Motion clearly seeks disqualification of Petitioner's former counsel, Sidney Freidler from representing Mark Waldron Jr., due to "unwaivable" conflicts of interest with Petitioner. Freidler was fired by Petitioner after representing Petitioner, his wife and mother in this case and related matters. As well, Freidler was "joint" counsel to Petitioner and Waldron in this case since the summer of 1994. These obvious conflicts are pointed out in Foa's Motion to disqualify Freidler. Waldron's plea agreement attached to Foa's disqualification motion as a "package" cannot exist at law because the contents of the "package" proves the conflicts that prevent Freidler from negotiating or executing the pre-drafted plea agreement included in the "package." How can Petitioner's former counsel, Freidler, "negotiate" a plea agreement for

Waldron while the plea agreement is already in his possession via fax from FOA, and in the face of Foa's disqualification motion also in Freidler's possession that precludes representation of Waldron by Freidler due to unwaivable conflicts of interest with Petitioner? And, when the PRE-DRAFTED plea agreement requires Waldron to testify against Freidler's former client, Petitioner? And how can Petitioner's then "exclusive" counsel ("exclusive" according to Foa in her motion, and Mezzaroba to Judge Padova in December 1994) now assist Freidler on March 7, 1995, (who is legally disqualified) with extracting a guilty plea from Waldron, (Mezzaroba's former client) when his now "exclusive" client, (Petitioner) is expected to testify against Waldron, Mezzaroba's former client at trial according to Foa? Equally despicable, how could Foa then file a motion to have Freidler admitted pro hoc vici to represent Waldron after having caused this felony deprivation of Petitioner and Waldron's 6th Amendment rights during pre-indictment plea negotiations? And worse, how could Judge Padova approve it? This absurdity defines corruption and shows that it exists at the highest levels of our justice system which cannot be permitted to stand in a civilized society. The concealing of Foa's "package" by all counsel proves the secret deal between them all to hide the conflicts and the "package" from their clients, former clients and the Court which is fraud on the Court as defined at law. The Government AND defense counsel were obligated to disclose this conflict to the defendants and the COURT at once and intentionally failed to do so. (citations infra) Instead, both counsel extracted Petitioner and Waldron's guilty pleas and delivered them to prosecutors in time for the Rule 11 hearing, thus intent to commit fraud on the Court and intentional deprivation of conflict free lawyers in a criminal trial, a felony, is clearly proved by the documents concealed and the existing record.

3. Instead of disclosing the conflicts to the Criminal Court in the presence of the defendants as required to comply with the 6th Amendment and Rule 44(c) Federal Rules of Criminal Procedure, prosecutors secretly conspired with the conflicted defense lawyers to conceal the conflicts and Foa's "package" while coercing pre-indictment guilty pleas from their clients and former clients prior to the Rule 11 hearing, then all counsel concealed the conflicts and the "package" from their clients and the Court at the Rule 11 hearing. The Government further facilitated the conflicted representation when AUSA Foa acted as supervising attorney for the pro hoc vici admission of Freidler, for the express purpose of representing Waldron, AND Judge Padova KNEW that Freidler was Petitioner's former counsel as Foa points out in the Government's concealed disqualification motion. Moreover, not only does the Government's concealed "package" disclose two hearings held before Judge Padova in December 1994, where the government claims it learned for the FIRST time that Freidler was THEN representing Waldron "exclusively" and Mezzaroba was representing Petitioner "exclusively" after representing Petitioner and Waldron "jointly," proved by Foa's statement that the government learned of separate representation as set forth in the motion. However, testimony of record proves that upon Freidler's receipt of Foa's "package" on March 6, 1995, one day later, BOTH defense counsel met with co-defendant Waldron and extracted his guilty plea for prosecutors which was presented to the Court on March 10, 1995, as was Petitioner's plea thereby completing that objective of the conspiracy. Judge Padova clearly knew of the conflicts in December 1994. Once Freidler and Waldron executed Foa's pre-drafted guilty plea agreement, (Part 2 of Foa's concealed "package,") Foa buried Part 1, her own motion to disqualify Freidler. Foa then filed a motion to admit Freidler, who was licensed in New York and Florida, to practice in the Pennsylvania District Court pro hoc vici for the purpose of representing

Waldron. This was fraud on the Court because ALL counsel knew of the conflicts that prohibited Freidler from representing Waldron not to mention Freidler was under criminal investigation. Had Foa disclosed her illegal "package" on the record of the Rule 11 hearing as required or had defense counsel disclosed any of those facts to the Court as required, the result would have been disqualification of BOTH Freidler and Mezzaroba for unwaivable conflicts of interest. ANY legitimate Court or advocate acting in the interest of his client would have complied with the requirements of the 6th Amendment and discussed the conflicts in open Court with the defendants present so as to protect the 6th Amendment rights of the defendants as is done in every other case where such conflicts exist. But Foa concealed her illegal "package" and the conflicts of interest from the Court and its records as did BOTH defense counsel, now acting as agents for the Government committing felonies! For these reasons, all 5 requirements for Writ of Error Coram Nobis were met.

4. Had the Government or defense counsel disclosed the conflicts and Foa's "package" in open Court, the Court would likely have enforced the law due to the nature of the documents and because the "package" would then be a part of the record thereby making it near impossible for Judge Padova to author the outrageous opinions now before this Court in 1996/1998/2019/2020. Foa's motion continues:

> 1. "The United States of America, by its counsel, Michael R. Stiles, United States Attorney for the Eastern District of Pennsylvania, and Ronald H. Levine, Pamela Foa and Seth Weber, Assistant United States Attorneys, moves the Court to disqualify Sidney Freidler, Esq., from further representation of Mark Waldron because of an unwaivable conflict of interest. The United States represents that:
>
> 2. On January 24, 1995, a federal grand jury indicted four men, including Mark Waldron and Edward Zinner. Both Waldron and Zinner were indicted on charges of racketeering and wire fraud. In the course of the investigation, defendant's wife and mother were subpoenaed to testify before the grand jury. They were represented by,

> and present with them at the grand jury, were Sidney Freidler, Esq., of Long Island New York and his co-counsel, Albert Mezzaroba, Jr., of Philadelphia. (Id. at pg. 2, App'x-E).

The Government's facts here are correct and require no further explanation as to the law with respect to conflicted counsel negotiating plea agreements for two clients and former clients that require both to testify against each other, one going to prison, the other house arrest, one ordered to pay almost $500,000 in restitution, the other $7,000. Aside from that farce, the Government needed Waldron for show because there was no crime and Waldron was the trustee of the ERISA plan, hence the reason for the guilty plea scam and use of both defense counsel to obtain BOTH unlawful guilty pleas. Worse, BOTH counsel were facing forfeiture of $210,000 upon conviction of EITHER CLIENT/FORMER CLIENT by guilty plea of a RICO violation. This too was an actual conflict of interest affecting both defense counsel (citations infra). Nonetheless, Foa permitted both counsel to retain the fees even though Petitioner and Waldron were convicted by guilty plea of stealing the money from the named RICO Enterprise while Foa claimed the fees were proceeds of the offense for purposes of restitution and a pre-indictment seizure of Petitioner's assets. At the Rule 11 and sentencing hearings, Petitioner was represented by Mezzaroba, Waldron's former counsel who just assisted Freidler with extracting Waldron's guilty plea, after Freidler was fired by Petitioner and conflicted out of the case according to the GOVERNMENT. More absurd, Waldron's guilty plea required his testimony against Petitioner, (both counsel's client and/or former client), while Petitioner's plea agreement required his testimony against Waldron, Petitioner also both counsels client and/or former client and none of this can exist at law. (Petitioner fired Freidler in late 1994 for a poor performance in the Resource Bank matter referenced in Foa's "package" which was part of the Government's case to be presented at trial according to Foa) NOTABLY, Mezzaroba's participation in the

extraction of Waldron's guilty plea was done on March 7, 1995, after Mezzaroba told Judge Padova in December 1994, that he was representing Petitioner "exclusively" as pointed out in Foa's motion to disqualify Freidler. Petitioner did not know any of this in 1994 and did not discover Foa's concealed and secreted "package" until mid 1999 after conclusion of the case, thus could not prove these facts at what Judge Padova touts as a "full" evidentiary hearing when denying relief to which he knows Petitioner is entitled. Mezzaroba then lied about these facts at the Rule 60(b) evidentiary hearing falsely claiming, "it was not decided who was representing who right up until after the indictment (January 24, 1995) but before the Rule 11 hearing" (March 10, 1995) and Weber and Foa suborned Mezzaroba's perjury. Judge Padova cited the perjury verbatim in his 1998 opinion denying relief which is clear proof of the conspiracy as no legitimate defense lawyer would commit perjury for any reason nor would any legitimate prosecutor suborn perjury for any reason. And more troubling, Judge Padova knew the truth of all of it since December 1994 and not only did nothing, but went along with the scam, but quoted what he knew was perjury in his 1998 opinion and has regurgitated that opinion in later opinions issued post 1998:

> "Defendant contended that Mezzaroba was trying to persuade Mark Waldron Sr., that his son should plead guilty as part of a corrupt deal he has with prosecutors, but Mezzaroba explained that he considered a guilty plea in Waldron's best interests. He said that he was advising Waldron as well as Defendant because at that time, it was not determined exactly which attorney would represent which client. (Hr. Tr. of 2/30/97 at 53-55)(J. Padova Op. at Appendice B, pg.'s 9-10).

Judge Padova KNOWS this "testimony " is a lie because the issues were discussed before him as pointed out in Foa's motion. Further, Mezzaroba told Judge Padova that as of December 1994, he was representing Petitioner "exclusively." Freidler was FIRED by Petitioner in late 1994, thus had no business in the case due to conflicts of interest as pointed out in Foa's

concealed disqualification motion/plea agreement "package." This is simply outrageous, fraud on the Court now implicating a federal judge. Even more egregious, when presented with Foa's "package" in 1999, Judge Padova ignored it and refused to even address it, denying habeas motions absent a hearing and absent a response from the government that explained the concealed "package" or the conflicts of interest let alone the intentional deprivation of Petitioner and Waldron's Constitutional rights. These facts demonstrate a clear criminal obstruction of the judicial process, by officers of the Court, the fraud directed at the Court, by which, the Court was deceived in a way that impinged on its ability to conduct a criminal trial and/or make decisions in habeas proceedings based upon facts. It is difficult to imagine more egregious conduct that could possibly run further afoul of the law or the Constitution than what occurred here.

5. It is irrefutable that Foa buried the disqualification motion as did defense counsel and both concealed the conflicts from the Rule 11 and sentencing courts in 1995; then LIED to the § 2255 court by omission in 1996, lied to the Rule 60(b) Court in 1997 as demonstrated herein to cover up fraud on the § 2255 and Criminal Courts, then failed to address the "package" in 1999 when answering a Rule 60(b) motion per Court Order; motion for new trial and motion to appoint special counsel to investigate fraud on the court, (the Court failing to even address the "newly discovered" evidence at that time") and then they all hid behind the AEDPA deflecting the truth from being introduced into the record. The Court and the Government misrepresented the Court's docket record in 2019 to hide the fact of the 1999 motions having been filed so as to create the false impression that the "package" was new evidence discovered in 2019, not 1999, thereby creating a quasi-path to misrepresent the evidence and shift the claim to a § 2255 claim instead of a fraud on the court claim as alleged in the true Rule 60(d)(3) motion (2019). This

was done to deceive the Court of Appeals into issuing a summary denial of the Appeal. Foa's Motion continues:

> "Thereafter, in response to a grand jury subpoena for documents, Sidney Freidler, Esq., orchestrated production of those documents and the delivery....all the documents were housed in the same office suite and were, in fact, under the control of Edward Zinner."
>
> "In December 1994, in response to further subpoena of the United States, the Government learned for the first time that Sidney Freidler was representing exclusively American Fidelity Trust and Mark Waldron, its trustee, and that Al Mezzaroba was representing exclusively, National Insurance Consultants, Inc., and its President, Edward Zinner. Those representations were reaffirmed at the Court's hearing on NIC's and American's motion to quash on December 23, 1994." (Id. at pg. 3).

This provides clear proof of discussions before Judge Padova with respect to who was representing who as of December 1994, rendering his "opinion" above in 1998, a complete fabrication and he only got away with it because Petitioner did not know of the existence of Foa's disqualification/plea agreement "package" until mid 1999 after conclusion of the case:

> "When a District Court is sufficiently apprised of even the possibility of a conflict of interest, the Court first has an inquiry obligation. See Wood, 450 U.S. at 272-73, 446 U.S. 347; Holloway, 435 U.S. at 484. The Court must investigate the facts and details of the attorney's actual conflict, a potential conflict or no genuine conflict at all. See Strouse v Leonardo, 928 F.2d 555 (2nd Cir. 1991)("In order to protect a defendant's right to conflict free counsel, the trial court must initiate an inquiry when it knows or reasonably should have known of the possibility of a conflict of interest." See also United States v Aiello, 814 F.2d 109, 113 (2nd Cir. 1987)("Sixth Amendment imposes duty upon a trial court to inquire.").

As the record demonstrates, there was no inquiry by the Court, no waiver from the defendants and no disclosure by the Government OR defense counsel and there can be no question now that everyone but the defendants knew of the conflicts and that the sham representation was

orchestrated by the Government, carried out by all counsel in the case and with full approval of the Judge.

6. This unlawful conduct runs so far afoul of the law and the Constitution that it wreaks not only the stench of corruption but stands as an affront to the integrity of the District Court, The United States Court of Appeals and the entire Federal Justice system. A very wise Supreme Court Justice once addressed this stating:

> "In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously...If the Government becomes the lawbreaker, it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy. To declare that the Government may commit crimes to secure a conviction of a private criminal, would bring terrible retribution...against that pernicious doctrine (the ends justifies the means) this Court should resolutely set its face." Justice Louis Brandeis, cf Olmstead v United States, 277 U.S. 438, 485, 72 L. ed. 944, 48 S. Ct. 566, 66 ALR 376 (1928)(emphasis added).

The questions presented to this Honorable Court, if unanswered, will allow federal prosecutors to continue this type of fraud on Courts to deprive citizens of Constitutional rights under the guise of legitimate prosecutions. This case is of national importance because it involves an atrocity that can happen to any person of a prosecutor's choosing while the prosecutor is literally accountable to no one! Further, this case involves the interpretation and application of Constitutional law that the Third Circuit refused to address. It is crucial that this court set a new precedent, otherwise prosecutors get a green light to obliterate the Constitutional rights of any citizen of their choosing. The Tenth Circuit has squarely addressed the issues at bar which is persuasive but not binding on other Courts outside the 10th Circuit, thus resolving the issues now would save potentially massive amounts of litigation. Further, the question presented as to whether or not a Hazel-Atlas fraud on the court claim waives the gate keeping requirements of the AEDPA has not been addressed by the Third Circuit as Judge Padova states in his 2019

opinion denying relief on a true Rule 60(d)(3) motion. (See Appendice-D @ Pg. 2) Foa continues:

> "On November 1, 1994, in civil proceedings in Virginia Beach, Virginia, initiated by Resource Bank, Sidney Freidler, Esq., entered his appearance on behalf of Edward Zinner and his wife, Cindy Zinner. Resource Bank v Zinner, Circuit Court of Virginia Beach, Law No. CL94-978. See Exhibit-A attached. That action concerns certain financial transactions, including the purchase by Atlantic Healthcare Benefit, between the Zinner's and Resource Bank, which were also part of the grand jury's investigation are expected to be presented as part of the Government's case at trial. On January 13, 1995, the United States moved, ex parte, to restrain pre-indictment certain of Defendant Zinner's real property." (They also moved to restrain Waldron's real property) On January 18, 1995, and for several days afterwards, Mr. Freidler was present during joint plea negotiations with Zinner, Waldron and the government. Mr. Zinner entered into a cooperation plea agreement with the government and is expected to be a witness against Mr. Waldron at the trial of this matter. Wherefore the United States respectfully requests the court to disqualify Sidney Freidler from representing Mark Waldron in this case."

In light of these now irrefutable facts before the Court, and Foa's representations as to the Court's discussions in the 1994 hearings before Judge Padova, a jurist of reason could only conclude (1) that Pamela Foa and every United States Attorney or AUSA whose name appears on Foa's motion was TOLD of separate representation of each client in December 1994, after "joint" representation proved by FOA's own statements in her disqualification motion; (2) that all counsel KNEW of an actual and unwaivable conflict of interest that applies equally to BOTH defense counsel for the same reasons; (3) that "joint" plea negotiations referenced on "January 18, 1995 and for several days afterwards" as represented by FOA were known by all counsel to be in conflict with the diverging legal interests of Petitioner and Waldron based upon the pre-indictment plea agreements proposed; and (4) both guilty pleas were coerced by the conflicted counsel through deception of both clients as Judge Padova was told in 1997 in open court and in

multiple habeas pleadings. This demonstrates a clear conspiracy to deprive the defendants of conflict free lawyers during a "critical stage of the proceeding" because the Government KNEW of the conflicts in December 1994 as FOA represents in her March 1995 motion. However, the Government AND defense counsel acting in concert with one another chose NOT to disclose the conflicts to the defendants on January 18, 1995, during the phony staged "joint" plea negotiations that were not in reality plea negotiations at all, but an attempt to execute a criminal scheme to extract guilty pleas to crimes that did not exist in fact or at law. The sham defense lawyers were assisting the Government in carrying out objectives of Foa's conspiracy to deprive Petitioner of Constitutional rights under color of law. To accomplish this criminal scheme, Petitioner was threatened with indictments against his wife and mother unless he agreed to plead guilty immediately and that is the only reason Petitioner pled guilty, not because of guilt or criminal wrongdoing just as Petitioner told Judge Padova during Rule 60(b) hearings. Foa and Mezzaroba falsely testified at the Rule 60 evidentiary hearings that there were no threats made. This was to sanitize the skullduggery they all knew took place in January 1995. See Manholt v Reed, 847 F.2d 576, 582{1991 U.S. App. LEXIS 13}(9th Cir.)("Exploring plea negotiations is an important part of providing adequate representation of a criminal client, and this part is easily precluded by a conflict of interest,"). cert.denied 488 U.S. 908, 102 L. Ed. 2d 249, 109 S. Ct. 269 (1988); See also United States v Swartz, 975 F.2d 1042 (4th Cir. 1992)(co-defendants were represented by same counsel...and Swartz being asked to testify at the sentencing of her co-defendant was found actual conflict of interest requiring vacating Swartz sentence); Here, Waldron was "required" to testify at Zinner's sentencing for the Government and DID SO per his plea agreement. (This alone required Petitioner's sentence to be vacated and Judge Padova certainly knew that); also see United States v Nicholson, 475 F.3d 241, 248 (4th Cir. 2007) (holding that an attorney

possessed a conflict of interest between two criminal defendants, despite being involved in different cases). Here, Waldron refused to plead guilty in January 1995, thus Foa's weapon of coercion, i.e., the "package" was intended to cause Freidler AND Mezzaroba to get Waldron's guilty plea done on March 7, 1995, or prior to March 10, 1995, in time for the Rule 11 hearing in violation of the law and the Constitutional rights of Petitioner and Waldron. This was done under direction of the Government and constitutes a felony violation of 18 U.S.C. §§ 241, 242. The pre-drafted plea agreement attached to the disqualification motion was not "negotiated," it was a tool proved by the fact that it contains a signature line for Freidler to sign off as Waldron's counsel while Freidler is in possession of Foa's motion to disqualify him which in of itself, establishes a scheme to defraud Waldron and Petitioner, a criminal offense. On March 7, 1995, Freidler and Mezzaroba were on a "joint" mission to extract Waldron's guilty plea on behalf of Foa and no other reason. The fact that Mezzaroba participated in extracting the plea under these facts and circumstances, provides clear and unequivocal proof of intended fraud on the Court and intent to deprive both Petitioner and Waldron of conflict free lawyers. Further, the fact that Waldron's guilty plea was in counsel's possession on March 6, 1995, before they went to meet with Waldron on March 7, 1995, proves that BOTH lawyers knew that the interests of their clients and former clients diverged based on the plain language in Petitioner's January 18, 1995, plea agreement and Waldron's March 6, 1995, plea agreement. (According to Foa in her motion "package," Zinner was to be a witness against Waldron at the trial); And, in the face of Foa's motion to disqualify Freidler BEING IN COUNSEL'S POSSESSION, they BOTH still proceeded extracting Waldron's guilty plea while hiding from the Court, the real reason they were there "jointly" committing felonies at the behest of FOA! MONEY! And LOTS OF IT, $210,000 PAID FOR A TRIAL, NOT GUILTY PLEAS! All counsel on both sides violated

every authority designed to prevent this type of deprivation of Constitutional rights and Judge Padova has written extensively on this very subject, thus cannot be said not to have known the law or that he was violating it. There are no other inferences that can be drawn from these documents, or the facts set forth within them or the relevant facts on this record. In U.S. v Haziz Self, 2009 U.S. Dist. LEXIS 121386, over which Judge Padova and Judge Diamond presided, a very lengthy opinion was authored that sets forth exactly why these facts cannot exist at law and why neither lawyer could legally represent Petitioner OR Waldron. First, the Sixth Amendment requires counsel to avoid conflicts of interest in order to fulfill the duty of loyalty owed to the client. Strickland v Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) citing Rule 44(c)"s prophylactic measure designed to ensure that a defendant's Sixth Amendment right to effective assistance of counsel is not impaired by an actual conflict of interest. United States v Pungitore, 910 F.2d 1084, 1140 (3rd Cir. 1990), Rule 44 "requires the court to promptly inquire about the propriety of joint representation...and personally advise each defendant of the right to effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel." citing Fed. R. Crim. P. 44(c)(2). In this case, there is no question that all counsel and the JUDGE KNEW of actual conflicts of interest, and, that separate representation after joint representation by the same counsel, violates Rule 44 and all of the authorities cited. When conflicted representation is arranged by prosecutors, as here, it constitutes an intentional deprivation of the Sixth Amendment right to a conflict free lawyer and the cover ups are obstructions of justice, due process deprivations and fraud on habeas courts intended to cover up fraud on the Criminal Court. Further, any waiver of the 6th Amendment right to conflict free counsel, "must be made knowingly, intelligently and with awareness of the

likely consequences of the waiver." United States v Dolan, 570 F.2d 1177, 1180-81 (3rd Cir. 1978). Of course, there were no waivers in this case at all, let alone knowing or intelligent waivers. A waiver is made "knowingly" and "intelligently" only if the "defendant" is aware of the foreseeable prejudices his attorney's continued representation could entail for his trial, and possible detrimental consequences of those prejudices." Id. at 1181; See also United States v Laura, 667 F.2d 365, 371 (3rd Cir. 1981). The record in this case demonstrates there was no inquiry and no waivers. See U.S. v Miller, 624 F.2d 1198 (Third Circuit affirmed disqualification of lawyer....by switching sides). Freidler switched sides after being fired by Petitioner and threatened by the Government with disqualification but was permitted to proceed after extracting Waldron's guilty plea for prosecutors, now acting in concert with Foa in the commission of a federal crime. For these reasons, prejudice is presumed. See Weaver v Mass., 582 U.S. __, 137 S. Ct. 1899, 198 L. Ed. 2d 420, 2017 U.S. LEXIS 4043, Id at 692, 104 S. Ct. 2052, 80 L. Ed. 2d 674, Cronic, 466 U.S. at 658-660, 104 S. Ct. 2039, 80 L. Ed. 2d 657. "Where there is...actual or constructive denial of counsel, state interference with counsel's assistance, or counsel that labors under actual conflict of interest. Id. at 692, 104 S. Ct. 2052, 80 L. Ed. 2d 657.

Prejudice can be presumed with respect to these errors because they "are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." Id. at 658, 104 S. Ct. 2039, 80 L. Ed. 2d 657; See Strickland, supra, at 692, 104 S. Ct. 252, 80 L. Ed. 2d 674; Mickens v Taylor, 535 U.S. 162, 175, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002). In the instant case, the Government arranged for the conflicted representation of criminal defendants by the same counsel who represented them jointly in the same matter, thus interfered or intruded into the attorney client relationships. There can be no "explanation" as to why Judge Padova protected the Government by engaging in outrageous conduct protecting what is clearly

fraud on the Court, as demonstrated in his erroneous opinions thereby shielding the corrupt lawyers from exposure for committing federal offenses while using the AEDPA as a tool to prevent judicial review of the case on its merits which goes far beyond the scope of the AEDPA's intended purpose.

REQUIREMENTS FOR WRIT OF ERROR CORAM NOBIS

7. Petitioner meets the first requirement because he is not in custody on the conviction at issue; (2) Petitioner has been deprived of his Constitutional right to a lawyer in the criminal trial and this qualifies as a most "fundamental" error for which this Court granted relief in Morgan, supra. This Court also held that no showing of prejudice is necessary "if the accused is denied counsel at a critical stage of his trial," United States v Cronic, 466 U.S. 648, 659, 104 S. Ct. 2029, 80 L. Ed. 2d 657 (1984); Here, Petitioner was denied counsel during the plea negotiation Rule 11 and sentencing stages as demonstrated above. The Cronic Court further held: Similarly, prejudice is presumed "if counsel fails to subject the prosecution's case to meaningful adversarial testing." Cronic, 466 U.S. at 659, 104 S. Ct. 2039, 80 L. Ed. 2d 657. Here, Petitioner stopped the Rule 11 hearing three times when Foa was lying to the Court regarding the phony and fabricated factual basis for the RICO violation only to be lied to privately by Mezzaroba while standing before a federal judge. Mezzaroba "advised" Petitioner that all the conduct Foa was lying to the Court about creating a phony factual basis for the RICO violation was dismissed per the plea agreement and "harmless" when in fact, nothing could have been further from the truth. Had a real lawyer been representing Petitioner, there would have been objections to the outright false factual basis for the charge resulting in the Court refusing to accept the guilty pleas, but that was not happening on Foa's watch. Foa owned Mezzaroba and Freidler as testimony and the record shows. Foa's lies included loss that did not exist, violations of judicial

orders that never occurred, lying to plan members which never occurred, all of which the Government's own evidence proves never occurred, and most disgusting, stealing One Million Dollars from the healthcare plans PROVED NOT to have happened in post-conviction tax litigation which in of itself, calls the conviction into question.

The Tax case was wholly predicated upon the Government lying to the IRS post-conviction in direct violation of the plea agreement, falsely claiming that Petitioner "used for personal benefit" the amount of One Million Dollars and based upon the guilty plea, (this was to punish Petitioner for the § 2255 motion), the IRS issued tax deficiency notices and sought $900,000 in taxes and penalties. Petitioner sued the IRS in the United States Tax Court and by mid 2000, Petitioner won the case. The IRS stipulated that Petitioner owed NOTHING despite the erroneous indictment and guilty plea because the BANK RECORDS and the PLAN's records told the TRUTH. NOT the government or its corrupt lawyers. The errors of fact and law set forth throughout this pleading show that Petitioner has met this requirement by demonstrating both; (3) There is no possible remedy at a trial where the defendant has no knowledge of a criminal scheme being perpetrated upon him by prosecutors and his own counsel. This case involves complex factual and legal issues neither of which were understood by Petitioner at the time. Further, criminal prosecutorial misconduct was concealed from the Court by all counsel in the case. So how could a defendant be expected to uncover those acts when he knows nothing about the law and his lawyer is lying to him about the law in relation to the facts of the case as well as the options available to him? Petitioner learned what legally happened to him after entering prison and studying the law over years. Petitioner cannot find any existing law even today that would provide an adequate remedy to prevent or expose defense counsel conspiring with prosecutors to convict their own clients by guilty plea knowing

they were not guilty. Even if some legal relief were available at that time, defense counsel was acting in concert with prosecutors against the interest of his client/Petitioner leaving him with no options. All of this is in violation of 18 U.S.C. §§§ 241, 242, 1622. Petitioner has sought remedy in this case on at least 10 different occasions since 1996 and over the years continuing to try and expose this outrageous fraud in state and federal courts to no avail due to the ADEPA and Heck v Humphrey, 512 U.S. 477, 486-487, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994) with exception, the IRS matter discussed above. These include fighting related tax matters, post-conviction matters, unlawful related tax liens that continue to be filed as of 2014, unjust seizure of money under color of law (2015) the pretense of which is unpaid restitution that does not exist, new criminal prosecutions based on Foa's relentless pursuit to silence Petitioner forever regarding this matter for reasons set forth herein; (It is not surprising Foa chose the IRS to attack yet again); (4) Petitioner is still suffering consequences of this case due to a significantly enhanced sentence related to Foa's most recent handy work (2018) where this case was cited by the court as reason for an upward departure in another prosecution for a non-existent crime, initiated by Foa, for reasons set forth herein, and (5) Petitioner did NOT wait to seek relief for any substantial period of time. He began filing habeas pleadings in 1996 and has continued doing so through 2021 including this Petition. As the Virginia Federal Court noted at the 2018 sentencing, Petitioner has been fighting the 1995 case for over 20 years and the Court took offense to that fact because it does not know the information that is now before this Court or that the conviction is and was at all times relevant predicated upon a fraud on the Court as shown herein which constitutes a deprivation of the most basic fundamental Constitutional rights. Judge Padova has aided and abetted prosecutors in violation of 18 U.S.C. § 2 which is a federal crime for which he should answer to this Court and be impeached and disbarred.

As a result, Petitioner again suffers consequences of an enhanced sentence imposed for yet another nonexistent crime thus this constitutes ongoing consequences. The outcome of this case will have significant impact on the Virginia matter now pending before that court. While the fraud on the Court in this case is serious and involves many federal offenses by the Court's officers, it is noteworthy that it is the tax dollars of the public that paid for the unlawful proceeding and incarceration. It is the employees that lost their jobs and the fallout of all that which caused significant harm not to mention that there was NEVER ONCE, a SINGLE unpaid claim while Petitioner ran the ERISA plans in the 1990's. There were only inchoate claims when the Government seized the plan and there was more than enough money to pay them all. The same is true in the Virginia matter which was brought to protect this unlawful conviction and to exact revenge for Petitioner defeating the IRS in the related tax case demonstrating to other courts that this case is unjust and was procured by fraud on the Court as demonstrated here. It is the IRS that brought the new prosecution, and the investigation began immediately upon the Government being notified by FOA that Petitioner had another successful business. For these reasons, this case is of significant importance to Petitioner and the public as their tax dollars have paid for FOA's initiation of the Virginia prosecution as well, proven by depositions given by her cohorts in the state matter Petitioner was prosecuting. The state matter is the reason Petitioner was arrested and held without bond based upon lies and deception of the Virginia Court, i.e., nearly all of the Government's witnesses were defendants in the state case which was a statutory business conspiracy lawsuit. The case was dismissed because Petitioner was unable to prosecute it from jail. Another atrocity related to this case and FOA was a listed defense witness in the state matter. For what reason is beyond even the wildest of imagination.

REASONS FOR GRANTING THE WRIT

There are good reasons for granting this Petition in addition to the facts demonstrated in that the concerted actions of the Court's officers in the case constitute felony violations of 18 U.S.C. §§ 241, 242. This Court held in Imbler v Pachtman, 424 U.S. 409, 421, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976):

> "We emphasize that the immunity of prosecutors in suits under § 1983 does not leave the public powerless to deter misconduct or to punish that which occurs. This Court has never suggested that the policy considerations which compel civil immunity for certain governmental officials also place them beyond the reach of the criminal law. Even judges, cloaked with immunity for centuries, could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. s 242 [18 USCS § 242], the criminal analog of {*pg. 143 § 1983. O'Shea v Littleton, 414 U.S. 488, 503, 38 L. Ed. 2d 674, 94 S. Ct. 669 (1974); cf. Gravel v United States, 408 U.S. 606, 627, 33 L. Ed. 2d 583, 92 S. Ct. 2614 (1972). The prosecutor would fare no better for his willful acts." Id.

Petitioner has not found a single case where a federal prosecutor has been held accountable pursuant to the above law or this Court's holding. It appears that 18 U.S.C. §§ 241, 242 are symbolic in text, but ignored in practice. Moreover, there is no available remedy at law for Petitioner or any citizen when this type of corruption befalls upon him or her because the Court itself becomes the catalyst to inflict the injury and it is its officers that corrupt and obstruct the judicial process itself, destroying the Court's machinery that exists for the protection of litigants that come before it, especially criminal defendants. For that reason, among others, this case is of national importance because unless these individuals and those of the like are stopped and held accountable under the law, then no deterrence factor exists to prevent more atrocities of this nature, but equally critical, the integrity of the entire justice system is called into question. Without intending to be disrespectful, the Padova Court here is the equivalent of a third world kangaroo court. As such, this Court's Supervisory Power should

be invoked to dismiss the indictment with prejudice for the 6th Amendment deprivation as this Court did in United States v Morgan, 346 U.S. 502, 74 S. Ct. 247, 98 L. Ed 248 (1954); and for the corruption of the Court by its officers and deprivation of due process guaranteed all citizens by the 5th & 14th Amendments.

8. This Court should establish legal binding precedent with respect to the questions presented, but further and equally important to every citizen in America, it can set a precedent that requires federal courts to review the full merits of all cases involving fraud on habeas courts without regard to the AEDPA and, to require federal prosecutors and other officers of the Court, found to have committed fraud on the court intended to intentionally deprive a citizen of Constitutional rights, resulting in unlawful incarceration and/or financial destruction, be held accountable and prosecuted thereby demonstrating that no person is impervious to the law, that 18 U.S.C. §§ 241, 242 are not merely symbolic and that federal prosecutors may NOT commit crimes to deprive citizens of Constitutional rights absent serious consequences.

9. Neither The Third Circuit nor the District Court have reached the merits of the instant Petition for writ of error coram nobis, instead, summarily denying the Petition and the Court of Appeals affirming and denying a COA. However, in doing so, the Court has affirmed a judge's participation in fraud on the District Court in habeas proceedings by ignoring the conflicts of interest, Foa's "package," the 6th Amendment rights of Petitioner and Waldron, the clear violation of Petitioner's right to due process and all of that in conflict with this Court's holdings in Gonzalez v Crosby, supra, the Constitution and the Tenth Circuit's holdings in In re Pickard discussed infra. Judge Padova has gone to great lengths to avoid reaching the merits of this matter and to prevent any other Court from reaching the merits as described herein and proven by the Court of Appeals' summary denials. Judge Padova misrepresented the Court's Docket

record in his 2019 opinion to hide the fact that Petitioner filed the above referenced motions in 1999 upon discovery of Foa's "package" which was "newly discovered" evidence then, not 2019. Notably, AUSA Ashenfelter too misrepresented the record in the Government's response to the Rule 60(d)(3) Petition claiming falsely that "there may have been other motions filed beyond 1998, but the Government is not in possession of those records." However, the Court's Docket record proves otherwise. See Docket sheet at Appendice F, Docket #'s 223, 224, 226, 236, 249, 250, 251. 252, 256, 257. AUSA Ashenfelter lied in his response to avoid answering the pleadings with regard to Foa's "package." This is because the "package" was "newly discovered" when it was filed in 1999 with a subsequent Rule 60(b) motion for fraud on the first habeas courts. That FACT had to be kept out of the Rule 60(d)(3) proceeding for obvious reasons, as well as the contents of the "package" to continue the cover up. Therefore, Judge Padova referenced the "package" as new evidence to mislead any reader of his opinion that the Rule 60(d)(3) claim was predicated upon new evidence thus making it a § 2255 claim when in fact, the claim was and still is a fraud on the Court claim subject to review on its merits pursuant to this Court's holdings in Gonzalez supra. The fraud includes but is not limited to the fraud on the Court during the "full evidentiary hearing" held in 1997 where the scheme to suborn perjury was executed by prosecutors and defense counsel while the "package" was concealed thereby hiding the known conflicts that were falsely denied to exist by all counsel; and, the "package" is clear and unequivocal proof of the conflicts and the cover up as shown herein which involves the participation of a federal judge. These truths destroy the Government's phony denials and prove inter alia Mezzaroba's false testimony, Weber suborning that Perjury and Judge Padova suborning perjury in his 1998 opinion. Further, a motion for a new trial was filed with the 1999 Rule 60 motion as well as a motion to Appoint Special Counsel to Investigate fraud on the

Court. ALL motions were DENIED IMMEDIATELY by Judge Padova ABSENT consideration or even an acknowledgment of the new evidence, i.e., Foa's "package." This was clearly done in 1999 to cover up the collusion exposed by Foa's disqualification/plea agreement "package" and its contents which prove the concealed conflicts of interest; collusion between prosecutors and defense counsel; the timelines as alleged in pleadings where the unlawfully coerced guilty pleas were extracted despite all counsel's knowledge of the conflicts, but also FOA'S "PACKAGE" having been CONCEALED in the face of the perjury and suborning perjury scheme, never mind the Rule 11 and sentencing hearings. All of that aside, The Third Circuit has not made a definitive ruling as to whether or not a subsequent habeas petition brought under Hazel-Atlas supra, alleging fraud on a prior habeas court to cover up fraud on the Criminal Court waives the gate-keeping requirements of the AEDPA. (See J.P. Opinion, July 24, 2019 @ Pg. 2, Appendice B). However, the Tenth Circuit extensively addressed this issue discussing Gonzalez supra in great detail. In In re Pickard, 661 F.3d 1201, 1215-16 (10th Cir. 2006) the Court held the following which it is respectfully submitted, should apply here:

> "More problematic, however, is the later dictum in Spitznas. Although the case before the panel involved no claim of fraud or deceit of any kind, the opinion stated that if the fraud alleged in a Rule 60(b) motion "includes (or necessarily implies) related fraud on the state court (or the federal district court that convicted or sentenced the movant in the case of a § 2255 motion), then the motion will ordinarily be considered a second or successive petition because any ruling would inextricably challenge the underlying conviction proceeding." 464 F.3d at 1216. "One could read this statement as requiring us to treat Defendant's claim of fraud in the § 2255 proceedings as a second or successive claim because the alleged fraud that obstructed discovery in the § 2255 proceedings paralleled the misconduct that allegedly occurred at trial. {681 F.3d 1207} We will not, however, follow that dictum so interpreted. We cannot accept the proposition that the government has a free pass to deceive a habeas court into denying discovery just because it similarly deceived the trial court. If the Defendants' claim of prosecutorial deceit during the § 2255 proceedings must be treated {2012 U.S. App.

> LEXIS 15}as a second-or-successive § 2255 motion, then the government's alleged misconduct during that proceeding could compound a substantial injustice to the Defendants".

This is exactly what happened here. The government deceived the § 2255 Court into believing that no conflicts of interest existed. The lawyers suborned perjury as to those facts while concealing key evidence, i.e., Foa's "package" and the truth from the Court and its records. The government deceived the Rule 60(b) court into the same belief with assistance of defense counsel and the judge. To continue fraud on the first habeas (§ 2255) Court, prosecutors, and defense counsel conspired with one another to hide the felony deprivations of Petitioner's Constitutional rights in the Criminal trial, then deceived the Rule 60 Courts through a scheme to suborn perjury of one another while concealing key evidence, thereby, compounding a substantial injustice already inflicted upon the Petitioner and Waldron by the Criminal and habeas Courts. For these same reasons, the Pickard Court remanded the case to the District Court to "consider in the first instance Defendant's claim that the prosecutor's false statement improperly prevented them from obtaining relevant discovery in the § 2255 proceedings." Id. The fraud here goes far beyond discovery violations or simply lying to the Court as demonstrated above. If in fact, the Government OR defense counsel would have disclosed Foa's secreted "package" to the Rule 11, sentencing, § 2255, Rule 60(b), 2nd Rule 60(b) third Rule 60(d)(3) OR coram nobis Courts and truthfully disclosed the concerted actions described herein, the Rule 11 Court would have disqualified counsel for conflicts of interest and the conviction would not exist. If the government or defense counsel disclosed Foa's "package" or the conflicts to the § 2255 Court, the conviction would have been vacated and a new trial would have proved Petitioner innocent. If the government or defense counsel disclosed the "package" or the conflicts to any of the Rule 60 Courts, the District Court could not have issued the erroneous

opinions that now exist all of which were by design, to shut down any attempt by Petitioner to gain access to any Court for the purpose of exposing this outright corruption. In an effort of last resort, the writ of coram nobis appeared to be the proper procedural mechanism by which Petitioner's claims should have been reviewed on the merits, but again, summary denials by both the District and Appeals Courts. How can any of this stand when the law is well settled that criminal defendants have a 6th Amendment right under the United States Constitution to be represented by a conflict free lawyer in a criminal trial? See U.S. v Wheat, 813 F.2d 1399 (9th Cir. 1986)(The U.S. const. amend. VI guarantees each criminal defendant the right to assistance of counsel unhinged by a conflict of interest); Also see Chester v Comm'r of Pa. Dept. of Corr, 598 Fed. Appx. 94, Jan 13, 2015, (citing 6th Amendment right to conflict free counsel); Cuyler v Sullivan, 466 U.S. 335, 349-50, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)(defendant who shows that conflict of interest actually affected adequacy of his representation need not demonstrate prejudice in order to obtain relief). It is impossible that Judge Padova is unaware of any of these authorities, yet Petitioner continues to suffer from unconscionable schemes as demonstrated above, which deprived him of a conflict free lawyer in a criminal trial. How can the conflicts be ignored when it is further well settled that even when a potential conflict arises, the government must alert the Court at once? See Rules of Professional Conduct, Rule 1.7(a)(b)(where the government has reason to believe the defense attorney has a direct conflict of interest, the government must alert the court) citing United States v Levy, 25 F.3d 146, 152 (2nd Cir. 1994)); see Holloway v Arkansas, 435 U.S. 475, 98 S. Ct. 1173, 55 L. Ed. 2d 426 (1978) (holding that defense attorneys have an obligation upon discovering a conflict of interest to advise the court at once of the problem); "When a possible conflict has been completely ignored, reversal is automatic." 7 Cuyler, 446 U.S. at 347; {25 F.3d 154} 100 S. Ct. 1717-18;

Holloway, 435 U.S. at 488. The automatic reversal rule applies when a district court has failed to fulfill its initial inquiry obligation. See Strouse, 928 F.2d at 555. In this case, there was NO INQUIRY by design! BOTH prosecutors and defense counsel concealed known conflicts from the RECORD, but Judge Padova knew about the conflicts and failed to inquire. ALL counsel participated in committing felonies to continue the prosecution as shown absent inquiry. ALL counsel continued to conceal the conflicts and Foa's "package" lying to habeas courts to cover up their fraud on the Criminal Court which has caused 25 plus years of devastation to Petitioner's personal and financial life still ongoing as of this writing. The Government stated clearly in its concealed Memorandum of Law in support of its Disqualification motion/Plea Agreement "package," that Third Circuit precedent forbid the representation based on the facts presented in the Motion including that the conflicts were "unwaivable" citing U.S. v Moscony, 697 F. Supp. 888 (E.D.PA. 1988(Reed, J.)) cf U.S. v Dolan, 570 F.2d 1177, 1184 (3rd Cir. 1978); also U.S. v Provenzano, 620 F.2d 985, 1005 (3rd Cir. 1980).

Petitioner agrees with THE GOVERNMENT'S FACTS HERE, but it is ONLY the Government that concealed its true position with respect to these known conflicts; and, it is in fact the Government who lured the defense lawyers into the scheme of unlawfully extracting guilty pleas from their clients and former clients, then covered that up lying in documents and pleadings, then lying by omission to Courts, committing and suborning perjury during Rule 60(b) evidentiary hearings thereby depriving Petitioner and Waldron of not only conflict free lawyers, but deprived both of due process of law in habeas proceedings time and time again ALL under color of law. See Imbler v Pachtman, 424 U.S. 409, 47 L. Ed. 2d 128:

> "A prosecutor who, while acting within the scope of his duties in initiating and prosecuting a case, willfully deprives the accused of his constitutional rights is subject to criminal punishment under 18 U.S.C. 242, which makes it a crime for a person, acting under color

> of law, to deprive another person of any right protected by the constitution or laws of the United States, and is subject to professional discipline or disbarment." Id

In light of this Court's holding above, it is respectfully requested that this Court invoke its Supervisory Power to vindicate these egregious deprivations of Petitioner's Constitutional rights in the interests of justice and to correct a horrific miscarriage of justice that has plagued Petitioner for more than 25 years and to bring those responsible before a Court to face justice for their criminal acts.

THE PETITION FOR WRIT OF ERROR CORAM NOBIS

10. Prosecutors answering Petitions for writ of error coram nobis are all quick to cite this Court's non-binding foot note in United States v Smith, 331 U.S. at 45, n. 4, 91 L. Ed. 1610, 67 S. Ct. 1330 (1947) where the Court stated:

> "After the enactment of the Federal Rules of Criminal Procedure, it is difficult to conceive of a situation in a federal case today where [a writ of error coram nobis] would be necessary or appropriate." Id.

However, since 1947, as the Third Circuit noted in Ragbir v United States, 950 F.3d 54 (3rd Cir. 2019):

> "The writ of error coram nobis was moribund-at least in the federal courts until the Supreme Court revived and refashioned it in 1954." citing United States v Morgan, 346 U.S. 502, 74 S. Ct. 247, 98 L. Ed. 248 (1954)." Id.

In Morgan, the Court held that (1) Rule 60(b) did not abolish coram nobis in criminal contexts, (2) Rule 35 did{2020 U.S. App. LEXIS 12} not render the writ unnecessary, and (3) section § 2255 did not replace coram nobis. Id. at 505 n.4, 505-06, 510-11. Instead, the Supreme Court stated that the continuing vitality of coram nobis was grounded in the All Writs Act of 1789. Id. at 506. The Court also broadened the scope of coram nobis relief beyond that of curing factual errors: the writ's function was to correct errors of the most "fundamental character." Id.

at 511-12. Coram nobis became a {950 F.3d 62} collateral remedy to correct fundamental errors, whether factual or legal. However, the writ is still limited to "'extraordinary cases presenting circumstances compelling its use to 'achieve justice.'" United States v Denedo, 556 U.S. 904, 910-11, 129 S. Ct. 2213, 173 L. Ed. 2d 1235 (2009)(quoting Morgan, 346 U.S. at 510). It provides a means to challenge a federal conviction where a party is no longer in custody for purposes of § 2255 faces continuing consequences{2020 U.S. App. LEXIS 13} as a result of being convicted. Rhines, 640 F.3d at 71; United States v Baptiste, 223 F.3d 188, 189 (3rd Cir. 2000); Chaidez, 568 U.S. at 345 n.1; United States v Stoneman, 870 F.2d 102, 105-06 (3rd Cir. 1989). In Denedo supra., this Court stated that "any rationale confining the writ of coram nobis to technical errors has been suspended, for in its modern iteration coram nobis is broader than its common law predecessor." citing Morgan where this Court stated that "a writ of coram nobis can issue to redress a fundamental error, there a deprivation of counsel in violation of the Sixth Amendment as opposed to mere technical errors." 346 U.S. at 513, 74 S. Ct. 247, 98 L. Ed 248. The potential universe of cases that range from technical errors to fundamental ones perhaps illustrates, in the case of coram nobis, the tendency of a principle to expand itself to the limit of its logic. B. Cardozo, the Nature of the Judicial Process 51, (1921). In the instant case, as in Morgan, Petitioner was deprived of his 6th Amendment right to a lawyer as shown herein and in the Petition for writ of error coram nobis.

Further, "The demands of the Constitution, as envisaged by this Court, have moved federal and state courts to acknowledge that due process requires a corrective judicial process in the nature of coram nobis be available to expunge a void judgment when all other avenues of judicial relief are unavailable." See Picket v Legerwood, (US) Pet 144, 147, 8 L. ed 638, 639; Davis v Packard (US) 8 Pet 312, 8 L. ed 957. The criminal judgment in this case was procured

by fraud on the criminal court covered up by fraud on the habeas courts, perpetrated on the court itself by all counsel in the case and the judge, the court having been deceived by perjury, suborning of perjury by its officers, concealing of key evidence by its officers, thereby depriving Petitioner of a lawyer in a criminal trial and further depriving him of relief even when clear proof was put before the habeas Courts. This case is the "extraordinary" case where this Court's Supervisory Power should be invoked to do justice by writ of coram nobis and or by its own Supervisory Power being invoked to reverse and expunge the conviction for good cause having been shown.

11. As to the second question presented, it is respectfully submitted that when federal prosecutors fail to admit or deny allegations of fraud on the Court, conflicts of interest or prosecutorial misconduct in a habeas pleading as required by Rule 8, F.R.Civ.P., that the allegations against them be admitted as in any other civil litigation. Especially, when the habeas pleading is pursuant to Rule 60(d)(3) which is an "independent civil action" standing on its own like any other civil litigation. In this case, the government failed to admit or deny the substantive issues in the pleadings instead simply regurgitating the District Court's erroneous conclusions without answering the relevant allegations and this was done with nefarious intent. The government and the Court side stepped the facts relevant to issues raised clearly to protect the conviction and to avoid addressing the facts of the case to protect the fraud on the Court and prevent its exposure. This in of itself is disgraceful and it is a sad day for all Americans that this pleading is being written to this Court. There is no polite way to state these facts and as a citizen who believes strongly in our system of justice, even though twice ensnared by its corrupt faction operating within it, this writer does not believe the entire system is corrupt. Petitioner acknowledges that most AUSAs prosecute cases fairly and lawfully every day. Any person with

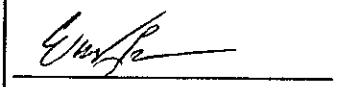
any sense of common decency that has spent time in a federal prison can certainly attest to why as a society, we need prisons. But we also need a fundamentally fair system of justice and there are far too many cases where this type of outright corruption and criminal conduct of federal actors, obliterate the Constitutional rights of citizens like it doesn't matter. This case is not an isolated incident nor does its reach end with this case. It is with hope, sincerity and a strong belief in American Jurisprudence that the injustices shown, will be rectified by this Honorable Supreme Court and those responsible brought to face justice for their unlawful concerted acts. This case involves matters of corruption and serious judicial misconduct as well as that of the Justice Department's employees masquerading as do-good crime fighters. This must never happen again to any American. This case is not just about Petitioner or Mark Waldron, but the questions presented will provide justice for America and preserve the integrity of the entire judicial system and its machinery that was by design, to prevent these types of injustices from ever occurring.

Finally, Petitioner asks this Court to take judicial notice of the Federal Case pending before the Virginia Federal Court pursuant to Rule 201. The facts are judicially noticeable and fraud in that case mirrors the fraud here. The sentence imposed is nearly double what it would have been absent the record in this case which contains false information as demonstrated in those pleadings in evidence attached thereto. The pending § 2255 case and related Motions can be seen on Pacer, Zinner v United States, Civil No. 4:19-cv-32. Armed with the information and facts set forth herein, the Court will more fully understand how the cases are connected and part of the ongoing vendetta the Government has against Petitioner for seeking justice. Petitioner hereby pleads with the Court to do justice using its Supervisory Power to vindicate the Constitutional violations demonstrated for the reasons stated.

CONCLUSION

For the foregoing reasons, good cause having been shown, Petitioner respectfully requests the Court GRANT the Writ of Certiorari.

Respectfully submitted,



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September 9, 2021