

Presented to:

21-5932
IN THE

Supreme Court of the United States

ORIGINAL

No.

Supreme Court, U.S.
FILED
SEP 27 2021
OFFICE OF THE CLERK

MICHAEL R. BURNS

v.

UNITED STATES,

Writ of Certiorari

From:

No. 21-8022

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT BOSTON

FOR LOCATION: BOP.gov

Mr. Michael R. Burns
Prisoner ID #93576-038
USP Lee County

A true, correct, certified copy of the foregoing is herin annexed, true, correct, certified, and correct, and is subject to the penalty of perjury 28 U.S.C.

Court has a Petitioner as in Petitioners case [] moving
the Court to address the DNA and Fingerprint Evidence Fabrication and the Court
Refuses to go on the record to address this

courts has refused to address the clearly apparent intentionally violating petitioners
Constitutional Rights as a [citizen] inflicting extreme irreparable harm to petitioner and family.

*With full absolute knowledge of the irreparable harm being caused
to Petitioner and family from this malicious wrongful conviction, acting in [Own Capacity]
continued*

*road block Petitioners claims for [Affirmative Relief].
an innocent man is in prison convicted on fake and fabricated DNA and Fingerprint evidence. For
all parties involved are liable for [Irreparable Harm] suffered from [Parties Negligence and
malfeasance]not vacating conviction and seeking immediate release of a wrongfully imprisoned.*

it violates his right to due process of law in violation of the **CONSTITUTION**.

The exhibits challenged here undisputedly prove beyond a reasonable doubt

3 Massachusetts State Police Forensic Technicians was found to be fabricating
[Fingerprint Evidence] and [DNA Evidence].

involved 2 Massachusetts State Police Forensic Laboratories

The court here has 3 individual forensic technicians acting in their
individual own capacity to fabricate forensic evidence at not one but two different
Massachusetts State laboratories...?

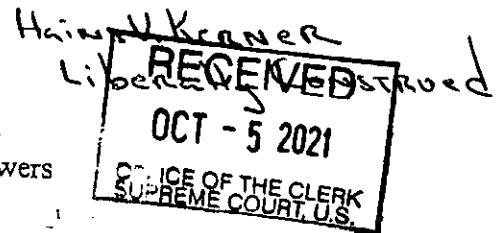
Writ of Certiorari

Question presented

Petitioners Equal Protections Under The Constitution
Are Being Irreparably Violated, Because Of The
Lower Courts Administrative Negligence, That In
This Case Have And Are Harming Petitioner And Family
Did The Lower Court ERROR, Not Vacating, Or Addressing
Wrongful Conviction, On Its Direct Appeal?

Judgment or decision on merits

exceptional circumstances warrant the exercise of the Court's discretionary powers



" specific claim for [AFFIRMATIVE RELIEF] , Vacate.."

Compare exhibits 78 v. 126 and 127 when compared the gloves are not one and the same. First received and photographed at laboratory exhibit 78. The gloves are cut right at the wrist and upon examination of the gloves in this photograph that was taken by David R. Mackin when the alleged fingerprint analysis was conducted then the gloves were placed in Locked **█** Evidence Storage. A second DNA sample technician testified on the record to specifically, the evidence was taken out of Locked **█** Evidence Storage and the next photographs were personally taken by Jessica L. Robidoux exhibits' 126 and 127 . With no reasonable doubt the gloves are not one and the same, clearly the gloves were substituted? The respective photographs were taken at the Lakeville, Ma Laboratory that *Only* conducts Fingerprint Testing, and takes Forensic DNA samples. The DNA samples get sent to a completely different laboratory

the Top DNA UNIT for testing. the [Massachusetts State Police Forensic Technology Center] located in Maynard, Ma. Clearly the gloves 2nd received out of Locked **█** Evidence Storage were substituted [?] We know this, respectively this is undisputed fact the evidence indisputable. The issue is one singular

sample was taken off the inside and the outside of the clearly substituted gloves and sent to the a completely different Laboratory the Top DNA unit for testing

and analysis. the DNA unit came up with a major DNA profile off the inside of the substituted gloves. The evidence is irrefutable Petitioners' major DNA profile was fabricated [off the inside of the substituted gloves].

For first Fingerprint Technician took photographs upon receipt then put those same gloves in to Locked **█** Evidence Storage. A Second DNA Sample Technician receives gloves out of Locked **█** Evidence Storage and personally photographs the gloves exhibit 126 and 127.

clearly depict the latex gloves were substituted and the DNA was fabricated as a major profile from the alleged singular sample that was taken off the inside of the substituted latex gloves all photographic evidence that clearly showed the disparity between the

latex gloves first photographed with Fingerprint Technician and then after receipt out of locked ~~8~~ evidence storage with the second DNA Sample Technician photographs

For the DNA Sample Technician here at the Lakeville, Ma Laboratory took

samples off the newly substituted gloves depicted in exhibits 126 and 127 and sent those

samples to a completely different Laboratory for testing and analysis the Top

DNA unit for testing and analysis located in Maynard, Ma.

the

DNA unit came up with a major DNA profile off the inside of the substituted gloves. The

evidence is irrefutable Petitioners' major DNA profile was fabricated [off the inside of

the substituted gloves] see that the gloves were substituted at the Lakeville Laboratory between

examinations for Fingerprints and DNA Samples all the forensic evidence is in clear question and can not be relied

on. [both] Laboratories work in this case is in question as well as the testimony that was derived from the three

Massachusetts State Police Forensic Technicians from the 2 different Laboratories.

Court has a Petitioner as in Petitioners case methodically and relentlessly moving

the Court to address the DNA and Fingerprint Evidence Fabrication and the Court

Refuses to go on the record to address this

In The

interest of justice preserving the public integrity in the judicial system and most

importantly the Constitution of the United States the Petitioners Wrongful Conviction

needs to be vacated immediately. [Petitioner] and [Family] have and are continuing to

suffer [Irreparable Harm Daily]. The court here has 3 individual forensic technicians acting in their

individual own capacity to fabricate forensic evidence at not one but two different

Massachusetts State laboratories...?

-See

page 4 concise statement of the case

must be liberally construed Hains v. Kerner 404 us 519 (1972)

III.

LIST OF PARTIES

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

For the First Circuit

RELATED CASES

1. U.S. COURTS OF APPEALS

No. 21-8022 Issued: June, 2021 Transcript of Jury Trial

No. 12-2318

2. U.S. District Court

1:10-cr-10390-GAO
November 1, 3, 14, 2019

Transcript of Jury Trial

3. SUPREME COURT

petition for a writ of certiorari in excess of the page limitation	APPLICATION Dec 20, 2016	15A720
Petition for writ of certiorari	April 24, 2017	16A611
Petition for rehearing denied	October 2, 2017	17-5498
writ of certiorari	February 20, 2018	17-5498
rehearing	October 5, 2020	20-5233
	March 22, 2021	20-5233

TABLE OF CONTENTS

OPINIONS BELOW.....	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	4.
REASONS FOR GRANTING DNA And Fingerprint Fabrication	
CONCLUSION.....	26.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Youngblood v. Arizona 488 U.S. 51 (1988)	
Limone v. United State 372 F.3d, 45 (1 st Cir 2004)	(19)
Napue v. Illinois 360 U.S. 264 (1954)	
Strickler v. Greene 527 U.S. 150 (1998)	
Giglio v. United states 405 U.S. 150 (1972)	
Bagley v. United States 473 U.S. 667 (1772)	
United States v. Agurs 427 U.S. 97 (1972)	
United States v. Olano 507 U.S. 725 (1993)	
Chapman v. California 386 U.S. 24 (1967)	(20)

STATUTES AND RULES

CONSTITUTION

AMENDMENT 14 Equal Protection.

Section 1. [Citizens of the United States.]

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

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

L Ed Digest: Constitutional Law § 840.3

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

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

IN THE
SUPREME COURT OF THE UNITED STATES

OPINIONS BELOW

Supreme Court

15A720

Application to exceed Page limits **Dec 20, 2016**

16A611

Application Rehearing **April 24, 2017**

17-5498

Writ of Certiorari **October 2, 2017**

17-5498

Rehearing **February 20, 2018**

20-5233

WRIT OF CERTIORARI **October 5, 2020**

20-5233

Application **March 22, 2021**
Request for Rehearing

12-2318

U.S. COURTS OF APPEALS **October 21, 2019**

No. 21-8022

Issued: June 15, 2021

1:10-cr-10390-GAO

U.S. District Court **November 1, 2019**

JURISDICTION

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

District court 18 U.S.C. 3231
Court of appeals 28 U.S.C. 1291
Supreme Court 28 U.S.C. 1257

Lower courts has refused to address the clearly apparent intentionally violating petitioners Constitutional Rights as a (citizen) inflicting extreme irreparable harm, as petitioner and family. Petitioner can honestly state that there is not a department or jurisdictional court that has not been contacted

A Major DNA profile pulled off the inside of substituted latex gloves, gloves were substituted and or switched at laboratory with a completely different pair of gloves before ("DNA") sample technician was second in receipt of the substituted latex gloves after technician pulled the latex gloves out of locked & evidence storage in Lakeville Lab. Technician Jessica L. Robidoux took samples off the new ("DNA free") latex gloves that were substituted and sent the samples from the Lakeville, Ma laboratory to the ("DNA unit") in Maynard. Most disturbingly the ("DNA unit") came up with a major ("DNA profile") on Petitioner as to the samples that were taken off the newly substituted latex gloves. Fingerprint technician David R. Mackie at Lakeville, Massachusetts laboratory fabricated fingerprint evidence and laboratory documentations of fingerprint analysis on the substituted latex gloves which were not the gloves that were originally received in case in chief thus giving light to false elicited testimony derived from the clearly substituted gloves that Fingerprint Technician purportedly analyzed.

We bring the Courts attention to the disparity on the originally received gloves to the gloves that were substituted to which the DNA evidence was fabricated off the substituted gloves. With no reasonable doubt exhibit 78 the originally received gloves compared to exhibits 126 and 127 which are suppose to be one and the same are clearly not one and the same respectively tells this Court the gloves were substituted at the Lakeville, Ma Laboratory.

Inadvertently samples were taken off the substituted gloves and sent to the mother laboratory for DNA testing and analysis. Respectively the most disturbing fact Petitioners DNA came up as a major profile off the inside of the substituted gloves which tells this Court Petitioners DNA was maliciously fabricated.

The fact is the gloves that were originally received were substituted. By the evidence of second technicians own testimony of *yellow residue* noted on her photograph and the fingerprint technicians own testimony @ 5-16,10 of the residue being a chemical he called Wetwip. The reviewer can clearly see that these substituted, and not the originally received gloves by fingerprint Tech, where processed for fingerprints, before this second technician picks evidence up out of lock evidence storage, and personally takes the first photographs of the substituted gloves in question. For all can see that the gloves in question beyond doubt substituted. Based on this fact that the petitioners DNA was fabricated not only off the outside "as received", but most importantly fabricated off the inside "as received" substituted gloves in question. In short exhibit 78 is the fingerprint technicians photographs, as the reviewer can see the received gloves @ 4-124,16 @ 5-16,4 @ 5-25,12 are cut at the wrist..... The proceeding DNA sample Tech's Photographs exhibit 126-127 @ 5-16,23 @ 5-31,4 @ 5-44,4 @ 5-44,1 @ 5-73,17 The gloves are complete verse cut as the original.... Consequently calling in to question any and all testimony and evidence base thereon that was forensically processed at either of the 2 Massachusetts States Police forensic Laboratories in Lakeville or Maynard. Plainly speaking all 3 forensic technicians testimony is valid and unreliable ...]

Exhibit 78 are samples to be seen and the same, as exhibit 126,127. ... report clearly not one and the same. The alarming problem here is that petitioners major DNA profile was fabricated off the substituted ... gloves in exhibit 126, ... same (abusively marked as exhibit 128 (Fingerprint Report). That this reviewer the discredited reviewer who personally took the photograph exhibit 78 substituted the gloves, during his purported examination. Then put the evidence in locked & evidence storage....

The review examiner received and personally photographed the gloves received out of locked & evidence storage, depicted in exhibit 126,127. The DNA samples are taken off the substituted gloves, and sent to a completely separate laboratory, that by a review of the photographs discredited petitioners DNA, to wrongfully convict in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments under the Constitution of the United States as a citizen.

Supreme Court

15A720

Application to exceed Page limits Dec 20, 2016

16A611

Application Rehearing April 24, 2017

17-5498

Writ of Certiorari October 2, 2017

17-5498

Rehearing February 20, 2018

20-5283

Writ of Certiorari October 5, 2020

20-5233

Application March 22, 2021

Request for Rehearing

12-2318

U.S. COURTS OF APPEALS October 21, 2019

1:10-cr-10390-GAO

U.S. District Court November 1, 3,14, 2019

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Equal Protection.

AMENDMENT 5

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

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

2. Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 14

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

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

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

L Ed Digest: Constitutional Law § 840.3

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

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

STATEMENT OF THE CASE

Compare exhibits 78 v. 126 and 127 when compared the gloves are not one and the same. First received and photographed at laboratory exhibit 78. The gloves are cut right at the wrist and upon examination of the gloves in this photograph that was taken by David R. Mackin when the alleged fingerprint analysis was conducted then the gloves were placed in Locked **8** Evidence Storage. A second DNA sample technician testified on the record to specifically, the evidence was taken out of Locked **8** Evidence Storage and the next photographs were personally taken by Jessica L. Robidoux exhibits' 126 and 127. With no reasonable doubt the gloves are not one and the same, clearly the gloves were substituted? The respective photographs were taken at the Lakeville, Ma Laboratory that *Only* conducts Fingerprint Testing, and takes Forensic DNA samples. The DNA samples get sent to a completely different laboratory more specifically the top DNA unit in Massachusetts the [Massachusetts State Police Forensic Technology Center] located in Maynard, Ma. Clearly the gloves 2nd received out of Locked **8** Evidence Storage were substituted [?] We know this, respectively this is undisputed fact the evidence indisputable. The issue is one singular sample was taken off the inside and the outside of the clearly substituted gloves and sent to the a completely different Laboratory the Top DNA unit for testing and analysis. DNA unit came up with a major DNA profile off the inside of the substituted gloves The evidence is irrefutable Petitioners' major DNA profile was fabricated [off the inside of the substituted gloves]. Petitioners' major DNA profile was fabricated off the [Inside] of substituted gloves.

A Major DNA profile polled off the inside of substituted latex gloves. Gloves were substituted and or switched at laboratory with a completely different pair of gloves before ("DNA") sample technician was second in receipt of the substituted latex gloves after technician polled the latex gloves out of locked & evidence storage in Lakeville Lab. Technician Jessica L. Robidoux took samples off the new ("DNA free") latex gloves that were substituted and sent the samples from the Lakeville, Ma laboratory to the (DNA unit) in Maynard. Most disturbingly, the ("DNA unit") came up with a major ("DNA profile") on Petitioner as to the samples that were taken off the newly substituted latex gloves. Fingerprint technician David R. Maciole at Lakeville, Massachusetts laboratory fabricated fingerprint evidence and laboratory determinations of fingerprint analysis on the substituted latex gloves which were not the gloves that were originally received in case in chief thus giving *light to false elicited testimony* derived from the clearly substituted gloves that Fingerprint Technicians purportedly analyzed.

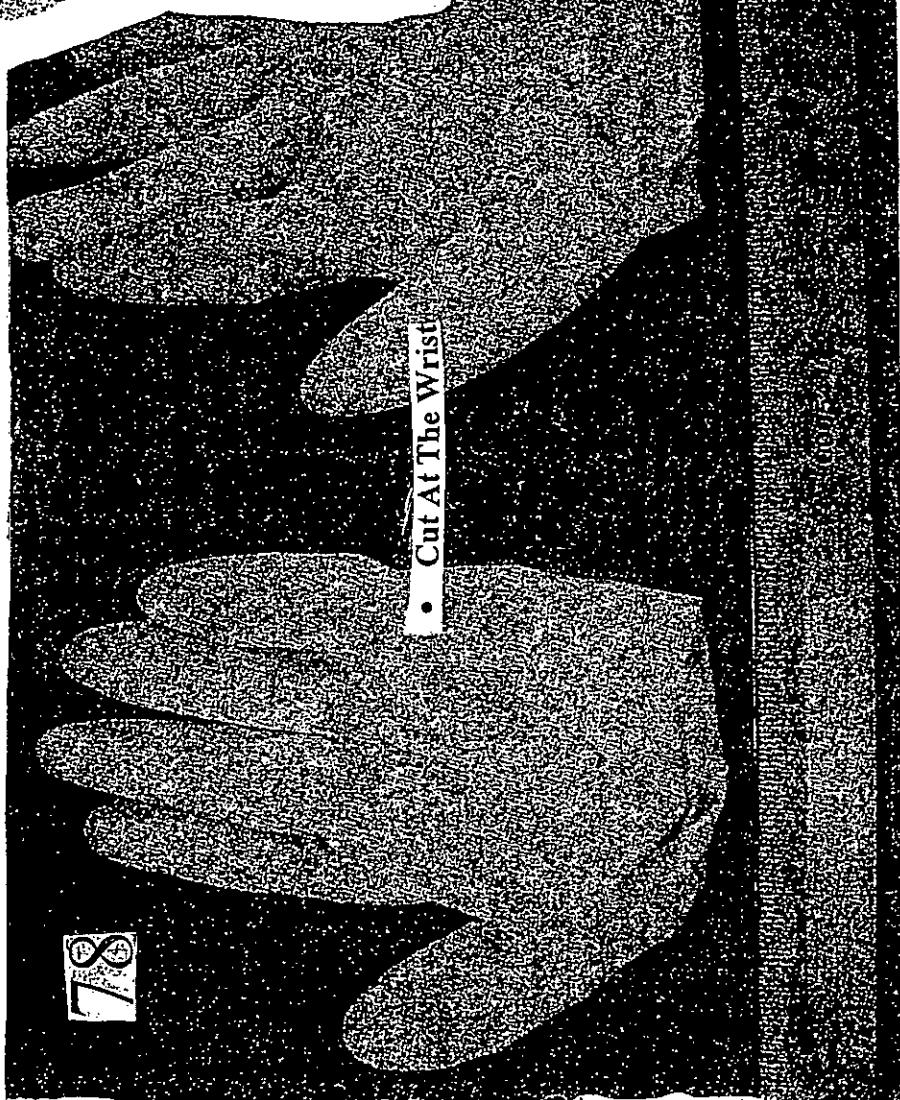
We bring the Courts attention to the disparity on the disparity on the originally received gloves to the gloves that were substituted to which the DNA evidence was fabricated off the substituted gloves. With no reasonable doubt exhibit 78 the originally received gloves compared to exhibits 126 and 127 which are suppose to be one and the same are clearly not one and the same respectively tells this Court the gloves were substituted at the Lakeville, Ma Laboratory.

Inadvertently samples were taken off the substituted gloves and sent to the mother laboratory for DNA testing and analysis. Respectively the most disturbing fact Petitioner's DNA came up as a major profile off the inside of the substituted gloves which tells this Court Petitioner's DNA was maliciously fabricated.

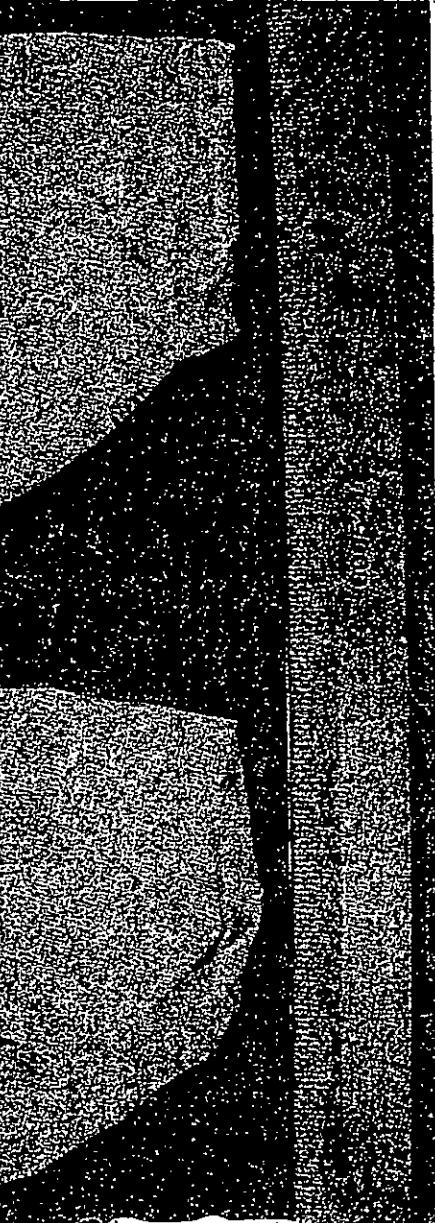
Consequently calling in to question any and all testimony and evidence date thereon that was forensically processed at either of the 2 Massachusetts State Police forensic Laboratories in Lakeville or Maynard. Plainly speaking All 3 forensic technicians testimony is void and unreliable. [1]

- Not Cut At The Wrist

126



- Cut At The Wrist



78

@ 4-126,16 @ 5-16,6 @ 5-25,12

• Cut At The Wrist

Exhibit 78 are suppose to be one and the same as exhibit 126,127. They are clearly not one and the same. The alarming problem here is that petitioners major DNA profile was fabricated off the substituted gloves in exhibit 126, note clearly marked on exhibit 126 [Fingerprint Residue]. That tells reviewer the fingerprint examiner who me personally took the photograph exhibit 78 substituted the gloves, during his purported examination. Then put the evidence in to locked & evidence storage....

Locked  Evidence Storage

Locked  Evidence Storage

The second examiner received and personally photographed the gloves received out of locked & evidence storage, depicted in exhibit 126,127. Then DNA Simples are taken off the substituted gloves, and sent to a completely separate laboratory, that by a review of the photographs fabricated petitioners DNA, to wrongfully convict in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments under the Constitution of the United States as a citizen.

Exhibit 126

Exhibit 126

@ 5-34,23 @ 5-35,14 @ 5- 46,4 @ 5-46,21 @ 5-73,17

• Not Cut At The Wrist

gloves-major profile

gloves-major profile

Compare exhibits 78 v. 126 and 127 when compared the gloves are not one and the same. First received and photographed at laboratory exhibit 78. The gloves are cut right at the wrist and upon examination of the gloves in this photograph that was taken by David R. Mackin when the alleged fingerprint analysis was conducted then the gloves were placed in Locked **8** Evidence Storage. A second DNA sample technician testified on the record to specifically, the evidence was taken out of Locked **8** Evidence Storage and the next photographs were personally taken by Jessica L. Robidoux exhibits' 126 and 127. With no reasonable doubt the gloves are not one and the same, clearly the gloves were substituted? The respective photographs were taken at the Lakeville, Ma Laboratory that *Only* conducts Fingerprint Testing, and takes Forensic DNA samples. The DNA samples get sent to a completely different laboratory

the Top DNA UNIT for testing. the [Massachusetts State Police Forensic Technology Center] located in Maynard, Ma. Clearly the gloves 2nd received out of Locked **8** Evidence Storage were substituted [?] We know this, respectively this is undisputed fact the evidence indisputable. The issue is one singular sample was taken off the inside and the outside of the clearly substituted gloves and sent to the a completely different Laboratory the Top DNA unit for testing

and analysis. the DNA unit came up with a major DNA profile off the inside of the substituted gloves. The evidence is irrefutable Petitioners' major DNA profile was fabricated [off the inside of the substituted gloves].

Petitioners' major DNA profile was fabricated off the [Inside] of substituted gloves For first Fingerprint Technician took photographs upon receipt then put those same gloves in to Locked **8** Evidence Storage. A Second DNA Sample Technician receives gloves out of Locked **8** Evidence Storage and personally photographs the gloves exhibit 126 and 127.

clearly depict the latex gloves were substituted and the DNA was fabricated as a major profile from the alleged singular sample that was taken off the inside of the substituted latex gloves all photographic evidence that clearly showed the disparity between the

latex gloves first photographed with Fingerprint Technician and then after receipt out of locked ~~8~~ evidence storage with the second DNA Sample Technician photographs

For the DNA Sample Technician here at the Lakeville, Ma Laboratory took

samples off the newly substituted gloves depicted in exhibits 126 and 127 and sent those samples to a completely different Laboratory for testing and analysis the Top

DNA unit for testing and analysis located in Maynard, Ma.

the

DNA unit came up with a major DNA profile off the inside of the substituted gloves. The

evidence is irrefutable Petitioners' major DNA profile was fabricated [off the inside of

the substituted gloves] see that the gloves were substituted at the Lakeville Laboratory between

examinations for Fingerprints and DNA Samples all the forensic evidence is in clear question and can not be relied on. [both] Laboratories work in this case is in question as well as the testimony that was derived from the three Massachusetts State Police Forensic Technicians from the 2 different Laboratories.

Court has a Petitioner as in Petitioners case methodically and relentlessly moving the Court to address the DNA and Fingerprint Evidence Fabrication and the Court Refuses to go on the record to address this

In The

interest of justice preserving the public integrity in the judicial system and most importantly the Constitution of the United States the Petitioners Wrongful Conviction needs to be vacated immediately [Petitioner] and [Family] have and are continuing to suffer [Irreparable Harm Daily]. The court here has 3 individual forensic technicians acting in their individual own capacity to fabricate forensic evidence at not one but two different Massachusetts State laboratories...?

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

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

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

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

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

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

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

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

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

Defense which is in the world of DNA probably the most important rule? It is very important not to contaminate item with your DNA, and not to contaminate items with other items DNA, yes it is important. Defense counsel really doing a dream team cross-examination on the forensic technicians in this case, especially the DNA sample technician here on specifically the gloves in question. Basely speaking air tight eliciting from technician only One Sample was taken off the outside, and only One Sample is taken off the inside of both gloves together as a pair. One sample is taken from both the outside, and one sample is taken from both the insides together. That one sample is put in a single test tube and shipped to be tested. @ 5-76,19 And you took a - I think as you explained it, you took a sample [SINGLE] - what ended up being a [SINGLE] sample from the exterior of both gloves? Correct. So you swabbed the exterior of both gloves and put it in to a tube right? Correct. @ 5-77,17 Once the samples is processed, and assuming that the DNA Material is extracted from the sample that you provided, you can not tell if DNA came from one glove, the right glove, the left glove, or both gloves? Technician responded. there is no way to know. Because you take - you only take one sample, you do not test the right glove and then test the left? Tec it is combined together as one sample you put it all together? Tec that is correct. So when you have the DNA result saying the gloves tested positive for DNA, it can come from one glove, left glove or botn gloves? Tec that is possible. The same procedure was used for the [interior of the gloves]? Tec that is correct. @ 5-78,8 Interior as received? Tec Correct So you took another swab sample, [single swab] of the interior of both gloves? Tec Correct. This single sample is put in a tube? Tec yes a plastic tube. Plastic tube, and then you assigned its number? Tec Correct. And that is

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

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

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

The fact is the gloves that were originally received were substituted. By the evidence of second technicians own testimony of *yellow residue* noted on her photograph and the fingerprint technicians own testimony @ 5-16,10 of the residue being a chemical he called Wetwop. The reviewer can clearly see that these substituted and not the originally received gloves by fingerprint Tec where processed for fingerprints before this second technician picks evidence up out of lock evidence storage and personally takes the first photographs of the substituted gloves in question. For all can see that the gloves in question beyond doubt substituted. Based on this fact the petitioners DNA was fabricated not off the outside "as received", but most importantly fabricated off the inside "as received" substituted gloves in question. In

exhibit 78 is the fingerprint technicians photographs, as the reviewer can see the received gloves @ 4-126,16 @ 5-16,6 @ 5-25,12 are cut at the wrist..... The proceeding DNA sample Tec's Photographs exhibit 126-127 @ 5-34,23 @ 5-35,14 @ 5-46,4 @ 5-46,21 @ 5-73,17 The gloves are complete verse cut as the originals...? Consequently calling in to question any and all testimony and evidence base thereon that was forensically processed at either of the 2 Massachusetts States Police forensic Laboratories in Lakeville or Maynard. Plainly speaking all 3 forensic technicians testimony is void and unreliable ..[.]

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

was harmless *United States v. Olano* 507 U.S. 725, 734, 113 S.Ct 1770 123 L.ed.2d 508 (1993) for most constitutional errors, the prosecution must show that the error was harmless beyond a reasonable doubt. Counsel objected @ 5-36,4 And at @ 5-37,16 overruled and admitted the several photographs with DNA sample technician personal workproduct notes contained on the photographs of the gloves in dispute, and that allows review under harmless error and for that reason *Chapman v. California* 386 U.S. 24 17 l.ed.2d 705 (1967) the prosecution must show that the "error" did not have a substantial and injurious effect or influence determining the juries verdict:

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

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

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

@ 5-79,19

Q: And if the – if someone turned the gloves inside out, you could transfer DNA from the exterior to the interior correct?

A: It is possible, that is why I testified earlier that I try to use as many precautions as absolutely possible when turning the gloves inside out: **wearing fresh gloves**: putting it on new, sterile piece of paper but there are limits we can only do so much.

@ 5-81,19

Q: You would not do that would you?

A: I change my gloves very frequently throughout my examination just in case, to take the utmost pre caution as possible

Q: Right because you want your results to be accurate correct?

A: correct

Q: You want people to rely on them right ?

@ TT 5-82

A: I would like the results to be as accurate as possible

Q: Right so you take precautions, you change gloves all the time correct ?

A: That is right **I change my gloves frequently**

@5-73, 15

A: I change my gloves frequently

@5-79, 21

A: That is why I testified earlier that I try to use as many precautions as absolutely possible when the gloves inside out wearing fresh gloves

@5-18,20

A: I change my gloves frequently my exam just in case. the utmost precaution as possible

@5-82, 2

Q: So you take precaution. You change gloves all the time correct???

A: that is right

For the record is fully developed by Appointed Defense Counsels Air Tight cross-examination on Technicians to the point were the chain of evidence is completely secured on the purported gloves being received out of Locked **8** Evidence Storage @ TT 5-34,20

I take the evidence out of Locked **8** Evidence Storage. The Technician fully testifies to changing her own gloves before even flipping gloves inside out during examination. The samples are taken at Lakeville Lab and then sent a completely different Lab located in Maynard, Ma for analysis. The DNA Lab came up with a Major DNA profile as to the Petitioners DNA coming off the inside of the clearly substituted gloves depicted in exhibits 126 and 127.

CONCLUSION

Judgment or decision on merits

The petition for a [] Writ should be granted.

" specific claim for [AFFIRMATIVE RELIEF] , Vacate.."

Respectfully submitted,

Michael R. Burns

Date: _____

The exhibits challenged here undisputedly prove beyond a reasonable doubt

3 Massachusetts State Police Forensic Technicians was found to be fabricating

[Fingerprint Evidence] and [DNA Evidence]

involved 2 Massachusetts State Police Forensic Laboratories

Wrongful Conviction THAT HAS AND IS CAUSING IRREPARABLE HARM
TO Michael Russell Burns and Family. 24