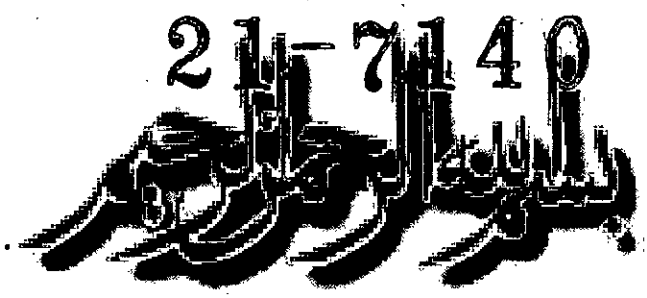
21-7140



Bismillah-ir-Rahman-ir-Rahim (In the Name of Allah, Most Gracious, Most Merciful)

IN THE SUPREME COURT OF THE UNITED STATES

No.

Gullett-El, Taquan Rashe,
In Propria Persona, Affiant-Petitioner — Petitioner

v.

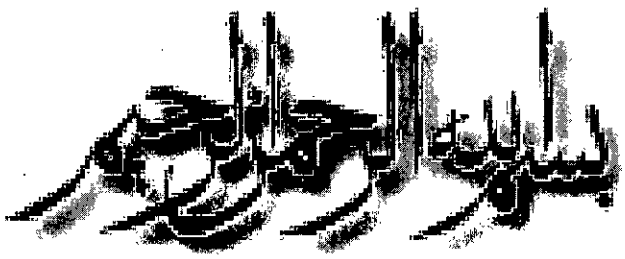
UNITED STATES OF AMERICA, et al. — Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO
NINTH CIRCUIT COURT OF APPEALS (Nos. 20-55808, 21-56275, 21-71442, 22-55062) and
DISTRICT COURT CENTRAL CALIFORNIA (Nos.2:14-cr-00725-CAS, 2:19-cv-10247-CAS, 2:21-cv-05720-JAK-JDE, 2:21-cv-09264-JAK-JDE)

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

Taquan Gullett, also called Maalik Rahshe El
Moorish Science Temple of America / Court of Equity and Truth
10105905 (Tax Immunity Number for the Asiatic Nation of North America)
In Care of: 422 East 27th Street; Jacksonville, Florida near [32206]
Molly's Garden Countee, Timucuan, Al Andalusia, Northwest Amexem [Al-Aqsa Al-Maghrib] (Morocco)
Unlawfully Detained at: [Vinewood Residential Re-Entry Center; 5520 Harold Way; Los Angeles, California 90028]
N/A
Phone Number
In Propria Persona Proceeding in Sui Juris capacity



Bismillah-ir-Rahman-ir-Rahim (In the Name of Allah, Most Gracious, Most Merciful)

IN THE SUPREME COURT OF THE UNITED STATES

Gullett-El, Taquan Rashe,
In Propria Persona, Affiant-Petitioner — Petitioner

v.

UNITED STATES OF AMERICA, et al. — Respondent(s)

MOTION FOR LEAVE TO FILE (S. Ct. R. 17.3)

The Affiant-Petitioner asks leave to file the Petition For Writ of Certiorari annexed and appended to this Motion.

I, Gullett-El, Taquan Rashe, declare and affirm under penalty of perjury under the Universal Law of Allah, then under the laws of the United States, that the foregoing is true, correct, and complete. 28 U.S.C. § 1746. Fed. R. Evid. 902(10).

21 Jumada Al-Akhirah 1443
[Gregorian Calendar Year (G.C.Y.) 2022 – January, 24]

under protest; without prejudice; under reserve; and with reservation of all our rights
Maalik Taquan Rahshe Gullett El, Autochthonous American Moorish Alien Friend UCC1-308

Maalik Taquan Rahshe Gullett El d/b/a Moorish Science Temple of America / Court of Equity and Truth
10105905 (Tax Immunity Number for the Asiatic Nation of North America)
General Executor-Caveator for AAMARU Religious Consul Association Testamentary Trust

NOTICE TO AGENT IS NOTICE TO PRINCIPAL / NOTICE TO PRINCIPAL IS NOTICE TO AGENT
APPLICABLE TO ALL SUCCESSORS AND ASSIGNS

JUDICIAL NOTICE (Fed. R. Evid. 201)

1. On the record and for the record, present is Taquan Gullett, also called Maalik Rahshe El d/b/a Moorish Science Temple of America / Court of Equity and Truth (10105905 Tax Immunity Number for the Asiatic Nation of North America (see C.D.Cal 2:21-cv-05720-JAK-JDE, Doc. 5, **EXHIBIT A**)), **On Behalf of Himself**: General Executor-Caveator for Autochthonous American Moor Alien (Friend) Republican Universal Government [AAMARU] Religious Consul Association Testamentary Trust – Divine Immortal Spirit in Living Flesh and Blood Competent Natural Man of majority by firm sound mind and righteous upright moral integrity, In Propria Persona proceeding in Sui Juris capacity, Settlor / Beneficiary / Paramount Security Interest Holder (Authenticated Birth Certificate; Registered Copyright / Trademark – USPO No. RE 246 590 423 US; Registered Fictitious Business Name – Florida Department of State No. G15000018576 (see C.D.Cal 2:21-cv-05720-JAK-JDE, Doc. 5, **EXHIBIT B**); Maritime Lien No. RE 246 590 573 US – Putnam County Florida. Inst. No. 20105471421; California UCC #'s 10-7225252349, 10-7253610631, 147415317710, Kentucky UCC # 2014-2695084-41.01) over DEBTOR / INDIVIDUAL "GULLETT-EL, TAQUAN RASHE" (any and all alphabetical and/or numerical variations and/or derivations), hereinafter, "Affiant." Affiant is a lawful non-immigrant alien within the meaning of *Dred Scott v. Sandford*, 60 U.S. 393-633 (19 Howard), 15 L. Ed 691 (1857)[1]; 8 U.S.C. § 1101 – Alien(s), Alien (Foreign) Estate(s), and 18 U.S.C. §§ 1116(b)(1),(2),(3),(4) – Alien (Foreign) Government, Alien (Foreign) Official(s), Internationally Protected Person(s), Family – irrespective of recognition by the United States. See Fourth Judicial Circuit Duval County Florida Probate (Registrar) Court TAQUAN RASHIE GULLETT ESTATE NOTICE OF TRUST # 16-2017-CP-001286 , DOC # 2017133137 , OR BK 18009 Pages 978-986*; TAQUAN RASHIE GULLETT ESTATE CAVEAT # 16-2017-CP-001025 , DOC # 2017104658 , OR BK 17971 Pages 674-680*; TAQUAN RASHIE GULLETT ESTATE Personal Replevin Claim # 16-2017-CA-002142 , DOC # 2017082163 , OR BK 17940 Pages 1656-1663*.

2. AAMARU Religious Consul Association Testamentary Trust situs is domiciled in Molly's Garden Countee, Timucuan, Al Andalusia, Northwest Amexem [Al-Aqsa Al-Maghrib] (Morocco).

3. Affiant does rise and give honors and recognition to the Noble Qur'an and Sunnah, then Holy Koran ⑦ Circle Seven, Zodiac Constitution AA222141 (Truth – A1), Suhuf, Tawrah, Zabur, Injil, Great Law of Peace, Treaty of Peace and Friendship (1787)*, Madrid Convention for Protection in Morocco (1880)*, United Nations Charter (1945)*, United Nations ECOSOC Resolutions 1503 (XLVIII) (27 May 1970) and Resolution 1 (XXIV) (13 August 1971)*, Universal Declaration of Human Rights (1948)*, United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (14 December 1960)*, United Nations Declaration on the Rights of Indigenous (Autochthonous) Peoples and (2007)*, ROME STATUTE, Geneva Conventions, HAGUE EVIDENCE CONVENTIONS*, Inter-American Conventions and all annexes thereto, Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (15 November 1965)*, Apostille Convention Abolishing the Requirement of Legislation for Foreign Public Documents (5 October 1961)*, Convention on International Access to Justice (25 October 1980)*, Convention on Choice of Court Agreements (30 June 2005)*, Convention on the Law Applicable to Trusts and On Their Recognition (1 July 1985)*, Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (5 July 2006)*, United Nations Convention on Civil and Political Rights (1966)*, Vienna Convention on the Law of Treaties (1969)*, Organic Constitution for the United States of America (1787), Statute of the International Court of Justice*, Statute of the International Criminal Court*, Spirit of Mandela International Tribunal**, and United Nations International Tribunal 2021**.

---

[1] JUDICIAL NOTICE (Fed. R. Evid. 201): see FINAL CERTIFICATE OF AUTHENTICITY: Visa / Passport M.S.T. of A., Bankr.M.D.Fla. 3:20-bk-00618-JAF (filed Nov. 2 & 16, 2020); Bankr.N.D.Fla. 21-00401-KKS (filed Jan. 29, 2021) (see C.D.Cal. 2:21-cv-05720-JAK-JDE, Doc. 5, **EXHIBIT A**). See *Watson v. Jones*, 80 U.S. 679 (1872) – Rights of Religious Corporation / Expressed by Trust Conveyance.

*Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of relevant public records. See *United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018) – a court may take judicial notice of undisputed matters of public record. See *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002) – taking judicial notice of filings in another proceeding. ** See www.spiritofmandela.org. **See www.tribunal2021.com.

ISSUES PRESENTED FOR REVIEW

1. Whether jurists of reason would find it debatable that a non-unanimous verdict in C.D.Cal. # 2:14-cr-00725-CAS, in violation of the Fifth Amendment and Sixth Amendment, is plain error, reversible error, and manifest miscarriage of justice warranting the requested Certificate of Appealability and habeas corpus relief.

2. Whether jurists of reason would find it debatable that a duplicitous indictment on all Counts (1, 2, 3, 4) of C.D.Cal. # 2:14-cr-00725-CAS, in violation of the Fifth Amendment and Sixth Amendment, is plain error, reversible error, and manifest miscarriage of justice warranting the requested Certificate of Appealability and habeas corpus relief.

3. Whether jurists of reason would find it debatable that a failure to cure / remedy duplicity by a specific unanimity jury instruction in C.D.Cal. # 2:14-cr-00725-CAS, in violation of the Fifth Amendment and Sixth Amendment, is plain error, reversible error, and manifest miscarriage of justice warranting the requested Certificate of Appealability and habeas corpus relief.

See *Heck v. Humphrey*, 512 U.S. 477, at 482 (1994) – establishing the basis for the damages claim necessarily demonstrates the invalidity of the conviction.

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

1. The parties are: **(A)** Gullett-El, Taquan Rashe; **(B)** UNITED STATES OF AMERICA; **(C)** UNITED STATES DEPARTMENT OF JUSTICE; **(D)** UNITED STATES ATTORNEY'S OFFICE; **(E)** FEDERAL BUREAU OF PRISONS; **(F)** INTERNAL REVENUE SERVICE; **(G)** UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT; **(H)** UNITED STATES DISTRICT COURT CENTRAL CALIFORNIA LOS ANGELES DIVISION; **(I)** UNITED STATES PROBATION OFFICE; **(J)** Lucy Salas, Probation Officer; **(K)** Jeffrey Thomason, Acting Chief U.S. Probation; **(L)** Merrick B. Garland, United States Attorney General.

2. Affiant-Petitioner has no corporate interests to disclose.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

RULES

CASES INVOLVED

1. C.D.Cal. Case No. 2:14-cr-00725-CAS (lead), *United States v. Gullett-El, Taquan Rashe*, Entry of Judgment: March 15, 2017.

2. D.D.C. Case No. 1:15-cv-00652-EGS, *United States v. Gullett-El, Taquan Rashe*, Entry of Judgment: pending.

3. C.D.Cal. Case No. 2:19-cv-10247-CAS, *Gullett-El, Taquan Rashe v. United States*, Entry of Judgment: July 13, 2020

4. C.D.Cal. Case No. 2:21-cv-05720-JAK-JDE, *Gullett-El, Taquan Rashe v. Lucy Salas, Probation Officer, et al.*, Entry of Judgment: November 18, 2021.

5. C.D.Cal. Case No. 2:21-cv-09264-JAK-JDE, *Gullett-El, Taquan Rashe v. Lucy Salas, Probation Officer, et al.*, Entry of Judgment: December 15, 2021.

6. Ninth Circuit Appeal Case No. 20-55808, *Gullett-El, Taquan Rashe v. United States*, Entry of Judgment: December 17, 2021

7. Ninth Circuit Appeal Case No. 21-56275, *Gullett-El, Taquan Rashe v. Lucy Salas, Probation Officer, et al.*, Entry of Judgment: January 14, 2022.

8. Ninth Circuit Original Case No. 21-71442, *Gullett-El, Taquan Rashe v. United States*, Entry of Judgment: pending.

9. Ninth Circuit Appeal Case No. 22-55062, *Gullett-El, Taquan Rashe v. Lucy Salas, Probation Officer, et al.*, Entry of Judgment: pending.

10. Bankr.M.D.Fla. Case No. 3:20-bk-00618-JAF (Chapter 7 Bankruptcy), *In re: Gullett-El, Taquan Rashe*, Entry of Judgment: September 27, 2021.

11. Bankr.M.D.Fla. Case No. 3:20-ap-00030-JAF (Ch. 7 Adversary Proceeding), *Gullett-El, Taquan Rashe v. United States, et al.*, Entry of Judgment: July 22, 2020.
[11th Cir. Appeal # 21-13426 (pending Ch. 7 Adversary Proceeding Appeal)], judgment pending.
[11th Cir. Appeal # 21-13427 (pending Ch. 7 Adversary Proceeding Appeal)], judgment pending.
[11th Cir. Appeal # 21-13428 (pending Ch. 7 Adversary Proceeding Appeal)], judgment pending.
[11th Cir. Appeal # 21-13429 (pending Ch. 7 Adversary Proceeding Appeal)], judgment pending.

12. Supreme Court Case No. 18-6630, *In re: Taquan Gullett*, Entry of Judgment: February 19, 2019.

13. Supreme Court Case No. 18-9138, *Taquan Rahshe Gullett-El v. Timothy J. Corrigan, et al.*, Entry of Judgment: November 25, 2019.

PROCEDURES AND ORDERS BELOW

1. Affiant-Petitioner filed 28 U.S.C. § 2255 Petition C.D.Cal. Case No. 2:19-cv-10247-CAS on December 3, 2019. The Entry of Judgment for this § 2255 Petition was on July 13, 2020. See **EXHIBIT A** – ORDER DENYING PETITIONER'S MOTION FOR RELIEF PURSUANT TO 28 U.S.C. § 2255 AND OTHER FILINGS (15 pages). Affiant-Petitioner then filed Ninth Circuit Appeal Case No. 20-55808 for this § 2255 Petition on August 6, 2020. The Entry of Judgment for this § 2255 Appeal was on December 17, 2021. See **EXHIBIT B** – ORDER DENYING CERTIFICATE OF APPEALABILITY (1 page).

2. Affiant-Petitioner filed 28 U.S.C. § 2241 Petition C.D.Cal. Case No. 2:21-cv-05720-JAK-JDE on July 13, 2021. The Entry of Judgment for this § 2241 Petition was on November 18, 2021. See **EXHIBIT C** – ORDER RE: SUMMARY DISMISSAL OF ACTION and JUDGMENT (17 pages). Affiant-Petitioner then filed Ninth Circuit Appeal Case No. 21-56275 for this § 2241 Petition on November 23, 2021. The Entry of Judgment for this § 2241 Appeal was on January 14, 2022. See **EXHIBIT D** – ORDER DENYING CERTIFICATE OF APPEALABILITY (1 page).

3. Affiant-Petitioner filed 28 U.S.C. § 2241 Petition C.D.Cal. Case No. 2:21-cv-09264-JAK-JDE on November 29, 2021. The Entry of Judgment for this § 2241 Petition was on December 15, 2021. See **EXHIBIT E** – ORDER RE: SUMMARY DISMISSAL OF ACTION and JUDGMENT (11 pages). Affiant-Petitioner then filed Ninth Circuit Appeal Case No. 22-55062 for this § 2241 Petition on January 10, 2022. The Entry of Judgment for this § 2241 Appeal is pending.

4. Affiant-Petitioner filed Second / Successive 28 U.S.C. § 2255 Petition Ninth Circuit Original Case No. 21-71442 on December 27, 2021. The Entry of Judgment for this Second / Successive 28 U.S.C. § 2255 is pending.

JURISDICTION

1. The certiorari jurisdiction of the Supreme Court is pursuant to 28 U.S.C. § 2101(e) and S. Ct. R. 10(a), (c), 11. The habeas corpus jurisdiction of the Supreme Court is pursuant to 28 U.S.C. §§ 2241, 2255. Also, Original jurisdiction is pursuant to the Constitution Article III, Section 2, Clause 1; 28 U.S.C. § 1251; Judiciary Act of 1789; and Supreme Court Rule (S. Ct. R.) 17. Moreover, the Supreme Court has jurisdiction pursuant to Federal Rules of Appellate Procedure (Fed. R. App. P.) 23(b), (d), and S. Ct. R. 36.3(a), 36.4.

2. This Petition For Certiorari is in aid of the Supreme Court's appellate jurisdiction which includes the Supreme Court's exercise of its general supervisory control over the federal court system. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 147 (1803) – the term "'appellate jurisdiction' is to be taken in its larger sense and implies in its nature the right of superintending the inferior tribunals." See *Connor v. Coleman*, 440 U.S. 612, 624 (1979) – when a lower federal court refuses to give effect to, or misconstrues the mandate of the Supreme Court, its action may be controlled by the Supreme Court.

3. The authority of the appellate court "is not confined to the issuance of writs in aid of jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected." See *FTC v. Dean Foods Co.*, 384 U.S. 597 (1966) (quoting *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 25 (1943)). This authority extends to support an ultimate power to review, although not immediately and directly involved. See *United States v. United States District Court*, 334 U.S. 258, 263 (1948). See S. Ct. R. 11, 17.1, 20.1. See 28 U.S.C. § 2101(e).

4. The Supreme Court also has jurisdiction pursuant to the United Nations Charter (59 Stat. 1046 – June 26, 1945) Articles 1(3), 55(c), 56, 62(2), 68, and 76(c). The United States has internationally pledged itself, through the provisions of the United Nations Charter (duly ratified and adopted by the United States) to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, colour, sex, language, religious belief, political opinion and expression[2], national or social origin, property, birth or other status. See *Oyama v. California*, 332 U.S. 633 (1948). The United Nations Charter (United States treaty) is indicative of public policy, and courts may treat its provisions as part of the law of the land. See *Oyama v. California*, 332 U.S. 633, at 650, 673-674 (1948).

---

[2] Political, jurisdictional, or international status of the country or territory to which a person belongs; whether it be independent, trust, non-self-governing, or under any other limitation of sovereignty.

STATEMENT OF THE CASE

1. The Jury Verdict Form (Redacted), C.D.Cal. 2:14-cr-00725-CAS, Document 150, Pages 1-5, (annexed and appended hereto in full as **EXHIBIT F**), shows **NO EVIDENCE** of 18 U.S.C. § 2(b), and that the jury **DID NOT return a unanimous verdict of guilty — they did not return any verdict at all** — to sustain a conviction on 18 U.S.C. § 2(b) (Causing an act to be done), as defectively duplicitously indicted / charged (see **EXHIBIT H**) and erroneously / wrongfully convicted and sentenced (see **EXHIBIT I**) conjunctively with 18 U.S.C. §§ 287, 1521, on all four counts. **Nowhere in the verdict form does it show or even mention 18 U.S.C. § 2(b). Affiant did not "willfully cause" an agent, another person, or an intermediary, to allegedly violate 18 U.S.C. §§ 287, 1521. Affiant is actually innocent.**

2. All four counts of the Indictment (see **EXHIBIT H**) are **duplicitous** as each count conjunctively combines two separate and distinct offenses, which is contrary to and in violation of Fed. R. Crim. P. 8(a). See *United States v. UCO Oil Co.*, 546 F.2d 833, at 835-836 (9th Cir. 1976); *United States v. Renteria*, 557 F.3d 1003 (9th Cir. 2009); *United States v. Ramirez-Martinez*, 273 F.3d 903, at 913-914 (9th Cir. 2001); *United States v. Mancuso*, 718 F.3d 780 (9th Cir. 2013); *United States v. Aguilar*, 756 F.2d 1414 (9th Cir. 1985). Affiant has a Sixth Amendment constitutionally protected right to a unanimous jury verdict. See *Edwards v. Vannoy*, 593 U.S. ___, 141 S.Ct. 1547 (2021) – new constitutional rule of criminal procedure announced by the Supreme Court. See *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390, 1405 (2020) - new constitutional rule of criminal procedure announced by the Supreme Court. See *Andres v. United States*, 333 U.S. 740 (1948); *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995).

3. A criminal defendant's remedy to duplicity is to move to require the prosecution to elect the charge within the count upon which it will rely; additionally, a duplicitous indictment is remediable by the court's instruction to the jury particularizing the distinct offense charged in each count in the indictment. See *United States v. Ramirez-Martinez*, 273 F.3d 903, at 915 (9th Cir. 2001). **The C.D.Cal. # 2:14-cr-00725-CAS Court did not implement any cure / remedy of election or specific issue unanimity jury instructions.** The District Court's error in failing to cure / remedy the duplicitous charges of Counts 1, 2, 3, 4, of the C.D.Cal. # 2:14-cr-00725-CAS Indictment by jury instructions violated Affiant's substantial right to a unanimous verdict, **and all of the foregoing is plain error warranting reversal of convictions and sentence.** See *United States v. Romero-Coriche*, 840 Fed. Apps. 138, at 140 (9th Cir. 2020). See *United States v. Hernandez*, 35 Fed. Appx. 300 (9th Cir. 2002). The District Court's jury instructions did not sufficiently provide a specific or augmented unanimity instruction for 18 U.S.C. § 2(b) on the duplicitous Counts 1, 2, 3, 4. See **EXHIBIT G** – Jury Instructions (C.D.Cal. # 2:14-cr-00725-CAS, Doc. 141, Pages 1-24). See *United States v. Ramirez-Martinez*, 273 F.3d 903, at 1098 (9th Cir. 2001). **There are no jury instructions at all on 18 U.S.C. § 2(b).**

REASONS FOR GRANTING THE PETITION

1. The judgments rendered in the Ninth Circuit (C.D. Cal. Case Nos. 2:14-cr-00725-CAS / 2:19-cv-10247-CAS, 9th Cir. Nos. 20-55808, 21-56275, 21-71442, 22-55062) and Eleventh Circuit (Bankr.M.D.Fla. Case No. 3:20-bk-00618-JAF / Bankr.M.D.Fla. Case No. 3:20-ap-00030-JAF, 11th Cir. Nos. 21-13426, 21-13427, 21-13428, 21-13429) and Federal Circuit (D.D.C. 1:15-cv-00652-EGS-RMM) have resulted in conflicting Circuit resolutions arising out of the one and same transaction which shows unusual, exceptional, special circumstances and the high probability that Affiant-Petitioner will succeed on appeal. Also, the issues presented for review constitute important and novel constitutional issues likely to reoccur in the future, which calls for the supervisory authority (aid of appellate jurisdiction) of the Supreme Court. See 28 U.S.C. § 2101(e). See S. Ct. R. 10(a), (c), 11.

2. Affiant-Petitioner is currently unlawfully detained and proceeding In Propria Persona, therefore, one original of the Petition For Habeas Corpus, alone, suffices. See S. Ct. R. 12.2, 39.2.

Affidavit of Certiorari Petition

GROUND ONE — **Non-unanimous Verdict in C.D.Cal. # 2:14-cr-00725-CAS — there is no verdict at all as to 18 U.S.C. § 2(b)** (in violation of Affiant's 6th Amendment & 5th Amendment constitutionally protected Natural Rights and Human Rights). **See EXHIBIT F — Jury Verdict Form (Redacted), C.D.Cal. 2:14-cr-00725-CAS, Document 150, Pages 1-5 (5 pages). Jurists of reasons would find this debatable.**

GROUND TWO — **Duplicitous Indictment on all Counts (1, 2, 3, 4) of C.D.Cal. # 2:14-cr-00725-CAS — each Count conjunctively combines two separate and distinct offenses (18 U.S.C. § 2(b) with18 U.S.C. §§ 287 & 1521)** (in violation of Affiant's 6th Amendment & 5th Amendment constitutionally protected Natural Rights and Human Rights). **See EXHIBIT H — Indictment, C.D.Cal. # 2:14-cr-00725-CAS, Doc. 1, Pages 1-4 (4 pages). Jurists of reasons would find this debatable.**

GROUND THREE — **Failure to Cure / Remedy Duplicity by Specific Issue Unanimity Jury Instruction in C.D.Cal. # 2:14-cr-00725-CAS — there is no specific unanimity jury instruction at all as to 18 U.S.C. § 2(b)** (in violation of Affiant's 6th Amendment & 5th Amendment constitutionally protected Natural Rights and Human Rights). **See EXHIBIT G — Jury Instructions, C.D.Cal. # 2:14-cr-00725-CAS, Doc. 141, Pages 1-24 (24 pages). Jurists of reasons would find this debatable.**

I. Manifest Miscarriage of Justice — Affiant Is Actually Innocent

1. The Jury Verdict Form (Redacted), C.D.Cal. 2:14-cr-00725-CAS, Document 150, Pages 1-5, (annexed and appended hereto in full as **EXHIBIT F**), shows **NO EVIDENCE** of 18 U.S.C. § 2(b), and that the jury **DID NOT return a unanimous verdict of guilty — they did not return any verdict at all** — to sustain a conviction on 18 U.S.C. § 2(b) (Causing an act to be done), as defectively and duplicitously indicted / charged (see **EXHIBIT H**) and erroneously / wrongfully convicted and sentenced (see **EXHIBIT I**) conjunctively with 18 U.S.C. §§ 287, 1521, on all four counts. **Nowhere in the verdict form does it show or even mention 18 U.S.C. § 2(b). Affiant did not "willfully cause" an agent, another person, or an intermediary, to allegedly violate 18 U.S.C. §§ 287, 1521. Affiant is actually innocent.**

2. All four counts of the Indictment (see **EXHIBIT H**) are **duplicitous** as each count conjunctively combines two separate and distinct offenses, which is contrary to and in violation of Fed. R. Crim. P. 8(a). See *United States v. UCO Oil Co.*, 546 F.2d 833, at 835-836 (9th Cir. 1976); *United States v. Renteria*, 557 F.3d 1003 (9th Cir. 2009); *United States v. Ramirez-Martinez*, 273 F.3d 903, at 913-914 (9th Cir. 2001); *United States v. Mancuso*, 718 F.3d 780 (9th Cir. 2013); *United States v. Aguilar*, 756 F.2d 1414 (9th Cir. 1985). Affiant has a Sixth Amendment constitutionally protected right to a unanimous jury verdict. See *Edwards v. Vannoy*, 593

U.S. ___ , 141 S.Ct. 1547 (2021) – new constitutional rule of criminal procedure announced by the Supreme Court. See *Ramos v. Louisiana*, 590 U.S. ___ , 140 S.Ct. 1390, 1405 (2020) - new constitutional rule of criminal procedure announced by the Supreme Court. See *Andres v. United States*, 333 U.S. 740 (1948); *United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995).

3. Duplicity in an indictment is objectionable in that the jury may find the defendant guilty on a count without having reached a unanimous verdict on the commission of a particular offense (18 U.S.C. § 2(b)), which conflicts with Affiant's Sixth Amendment constitutionally protected rights and may prejudice a subsequent double jeopardy defense in that duplicity may also give rise to problems regarding the admissibility of evidence. See *United States v. UCO Oil Co.*, 546 F.2d 833, at 835-836 (9th Cir. 1976). The duplicitous Counts 1, 2, 3, 4, of the C.D.Cal. # 2:14-cr-00725-CAS Indictment prejudiced Affiant's substantial Sixth Amendment protected right to a unanimous verdict, therefore, the guilty verdict on all Counts (1, 2, 3, 4) is tainted. See *United States v. Echeverry*, 698 F.2d 375, at 377-378 (9th Cir. 1998).

4. Vices of duplicity arise from breaches of Affiant's Sixth Amendment protected right to knowledge of charges against him, since the convictions on all four duplicitous Counts were obtained without a unanimous verdict as to each offense (18 U.S.C. § 2(b)) conjunctively contained in all Counts. See *United States v. UCO Oil Company*, 546 F.2d 833, 835 (9th Cir. 1976); *United States v. Aguilar*, 756 F.2d 1414, at 1420-1421 (9th Cir. 1985). The duplicitous C.D.Cal. # 2:14-cr-00725-CAS Indictment also eviscerates Affiant's Fifth Amendment protection against double jeopardy, because of lack of clarity concerning the offenses for which he was charged or convicted. See *Abney v. United States*, 431 U.S. 651, 654 (1977); *United States v. Aguilar*, 756 F.2d 1414, at 1420-1421 (9th Cir. 1985); *United States v. King*, 200 F.3d 1207, at 1212-1213 (9th Cir. 1999).

5. Though failure to raise the duplicity issue pretrial constitutes waiver of defendant's objection to the form of indictment (unless for good cause – **i.e. ineffective assistance of counsel**), and the right to force the Government to divide the contested counts, **Affiant nevertheless retains his Sixth Amendment right to a unanimous jury verdict, and may challenge the defective duplicitous Indictment as violating that constitutionally protected right**. See Fed. R. Crim. P. 12(b)(2). See U.S. Constitution 6th Amendment. See *United States v. Echeverry*, 698 F.2d 375, 377 (9th Cir.), modified, 719 F.2d 974 (9th Cir. 1983). See *United States v. Gordon*, 844 F.2d 1397, at 1401 (9th Cir. 1988). **Affiant's constitutional claim is not waived.**

6. A defendant indicted pursuant to a duplicitous indictment may be properly prosecuted and convicted if either (1) the Government elects between the charges in the offending count(s), or (2) the court provides an instruction requiring all members of the jury to agree as to which of the distinct charges the defendant actually committed. See *United States v. Mancuso*, 718 F.3d 780, at 787-788 (9th Cir. 2013); *United States v. Ramirez-Martinez*, 273

F.3d 903, at 915 (9th Cir. 2001). A defendant's remedy to duplicity is to move to require the prosecution to elect the charge within the count upon which it will rely; additionally, a duplicitous indictment is remediable by the court's instruction to the jury particularizing the distinct offense charged in each count in the indictment. See *United States v. Ramirez-Martinez*, 273 F.3d 903, at 915 (9th Cir. 2001). **The C.D.Cal. # 2:14-cr-00725-CAS Court did not implement any cure / remedy of election or specific issue unanimity jury instructions.**

7. "Ordinarily, the general unanimity instruction suffices to instruct the jury that they must be unanimous on whatever specifications form the basis of the guilty verdict." See *United States v. Lyons*, 472 F.3d 1055, 1068 (9th Cir. 2007) (quoting *United States v. Kim*, 196 F. 3d 1079, 1082 (9th Cir. 1999)). But a specific unanimity instruction is required if there is a genuine possibility of jury confusion or that a conviction may occur as the result of different jurors concluding that the defendant committed different acts. See *United States v. Mancuso*, 718 F.3d 780 (9th Cir. 2013). See *Lyons*, 472 F.3d at 1068 – a specific unanimity instruction could be given by the District Court including the phrase "with all of you agreeing [as to the particular matter of 18 U.S.C. § 2(b) requiring unanimity]" in the substantive jury instructions. See Ninth Circuit Model Criminal Jury Instructions 7.9, Specific Issue Unanimity. **Nowhere in the jury instructions is 18 U.S.C. § 2(b) shown or mentioned.**

8. The District Court's error in failing to cure / remedy the duplicitous charges of Counts 1, 2, 3, 4, of the C.D.Cal. # 2:14-cr-00725-CAS Indictment by jury instructions violated Affiant's substantial right to a unanimous verdict, **and this is plain error warranting reversal of convictions and sentence.** See *United States v. Romero-Coriche*, 840 Fed. Apps. 138, at 140 (9th Cir. 2020). See *United States v. Hernandez*, 35 Fed. Appx. 300 (9th Cir. 2002). The District Court's jury instructions did not sufficiently provide a specific or augmented unanimity instruction for 18 U.S.C. § 2(b) on the duplicitous Counts 1, 2, 3, 4. See **EXHIBIT G** – Jury Instructions (C.D.Cal. # 2:14-cr-00725-CAS, Doc. 141, Pages 1-24). See *United States v. Ramirez-Martinez*, 273 F.3d 903, at 1098 (9th Cir. 2001). **There are no jury instructions at all on 18 U.S.C. § 2(b).**

9. A plain reading of the C.D.Cal. # 2:14-cr-00725-CAS Indictment (**EXHIBIT H**) shows all Counts 1, 2, 3, 4, are duplicitous. A plain reading of the C.D.Cal. # 2:14-cr-00725-CAS Jury Instructions (**EXHIBIT G**) show there is no cure / remedy by specific or augmented unanimity instructions for 18 U.S.C. § 2(b). A plain reading of the C.D.Cal. # 2:14-cr-00725-CAS Jury Verdict (Redacted) Form (**EXHIBIT F**) shows 18 U.S.C. § 2(b) is omitted and the Petit Jury of C.D.Cal. # 2:14-cr-00725-CAS **DID NOT return a unanimous verdict of guilty — they did not return any verdict at all** — to sustain a conviction on 18 U.S.C. § 2(b) (Causing an act to be done), as defectively duplicitously indicted / charged (see **EXHIBIT H**) and erroneously / wrongfully convicted and sentenced (see **EXHIBIT I**) conjunctively with 18 U.S.C. §§ 287, 1521, on all four counts. **Affiant is actually innocent.** See *United States v. Mancuso*, 718 F.3d 780, at 792-793 (9th Cir. 2013) – in reviewing an indictment *de novo* for duplicity, the Court of Appeals' task is solely to assess whether the indictment itself can

be read to charge only one violation in each count. See *United States v. Romero-Coriche*, 850 Fed. Appx. 138, at 141-142 (9th Cir. 2020) – "a conviction notwithstanding a genuine possibility of jury confusion and risk of non-unanimous verdict seriously affects the fairness and integrity of judicial proceedings because it jeopardizes [Affiant's] constitutional rights." See *United States v. Lapier*, 796 F.3d 1090, 1097 (9th Cir. 2015); *United States v. Martin*, 4 F.3d 757, 759 (9th Cir. 1993). A duplicitous indictment compromises a defendant's Sixth Amendment right to know the charges against him, as well as his Fifth Amendment protection against double jeopardy. See *United States v. King*, 200 F.3d 1207, at 1212-1213 (9th Cir. 1999); *United States v. Aguilar*, 756 F.2d 1418, 1420, 1422 (9th Cir. 1985).

10. **Affiant may raise a plain error challenge to the non-unanimous verdict and the jury instructions that did not remedy the duplicitous charges of Counts 1, 2, 3, 4, for the first time on collateral review under the Sixth Amendment because a substantial right is at issue and a criminal defendant will typically prevail on a plain error challenge if the indictment was, in fact, duplicitous (which it is).** See *United States v. Romero-Coriche*, 850 Fed. Appx. 138, at 142-143 (9th Cir. 2020). See *United States v. Savage*, 67 F.3d 1435, 1439 (9th Cir. 1995). See *United States v. Arreola*, 467 F.3d 1153 (9th Cir. 2006). **This plain error affected the jury verdict – they did not return any verdict at all as to 18 U.S.C. § 2(b) which is conjunctively and duplicitously charged on all Counts 1, 2, 3, 4. See EXHIBIT F**. See *United States v. Arreola*, 467 F.3d 1153, at 1161-1162 (9th Cir. 2006) – "In order to reverse under the plain error standard, it must be highly probable that the error affected the verdict. *United States v. Chang*, F.3d 1169, 1175 (9th Cir. (2000) (quoting *United States v. Kessi*, 868 F.2d 1097, 1103 (9th Cir. 1989)). See *United States v. Savage*, 67 F. 3d 2435, 1439 (9th Cir. 1995).

11. The Courts have erred in failing to cure / remedy the risk of the non-unanimous verdict of C.D.Cal. # 2:14-cr-00725-CAS resulting from the wholly duplicitous Indictment, therefore, **reversal of the convictions and sentence on Counts 1, 2, 3, 4, of the C.D.Cal. # 2:14-cr-00725-CAS Indictment is required by law**. See *United States v. Gordon*, 844 F.2d 1397, at 1402 (9th Cir. 1988). See *United States v. Ramirez-Martinez*, 273 F.3d 903, at 915-916 (9th Cir. 2001). See *United States v. Hernandez*, 35 Fed. Appx. 300 (9th Cir. 2002). Along with the required reversal of conviction and sentence on all duplicitous Counts 1, 2, 3, 4, of the Indictment, the sufficiency of evidence question must be decided because a reversal on "No Evidence / Insufficient Evidence" bars retrial. See *Burks v. United States*, 437 U.S. 1, 18 (1978). See *United States v. Gordon*, 844 F.2d 1397, at 1404-1045 (9th Cir. 1988).

II. No Evidence / Insufficient Evidence

12. The Government's case (C.D.Cal. 2:14-cr-00725-CAS) did not present any evidence whatsoever to prove the elements of 18 U.S.C. § 2(b) (Causing an act to be done) which was charged and sentenced on all four counts of the Indictment (**EXHIBIT H**) and Sentencing Order (see **EXHIBIT I**) conjunctively with 18 U.S.C. §§ 287, 1521, respectively. Courts have uniformly construed the word "cause" in 18 U.S.C. § 2(b) to mean "a principal acting through an agent, another person, or an intermediary."[1] There is no evidence in C.D.Cal. 2:14-cr-00725-CAS of Affiant acting through an agent, another person, or intermediary — the crucial elements of 18 U.S.C. § 2(b). Only the person who willfully causes the forbidden act to be done is guilty of violating 18 U.S.C. § 2(b). See *United States v. Lester*, 363 F.2d 68, 73 (6th Cir. 1996) (quoted in *United States v. American Investors of Pittsburgh, Inc.* 879 F.2d 1087, 1095 (3rd Cir. 1989)). See also *United States v. Gumbs*, 283 F.3d 128, at 134-135 (3rd Cir. 2002).

13. Also, 18 U.S.C. § 2(b)'s "willfulness" requirement means that in a prosecution for "causing" an agent, another person, or intermediary to allegedly violate 18 U.S.C. §§ 287, 1521, the defendant must at least have known that he was "willfully causing" the agent, other person, or intermediary to allegedly violate 18 U.S.C. §§ 287, 1521. See *United States v. Curran*, 20 F.3d 560, 567 (3rd Cir. 1994); *United States v. Hsia*, 176 F.3d 517 (D.C. Cir. 1999); *United States v. Gabriel*, 125 F.3d 89, 99 (2nd Cir. 1997); *United States v. Gumbs*, 283 F.3d 128, at 134-135 (3rd Cir. 2002).

14. Nowhere in the Indictment does it allege that Affiant "willfully caused" an agent, another person, or an intermediary to violate 18 U.S.C. §§ 287, 1521. The Government's case did not present any evidence whatsoever of an agent, another person, or intermediary in C.D.Cal. 2:14–cr-00725-CAS. Nor was there any co-defendant, agent, another person, or intermediary charged, tried, and/or convicted in connection with C.D.Cal. 2:14-cr-00725-CAS. It is impossible for Affiant to have acted as principal against himself within the meaning of 18 U.S.C. § 2(b). So whom did Affiant, as principal, (allegedly) "willfully cause" to (allegedly) violate 18

---

[1] See H.Rep. No. 304, 80th Cong., 1st Sess. 2448-49 (1948); *United States v. Giles*, 300 U.S. 41 (1937); *Rothenburg v. United States*, 245 U.S. 480 (1918); *United States v. Hordorowicz*, 105 F.2d 218 (C.C.A. Ill.), *cert. denied*, 308 U.S. 584 (1939); *United States v. Kenofsky*, 243 U.S. 440, 443 (1917); *United States v. Sheridan*, 329 U.S. 379, 391 (1946); *Boushea v. United States*, 173 F.2d 131, 134 (8th Cir. 1949); *United States v. Inciso*, 292 F.2d 374 (7th Cir. 1961); *Pereira v. United States*, 202 F. 2d 830, 836-837 (5th Cir.1963), aff'd, 347 U.S. 1, 8-9 (1954); *United States v. Wiseman*, 445 F.2d 792, 794-95 (2nd Cir. 1971); *United States v. Catena*, 500 F.2d 1319 (3rd Cir. 1974); *United States v. Walser*, 3 F.3d 380, 388 (11th Cir. 1993); *United States v. De Santiago-Flores*, 107 F.3d 1472 (10th Cir. 1997); *United States v. Ezeta*, 752 F.3d 1182 (9th Cir. 2014); *United States v. Levine*, 457 F.2d 1186 (10th Cir. 1972); see *United States v. Ruffin*, 613 F.2d 403 (2nd Cir. 1979) – other individual must have violated substantive federal law in order for defendant to be convicted under 18 U.S.C. § 2(b); see *United States v. Selph*, 82 F. Supp. 56 (D.Cal. 1949) – he who causes another to commit criminal act innocently may be prosecuted for principal offense.

U.S.C. §§ 287, 1521, as defectively and duplicitously indicted and erroneously / wrongfully convicted on all four Counts? And, how could Affiant knowingly "willfully cause" a nonexistent agent, other person, or intermediary, to violate 18 U.S.C. §§ 287, 1521? There is, therefore, no evidence from which a rational prudent man or woman of the grand jury could have found the facts and circumstances sufficient to establish probable cause to indict, nor any evidence from which a rational trier of fact of the petit jury could have found sufficient proof beyond a reasonable doubt to convict (**in fact, there is no conviction for 18 U.S.C. § 2(b)**) — the entire Indictment / Judgment / Case.

15. Furthermore, there is insufficient evidence to support a finding of guilt beyond a reasonable doubt that Affiant violated all of the elements of 18 U.S.C. §§ 287, 1521, because both allege — as crucial elements of the offenses — that the year 2010 tax transaction was "False, Fictitious, and Fraudulent." If the Internal Revenue Service (IRS) , Federal Bureau of Prisons (FBOP), and Department of Justice (DOJ), have been collecting upon the $74,431 taxes from the $149,296 claimed refund from the year 2010 tax transaction for over 10 years (4 years pre-Indictment / 6 years and counting post-Indictment) — evidenced by the unlawful Federal Tax Lien filing in Los Angeles County in 2011 (see **EXHIBIT J**) — then how could there be sufficient evidence to establish probable cause or to prove all of the crucial elements of 18 U.S.C. §§ 287, 1521, beyond a reasonable doubt? If the United States, on behalf of the IRS, has been (since 2015) and is currently suing Affiant (see D.D.C. 1:15-cv-00652-EGS-RMM*) for collection enforcement of the $74,431 Federal Tax Lien from the $149,296 claimed refund, then how could there be sufficient evidence to establish probable cause or to prove all of the crucial elements of 18 U.S.C. §§ 287, 1521, beyond a reasonable doubt?

16. "It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process. A person cannot incur the loss of liberty for a criminal offense without notice and **a meaningful opportunity to defend**, and such opportunity, if not the right to trial itself, presumes as well that a total want of evidence to support a charge will conclude that case in favor of the accused; accordingly, **a criminal conviction based upon a record wholly devoid of any relevant evidence of a crucial element of an offense is constitutionally infirm, the most elemental of due process rights being freedom from a wholly arbitrary deprivation of liberty.**" See *Jackson v. Virginia*, 443 U.S. 307, at 314-315 (1979).

17. "A claim that a conviction is based on a record lacking any evidence relevant to the crucial elements of the offense is a claim with serious constitutional overtones." See *Anderson v. United States*, 417 U.S. 211, n.12 (1974). "An essential of the due process guaranteed by the 14th Amendment that no person shall be made to suffer on the onus of a criminal conviction except upon sufficient proof – defined as evidence necessary to

convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." See *In re Winship*, 397 U.S. 358 (1970). See *Thompson v. Louisville*, 362 U.S. 199, 204-205 (1960) – striking a conviction under the Due Process Clause when "the record [was] entirely lacking in evidence" of guilt – such that it could not even establish probable cause. A conviction is not supported by evidence, and does not comport with due process of law, where the evidence fails to prove all the elements of the offense. See *Berger v. United States*, 295 U.S. 78, 82-83 (1935) – the general rule that allegations and proof must correspond is based upon the obvious requirement (1) that the accused shall be definitely informed as to the charges against him (6th Amendment), so that he may be enabled to present his defense and not be taken by surprise by the evidence (or lack thereof) offered at the trial; and (2) that he may be protected against another prosecution for the same offense.

III. Inadequacy and Ineffectiveness of § 2255

18. Congress enacted § 2255 in 1948 as an alternative to the § 2241 writ of habeas corpus. See *United States v. Hayman*, 342 U.S. 205, at 206-207 (1952) – the remedy is intended to be as broad as habeas corpus and "provide an **expeditious remedy** for correcting erroneous sentences without resort to habeas corpus." *Id.* at 218. The "Savings Clause" provision (§ 2255(e)) allows federal courts to grant writs of habeas corpus to federal prisoners pursuant to § 2241 when § 2255 is inadequate or ineffective to test the legality of detention. See 28 U.S.C. § 2255. See *Hayman*, at 209-210, 219, 223 – when § 2255 procedure is inadequate and ineffective, it precludes resort to habeas corpus and amounts to an unconstitutional "suspension" of the writ of habeas corpus. See *Hernandez v. Campbell*, 204 F.3d 861, at 864-865 (9th Cir. 2000).

19. The Supreme Court holds that the § 2255 remedy is inadequate or ineffective to test the legality of detention when there are legal inadequacies / insufficiencies and/or practical inadequacies / insufficiencies. See *Swain v. Pressley*, 430 U.S. 372 (1977). "The essential function [of the writ of habeas corpus] is to give a prisoner a reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of his conviction and sentence. See *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) – **if a prisoner is unable to obtain such a determination due to procedural barriers under § 2255, then § 2255 must be inadequate (or ineffective) to test the legality of his conviction.** This conclusion rests on the rationale that a petitioner should be given one unobstructed shot at raising his claim; **if that petitioner has been denied any opportunity to raise the claim, then § 2255 is inadequate.** See *Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006). See *Ivy v. Pontesso*, 328 F.3d 1057, 1059 (9th Cir. 2003).

20. The Ninth Circuit has summarized the "Savings Clause" rule to mean that a petitioner may proceed under § 2241 when the petitioner: (1) claims to be "legally innocent of the crime for which he has been convicted;" and (2) "has never had an unobstructed procedural shot at presenting this claim." See *Ivy v. Pontesso*, 328 F.3d 1057, 1060 (9th Cir. 2003). See *Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006). See *Lorentsen v. Hood*, 223 F. 3d 950, 953-954 (9th Cir. 2000). "To establish actual innocence for the purposes of habeas relief, a petitioner 'must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him.'" See *Bousley v. United States*, 523 U.S. 614, at 623-624 (1998). See *Schlup v. Delo*, 513 U.S. 298, 327-328 (1995). See *Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011) (citing *Stephens*, 464 F. 3d at 898). "A petitioner is actually innocent when he was convicted for conduct not prohibited by law." *Id.* at 1047. **In light of all the evidence of C.D.Cal. # 2:14-cr-00725-CAS, no juror did convict Affiant of 18 U.S.C. § 2(b) — the jury did not return a verdict at all on 18 U.S.C. § 2(b), which is duplicitously and conjunctively charged on all Counts (1, 2, 3, 4) of the Indictment and Sentencing Order. Affiant is innocent.**

IV. Unobstructed Procedural Shot

21. Although the Ninth Circuit has not defined precisely what renders the § 2255 remedy "inadequate or ineffective," see *Hernandez v. Campbell*, 204 F.3d 861, at 866 (9th Cir. 2000), the statute specifically contemplates that such instances may arise. See *United States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997). See *Moore v. Reno*, 185 F.3d 1054, at 1055 (9th Cir. 1999). Black's Law Dictionary (4th Ed.) defines "obstruct" as "to hinder or prevent from progress, check, stop, also to retard the progress of, make accomplishment of difficult, and slow." We adopt this definition and apply it *in passim* to the remainder of this document.

22. On or about December 3, 2019, Affiant filed § 2255 Petition C.D.Cal. 2:19-cv-10247-CAS (see C.D.Cal. 2:19-cv-10247-CAS Docket, Doc. 1). Said § 2255 Petition included without limitation Affiant's claim of "actual innocence" stated in the Ground 3 Ineffective Assistance of Counsel claim. See C.D.Cal. 2:19-cv-10247-CAS, Doc. 1, Pgs. 34-37. On January 2, 2021, and again on April 3, 2020, the Court granted the Government's Ex Parte Application for Continuance (obstruction by prejudicial delay) without notice or opportunity for Affiant to respond. See C.D.Cal. 2:19-cv-10247-CAS, Docs. 11, 24. See *United States v. Hayman*, 342 U.S. 205, at 220-221 (1952) – a Petitioner being denied the opportunity to be heard, "has lost something indispensable, however convincing the ex parte showing."

23. On or about May 28, 2020, the Government filed the Response to Affiant's § 2255 Petition. See C.D.Cal. 2:19-cv-10247-CAS, Doc. 34. The Government's Response did not include any affidavits from trial and appellate counsel regarding their first-hand knowledge of Affiant's Ineffective Assistance of Counsel claims. On or about June 22, 2020, the District Court granted Affiant an Extended Reply Deadline until July 29, 2020, to Reply to the Government's Response. See **EXHIBIT K**. On July 13, 2020, the District Court entered an Order Denying § 2255 Relief (see C.D.Cal. 2:19-cv-10247-CAS, D.E. 44) premature to Affiant's Extended Reply Deadline of July 29, 2020, and short of an evidentiary hearing (procedural obstruction – denial of meaningful opportunity to present a defense).[2] **The District Court's premature Order Denying § 2255 Relief does constitute a denial of Affiant's opportunity to raise the claims a stated herein.** See *Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006) - This conclusion rests on the rationale that a petitioner should be given one unobstructed shot at raising his claim; **if that petitioner has been denied any opportunity to raise the claim, then § 2255 is inadequate.** See *Ivy v. Pontesso*, 328 F.3d 1057, 1059 (9th Cir. 2003).

24. Before dismissing facially adequate factual assertions (of innocence) short of an evidentiary hearing in a habeas corpus proceeding, ordinarily, a district judge should seek as a minimum to obtain affidavits from all persons likely to have first-hand knowledge. See *Blackledge v. Allison*, 431 U.S. 63 (1977). See *Wagner v. United States*, 418 F. 2d 618 (9th Cir. 1969). See *Wilson v. Weigel*, 387 F. 2d 632 (9th Cir. 1967). The District Court's procedural obstruction (denial of meaningful opportunity to present a defense) by denying Affiant's opportunity to Reply and refusal to hold an evidentiary hearing based upon Affiant's verified and unrebutted factual assertions as to the ineffective assistance claims (of his innocence) against trial and appellate counsel, constitutes clear abuse of discretion by the court. See *Frazer v. United States*, 18 F.3d 778 (9th Cir. 1994). See *Dobbs v. Zant*, 506 U.S. 357, 358-359 (1993). See *Mitchell v. Kemp*, 483 U.S. 1026 (1987) – ineffective assistance of counsel claim litigated based on 170 pages of affidavits.

---

[2] The substantive and procedural due process violations of prejudicial delay (in 9th Cir. # 20-55808 § 2255 Appeal) and denial of a fair opportunity to present every available defense, exacerbates and compounds the issue of cumulative constitutional error in C.D.Cal. # 2:14-cr-00725-CAS and all related proceedings. See *O'Neal v. McAninch*, 513 U.S. 432, at 451 (1995) – **The Court suggests that when there is grave doubt about the harmfulness of an error, "a legal rule requiring issuance of the writ will, at least often, avoid a grievous wrong-holding a person 'in custody in violation of the constitution... of the United States.'" (quoting 28 U.S.C. §§ 2241(c)(3), 2254(a). See *Chambers v. Mississippi*, 410 U.S. 284, at 295, 298, 302-303 (1973) – the right of an accused to due process is, in essence, the right to a fair opportunity to defend against the accusations. In accord see *Kyles v. Whitley*, 514 U.S. 419 (1995); *Montana v. Egelhoff*, 518 U.S. 37, 53 (1996); *Taylor v. Kentucky*, 436 U.S. 478, 487, n.5 (1978); *Parle v. Runnels*, 505 F.3d 922, at 926-927 (9th Cir. 2007).**

25. On or about August 21, 2020, Affiant filed Affidavit For Certificate of Appealability (COA) (9th Cir. 20-55808, Doc. 4) which included without limitation Affiant's claim of "actual innocence" stated in Claim 3 for Ineffective Assistance of Counsel. See 9th Cir. 20-55808, Doc. 4, Pgs. 9-11, 44, 46-49, 53. On or about August 21, 2020, Affiant filed Affidavit For Modification of Detention Order which includes without limitation Affiant's claim of "actual innocence." See 9th Cir. 20-55808, Doc. 5. On or about October 21, 2020, Affiant filed Addendum Affidavit For Modification of Detention Order which includes without limitation Affiant's claim of "actual innocence." See 9th Cir. 20-55808, Doc. 7. See 9th Cir. 20-55808 Docket. Affiant has preserved the right to challenge the convictions on grounds of "No Evidence / Insufficient Evidence" by the Rule 29 Motion For Judgment of Acquittal. See C.D.Cal. # 2:14-cr-00725-CAS Trial Transcript, D.E. 235, Page 99, Lines 13-14. See *United States v. Savage*, 67 F.3d 1435, at 1440-1441 (9th Cir. 1995). See *United States v. Atkinson*, 990 F.2d 501, 502-503 (9th Cir. 1993).

26. Affiant's § 2255 appeal has been prejudicially delayed (procedural obstruction), awaiting grant of COA, since on or about August 21, 2020 (well over 1 year). See 9th Cir. # 20-55808 Docket. Such prejudicial delay (procedural obstruction) runs counter to the congressional intent of § 2255 to provide an **expeditious remedy** as broad as § 2241 for correcting erroneous sentences, demonstrates the inadequacy and ineffectiveness of § 2255, **and amounts to an unconstitutional "suspension" of the writ of habeas corpus.** See *United States v. Hayman*, 342 U.S. 205, at 218 (1952). See *Hernandez v. Campbell*, 204 F.3d 861, at 864-865 (9th Cir. 2000).

27. Affiant's claims stated in this Petition demonstrate cause for any alleged procedural default, **show plain error, show reversible error, show manifest miscarriage of justice, and show actual prejudice as a result of constitutional violations of federal law.** See *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). See *Dretke v. Haley*, 541 U.S. 386, 393 (2004). See *Strickler v. Greene*, 527 U.S. 263, 289, 296 (1999). See *Murray v. Carrier*, 477 U.S. 478, 485 (1986). See *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977). See *United States v. Frady*, 456 U.S. 152, 170 (1982).

28. "Cause" for (alleged) procedural default exists if "the [petitioner] can show that some objective factor external to the defense impeded efforts to comply with procedural rules. See *Murray v. Carrier*, 477 U.S. 478, at 488 (1986). In accord *Coleman v. Thompson*, 501 U.S. 722, at 752-753 (1991). The concepts of "objective factor" and "external impediment" have broad application. See *Coleman v. Thompson*, 501 U.S. 722, at 753 (1991) (quoting *Murray v. Carrier*, 477 U.S. 478, at 488, 492 (1986)). The concepts encompass situations in which the petitioner was denied effective assistance of counsel in violation of the Sixth Amendment. See *Coleman v. Thompson*, 501 U.S. 722, at 753-754 (1991). In accord see *Murray v. Carrier*, 477 U.S. 478, at 488 (1986).

29. Due to trial and appellate counsels' ineffective assistance of counsel, Affiant was not able to present his claim of "actual innocence" until the § 2255 collateral attack proceedings. **Ineffective assistance of counsel claims are required to be brought for the first time in collateral attack proceedings because raising the claim at any earlier stage would require attorneys to implicate themselves and would give rise to conflicts of interests**. See *Massaro v. United States*, 538 U.S. 500, 502-503 (2003). See *Halbert v. Michigan*, 545 U.S. 605, 620, n.5 (2005). See *Martinez v. Ryan*, 566 U.S. 1, 13 (2012). See *Trevino v. Thaler*, 569 U.S. 413, 428 (2013). See *Nelson v. Washington*, 172 Fed. Appx. 748, 750, 2006 U.S. App. LEXIS 5711, at *4-*5 (9th Cir. March 6, 2006). See *United States v. Baldwin*, 987 F.2d 1432, at 1437-1438 (9th Cir. 1998). Affiant asserts that both trial and appellate counsel were ineffective for failure to implement or raise the issues of required election of the charge within the duplicitous counts upon which the Government would rely, and required jury instruction particularizing the distinct offenses duplicitously charged in each Count of the Indictment.

30. Affiant's claims stated in this Petition did not arise or become apparent until after the time when challenges to such errors were required to be raised because of the ineffective assistance of trial and appellate counsel. See *Coleman v. Thompson*, 501 U.S. 722, at 753 (1991). See *Massaro v. United States*, 538 U.S. 500, 502-503 (2003). The procedural posture of Affiant's claims precluded the factual development necessary to litigate such claims until this present collateral attack. See *Massaro v. United States*, 538 U.S. 500, at 503-505 (2003). See *Bousley v. United States*, 523 U.S. 614, at 621-622 (1998). See *Trevino v. Thaler*, 569 U.S. 413, 428 (2013). See *Martinez v. Ryan*, 566 U.S. 1, 13 (2012).

31. The actions of Defendant(s)-Respondent(s) stated in this Petition Grounds 1-3, hindered compliance with the procedural rules and/or made compliance impracticable. See *Banks v. Dretke*, 540 U.S. 668, 691-698 (2004). See *Strickler v. Greene*, 527 U.S. 263, 283, 289 (1999). See *Dobbs v. Zant*, 506 U.S. 357, 359 (1993). See *Coleman v. Thompson*, 501 U.S. 722, at 753 (1991). See *Amedeo v. Zant*, 486 U.S. 214, 222 (1988). See *Murray v. Carrier*, 477 U.S. 478, 488 (1986).

32. Affiant's trial and appellate counsel are responsible for any (alleged) procedural default and their actions (or omissions) in this regard may properly be "imputed to the Government" because the (alleged) default occurred at a critical stage of the proceedings at which Affiant was constitutionally or statutorily entitled to effective assistance of counsel and their ineffective assistance in violation of the Sixth Amendment impugned the "overall fairness of the entire proceeding." See *Wainwright v. Sykes*, 433 U.S. 72, at 96 (1977) (Stevens, J., concurring). See *Buckley v. Davis*, 137 S. Ct. 759, 767, 775 (2017). See *Alabama v. Shelton*, 535 U.S. 654, 657-658 (2002). See *Missouri v. Frye*, 566 U.S. 134, 140 (2012). See *Lafler v. Cooper*, 566 U.S. 156, 165 (2012). See *Rothgary v. Gillespie County*, 554 U.S. 191, 198, 213 (2008). See *Tollett v. Henderson*, 411 U.S. 258 (1973). Affiant has not been afforded an unobstructed procedural shot, therefore, the § 2255 remedy is inadequate and ineffective.

33. Based upon all of the foregoing, Affiant has not been afforded a "reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of the conviction and sentence" of C.D.Cal. 2:14-cr-00725-CAS, nor has Affiant been afforded a "meaningful opportunity" to raise his claim of actual innocence stated herein. See *Prost v. Anderson*, 636 F. 3d 578, at 605-606 (10th Cir. 2011). See *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). See *Price v. Johnston*, 334 U.S. 266, 283 (1948).

34. Affiant's § 2241 Petitions and § 2255 Petitions demonstrate that the § 2255 remedy has been inadequate and ineffective, demonstrates that Affiant's claims (Grounds 1-3) of innocence are meritorious, and demonstrates that Affiant has not had an unobstructed procedural shot at presenting these claims (Grounds 1-3) — within the meaning of *United States v. Hayman*, 342 U.S. 205 (1952); *Swain v. Pressley*, 430 U.S. 372 (1977); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968); *Price v. Johnston*, 334 U.S. 266, 283 (1948); *Bousley v. United States*, 523 U.S. 614 (1998); *Schlup v. Delo*, 513 U.S. 298, 327-328 (1995); *Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011); *Hernandez v. Campbell*, 204 F.3d 861, at 864-865 (9th Cir. 2000); *Ivy v. Pontesso*, 328 F.3d 1057, 1059 (9th Cir. 2003); *Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006); *Lorentsen v. Hood*, 223 F.3d 950, 953-954 (9th Cir. 2000); *Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011).

35. "A prisoner in custody pursuant to the final judgment of a court of criminal jurisdiction may have a judicial inquiry in a court of the United States into the very **truth and substance** of the causes of his detention although it may become necessary to look behind and beyond the record of his conviction to a sufficient extent to test the jurisdiction of the court to proceed to judgment against him." See *United States v. Hayman*, 342 U.S. 205, at 211-212 (1952). See *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938).

36. "Nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions. On the contrary, the sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum." See *United States v. Hayman*, 342 U.S. 205, at 219-220 (1952).

37. "In a case where the Section 2255 procedure is shown to be 'inadequate or ineffective,' the Section provides that the (§ 2241) habeas corpus remedy shall remain open to afford the necessary hearing." See *United States v. Hayman*, 342 U.S. 205, at 223-224 (1952). See *Stack v. Boyle*, 342 U.S. 1, 6-7 (1951). Affiant's § 2255 Petitions qualify under the "Savings Clause," but the District Court dismissed Affiant's § 2241 Petitions for lack of subject matter jurisdiction. See C.D.Cal. # 2:21-cv-05720-JAK-JDE. See C.D.Cal. # 2:21-cv-09264-JAK-JDE. Therefore, Affiant respectfully invites and urges the Supreme Court of the United States to authorize this Petition on the claims of manifest miscarriage of justice and actual innocence stated herein.

38. Affiant asserts that the substantive and procedural due process violations presented in this Petition present "structural defects[3]," "fundamental defects," and "exceptional circumstances." See *Hill v. United States*, 368 U.S. 424, at 428-429 (1962) – a fundamental defect is a violation of federal statutory rights which inherently results in a complete miscarriage of justice, or is inconsistent with the rudimentary demands of fair procedure; which presents "exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent. See *Bowen v. Johnston*, 306 U.S. 19, 27 (1939). See *Escoe v. Zerbst*, 295 U.S. 490 (1935). See *Johnston v. Zerbst*, 304 U.S. 458 (1938). See *Walker v. Johnston*, 312 U.S. 275 (1941).

39. The Supreme Court has clearly established that the combined effect of multiple trial errors violated due process where it rendered the resulting criminal trial fundamentally unfair. See *Parle v. Runnels*, 505 F.3d 922, at 926-927 (9th Cir. 2007) - Because "the [cumulative] impact of these errors is devastating to one's confidence in the reliability of the verdict." See also *Thomas v. Hubbard*, 273 F.3d 1164, 1179-80 (9th Cir. 2002) – analyzing cumulative error in habeas petition; *Whelchel v. Washington*, 232 F.3d 1197, 1212 (9th Cir. 2000) – noting that cumulative error doctrine applies on habeas review; *United States v. Fredrick*, 78 F.3d 1370, 1381 (9th Cir. 1996) – recognizing the importance of considering the "cumulative effect of multiple errors."

40. "Any claim that, if valid, 'would advance the date of... release of present incarceration... implicates the core purpose of habeas review.'" See *Garlotte v. Fordice*, 515 U.S. 39, 44, 47 (1995) (citing *Peyton v. Rowe*, 391 U.S. 54, 66-67 (1968)). "When a prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate... or speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." See *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

---

[3] The Supreme Court holds that "structural" constitutional error is "so basic to a fair trial that their infraction can never be treated as harmless error," or so prone to prejudice, when violated, that prejudice has already been proved or should be presumed. See *Weaver v. Massachusetts*, 137 S.Ct. 1899, 1907, at 1911 (2017) – error deemed structural requires automatic reversal; *Neder v. United States*, 527 U.S. 1, 7, at 8 (1999) – structural error is subject to automatic reversal; *Ricardo v. Rardin*, 1999 U.S. App. LEXIS 18271, at *7 (9th Cir. Aug. 2, 1999), cert. denied, 528 U.S. 1047 (1999) – because structural error is automatic reversal, we do not apply harmless error [analysis].

V. Factors Bearing on a District Court's Discretion to Entertain a Successive Petition

41. The statute relating to successive applications for habeas corpus does not compel judge to decline to entertain successive applications on which hearings may be denied because ground asserted was previously heard and decided, but merely permits him to do so, and only if he is satisfied that the ends of justice will not be served by inquiring into the merits. See *Sanders v. United States*, 373 U.S. 1, at 12 (1963) – conventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged. *Id* at 8-9. See *Fay v. Noia*, 372 U.S. 391, at 402 (1963).

42. Affiant's claims stated herein have not been previously heard or decided — these Ground (1-3) have not been presented and determined. See *Sanders v. United States*, 373 U.S. 1, at 12-13 (1963) - The statute relating to successive applications for habeas corpus is addressed only to successive applications based on grounds previously heard and decided, and does not cover second or successive application containing ground not theretofore presented and determined.

43. The statute authorizing motion at any time to vacate, set aside or correct sentence **was enacted to provide an expeditious remedy for correcting erroneous sentences of federal prisoners without resort to habeas corpus**. See *Sanders*, at 13. See *United States v. Hayman*, 342 U.S. 205 (1952). The statute authorizing motion at any time to vacate, set aside or correct sentence was intended simply to provide in sentencing Court a remedy exactly commensurate with that which had previously been available by habeas corpus in court of district where prisoner was confined. See *Sanders*, at 14. See *Hill v. United States*, 368 U.S. 424, 427 (1962). The "similar relief" provision of the statute authorizing motion at any time to vacate, set aside or correct sentence is to be deemed the material equivalent of the statute relating to successive applications for habeas corpus. See *Sanders*, at 14-15.

44. The Grounds (1-3) presented herein are new, they have not been determined adversely to Affiant, there has been no determination on the merits, and reaching the merits of would serve the ends of justice. See *Sanders*, at 16 - controlling weight may be given to denial of prior application for federal collateral relief only if the same ground presented in subsequent application was determined adversely to applicant on a prior application, if prior determination was on the merits, and if the ends of justice would not be served by reaching the merits of the subsequent application.

45. Should doubts arise whether two grounds of successive applications for federal collateral relief are different or the same, they should be resolved in favor of the applicant. By "ground" we mean simply a sufficient legal basis for granting the relief sought by the applicant. In other words, identical grounds may often be proved by different factual allegations. So also, identical grounds may often be supported by different legal arguments; or be couched in different language, or vary in immaterial respects. See *Sanders*, at 16.

46. There has been no adjudication on the merits of Grounds 1-3, and the files and records, including without limitation the EXHIBITS annexed and appended hereto, meet the heightened specific fact-pleading standard with support in the evidentiary record. Furthermore, there was no evidentiary hearing held in the previous § 2255 motion (C.D.Cal 2:19-cv-10247-CAS / 9th Cir. 20-55808). See *Sanders*, at 16-17 - With respect to denial of successive applications for federal collateral relief, prior determination was not on the merits unless the prior denial rested on adjudication of the merits of the ground presented in a subsequent application and unless, if factual issues were raised on prior application and it was not denied on the basis that files and records conclusively resolve these issues, an evidentiary hearing was held.

47. The ends of justice would be served if the Supreme Court would permit redetermination of any Ground(s) presented herein which the Court deems to have been previously rejected. See *Sanders*, at 17 - Even if some ground was rejected on the merits on prior application for collateral relief, it is open to applicant to show that the ends of justice would be served by permitting redetermination on the ground, but the burden is on the applicant to show.

48. No matter how many prior applications for federal collateral relief a prisoner has made, if different ground is presented by a new application or if the same ground was not adjudicated on the merits, then consideration of the merits of the new application can be avoided only if there has been abuse of the writ or motion remedy, and this the government has the burden of pleading. See *Sanders*, at 17-18. Habeas corpus is governed by equitable principles, and it is open to government to show that second or successive application for federal collateral relief is abusive. See *Sanders*, at 18. See *United States ex rel. Smith v. Baldi*, 344 U.S. 561, 573 (1953). See *Molina v. Rison*, 886 F.2d 1124 (9th Cir. 1989) – motion challenging conviction and sentence may be considered "abusive" only when applicant made a conscious decision deliberately to withhold new grounds from prior motion; or is pursuing needless piecemeal litigation; or has raised claims only to vex, harass, or delay. *Id.* at 1127-1128. See *Neuschafer v. Whitley*, 860 F.2d 1470, 1474 (9th Cir. 1988). See 28 U.S.C. § 2255 Rule 9(b) – a second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds for relief are alleged, the judge finds that the failure of the moving to assert those grounds in a prior motion constituted an abuse of the procedure governed by those rules. *Molina v. Rison*, 886 F.2d 1124, at 1127-1128 (9th Cir. 1989).

49. The new issues stated in Grounds 1-3 are themselves plain constitutional error requiring reversal, vacatur and setting aside of verdict / judgment / conviction / sentence, and dismissal of Indictment. *Molina v. Rison*, 886 F.2d 1124, at 1129-1130 (9th Cir. 1989) - in determining whether motion challenging conviction or sentence is successive, ground is successive if the basic thrust or "gravamen" of legal claim is the same, regardless of whether basic claim is supported by new and different legal arguments; thus, whether particular new issue is merely new legal argument rather than new legal claim will depend on whether new issue itself is ground for relief, as opposed to being merely supporting argument or predicate step to larger, basic claim. See *Sanders v. United States*, 373 U.S. 1, at 16 (1963)

VI. Imperfect Knowledge of Facts Bears on a Request for Second or Successive § 2255 Petition

50. Affiant has been, and is now for the time being, unlawfully detained, falsely imprisoned, and subject to prolonged arbitrary detention. On May 20, 2021, Affiant was discharged from FCI Coleman Medium in Florida to Vinewood Residential Re-Entry Center in California. Since on or about May 20, 2021, Affiant has been able to conduct research which he was previously not at liberty to do and discover the grounds presented in this Petition. Affiant asserts that there was imperfect knowledge of the facts of C.D.Cal. # 2:14-cr-00725-CAS and this prevented any presentation of them until this current Petition. See *Bennett v. Milusnic*, 2019 WL 7206451, at *5 (C.D.Cal. Sept. 16, 2019) – petitioner's imperfect knowledge of the facts may bear on a request to file a second or successive § 2255 motion. See *Cole v. United States*, 2021 WL 1217402, at *5 (C.D.Cal. Mar. 25, 2021) – petitioner's imperfect knowledge of the facts may bear on a request to file a second or successive § 2255 motion.

VII. Petitioner Acquired New or Additional Information Since the Disposition of the Earlier Petitions

51. Affiant asserts that he has acquired new or additional information since the disposition of his earlier § 2255 Petition (C.D.Cal 2:19-cv-10247-CAS / 9th Cir. 20-55808), and because of being unlawfully detained, falsely imprisoned, and subject to prolonged arbitrary detention, Affiant has previously been unable to assert his rights or was unaware of the significance of relevant facts. See *Price v. Johnston*, 334 U.S. 266 (1948) – the Supreme Court held that the District Court abused its discretion by summarily dismissing a petition that raised a claim not asserted in any of three previous petitions filed by the same petitioner. Petitioner **"acquired new or additional information since" the disposition of the earlier petitions.** *Id.* at 290. "Even if it [had been] found that petitioner did have prior knowledge of all of the facts concerning the allegation in question," the District Court should not have dismissed the petition before affording the prisoner an opportunity to articulate "some justifiable reason [why] he was previously unable to assert his rights or was unaware of the significance of relevant facts." *Id.* at 291.

VIII. Court has Equitable Discretion to Correct a Miscarriage of Justice — "Actual Innocence"

52. The power to entertain a second or successive petition should turn not on "the inflexible doctrine of res judicata" but rather on the exercise of "sound judicial discretion guided and controlled by a consideration of whatever has a rational bearing on the subject." See *McClesky v. Zant*, 499 U.S. 467, at 502-503, 508 (1991) – court has equitable discretion to correct miscarriage of justice;

53. In *Sanders v. United States*, 373 U.S. 1 (1963), the Supreme Court crystallized the various factors bearing on a district court's discretion to entertain a successive petition. The Supreme Court in *Sanders* distinguished successive petitions raising previously asserted grounds from those raising previously unasserted grounds. With regard to the former [previously asserted grounds], the Supreme Court explained, the district court may give "controlling weight... to [the] denial of a prior application" unless "the ends of justice would... be served by reaching the merits of the subsequent application. With regard to the latter [previously unasserted grounds], however, the district court **must** reach the merits of the application. See *McClesky*, at 509. See *Sanders v. United States*, 373 U.S. 1, at 15 (1963);

54. However, so long as the petitioner's previous application was based on a good-faith assessment of the claims available to him, see *Price v. Johnston*, at 289, the denial of the application does not bar the petitioner from availing himself of "new or additional information," see *Price v. Johnston*, at 290, in support of a claim not previously raised. In accord see Advisory Committee's Notes to Habeas Corpus Rule 9, 28 U.S.C., p. 427. See *McQuiggin v, Perkins*, 569 U.S. 383 (2013) – plea of actual innocence can overcome the Antiterrorism and Effective Death Penalty Act's (AEDPA) one-year statute of limitations for filing habeas petitions; **miscarriage of justice exception survived the passage of AEDPA.** *Id.* at 392-393. See *Herrera v. Collins*, 506 U.S. 390, 404-405 (1993); *Sawyer v. Whitley*, 505 U.S. 333 (1992); *Murray v. Carrier*, 477 U.S. 478, 496 (1986); *Lee v. Lampert*, 653 F.3d 929, at 933 (9th Cir. 2011) – a credible claim of actual innocence constitutes an equitable exception to the AEDPA's one-year statute of limitations; when an otherwise time-barred habeas petitioner demonstrates that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt, the petitioner may have his constitutional claims heard on the merits.

55. Federal habeas corpus court may invoke miscarriage of justice exception to justify consideration of claims defaulted under timeliness rules. See *McClesky*, at 394. See *Coleman v. Thompson*, 523 U.S. 538 (1998). A petitioner asserting actual innocence claim need not prove diligence to overcome AEDPA's statute of limitations, but untimeliness bears on credibility of evidence proffered to show actual innocence. See *McClesky*, at 401. See *Schlup v. Delo*, 513 U.S. 298, at 327 (1995). See *Bousley v. United States*, 523 U.S. 614, 622 (1998). See *House v. Bell*, 547 U.S. 518, at 537 (2006);

56. **Affiant's Grounds 1-3 presented herein show that no juror of C.D.Cal. # 2:14-cr-00725-CAS convicted him of 18 U.S.C. § 2(b) as defectively and duplicitously indicted and erroneously / wrongly convicted and sentenced on all Counts (1, 2, 3, 4).** See *McClesky*, at 401 - To invoke miscarriage of justice exception to AEDPA's statute of limitations, a habeas petitioner must show that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence. See *Sawyer v. Whitley*, 505 U.S. 333, at 336, 339 (1992) – generally, habeas petitioner must show cause and prejudice before the court will reach

the merits of a successive, abusive, or defaulted claim; however, if he cannot meet this standard, court may hear the merits of such claims if failure to hear them would result in a miscarriage of justice.

57. **Affiant's Grounds 1-3 presented herein show that he was erroneously / wrongfully convicted of 18 U.S.C. § 2(b) and Affiant is actually innocent.** The plain constitutional errors presented in Grounds 1-3 precluded the development of true facts or resulted in the admission of false ones. See *Sawyer v. Whitley*, 505 U.S. 333, at 339-340 (1992) – **[definition of "miscarriage of justice" or "actual innocence" exception]** the miscarriage of justice exception, which permits court to hear habeas petitioner's successive, abusive, or defaulted claim — **applies if failure to hear the claim would result in a miscarriage of justice and applies where petitioner is "actually innocent" of crime of which he was convicted or penalty which was imposed.** See *Sawyer*, at 340 – "actual innocence means that the alleged constitutional error precluded the development of true facts or resulted in the admission of false ones." (quoting *Smith v. Murray*, 477 U.S. 527, at 538 (1986)).

58. **Affiant's Grounds 1-3 along with the annexed and appended Exhibits presented in this § 2255 Petition show a preponderating weight of highly probative evidence which carries a strong presumption with an unassailable inference that Affiant is innocent and there is no confidence in the outcome of the trial of C.D.Cal. # 2:14-cr-00725-CAS.** Also, the record shows that the trial was not free of harmless error. See *Schlup v. Delo*, 513 U.S. 298, at 316 (1995) – if habeas petitioner presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial, unless the court is also satisfied that the trial was free of non-harmless constitutional error, petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims in a successive habeas petition. Affiant asserts that his claims of manifest miscarriage of justice and actual innocence stated herein meet the *Sawyer v. Whitley* standard announced in *Schlup v Delo.* See *Schlup v. Delo*, 513 U.S. 298, at 323-324 (1995) - The *Sawyer v. Whitley* standard for demonstrating actual innocence is more stringent than the *Murray v. Carrier* standard.

59. **In this case, it is universally acknowledged that Affiant's incarceration is unauthorized. <u>The miscarriage of justice is manifest.</u>** Since the "imperative of correcting a fundamentally unjust incarceration" will lead to the issuance of the writ regardless of the outcome of the cause and prejudice inquiry, the Court's rendering a ruling (on the cause and prejudice prongs) would needlessly postpone the final adjudication of Affiant's claims stated herein and would perversely prolong the very injustice that the cause and prejudice standard was designed to prevent. See *Dretke v. Haley*, 541 U.S. 386, at 398 (2004) – The Supreme Court holds that "in cases in which the cause and prejudice standard is inadequate to protect against fundamental miscarriages of justice, the cause and prejudice requirement 'must yield to the imperative of correcting a fundamentally unjust incarceration.'" (quoting *Engle v. Isaac*, 456 U.S. 107, 135 (1982)). **The law must serve the cause of justice!!!**

60. **Affiant's credible claims of a fundamental manifest miscarriage of justice and actual innocence stated herein meet the equitable exception standard of *Sawyer v. Whitley* announced in *Schlup v. Delo* – no juror returned any verdict of guilt at all for 18 U.S.C. § 2(b).** See *Lee v. Lampert*, 653 F.3d 929, at 933 (9th Cir. 2011) - a credible claim of actual innocence constitutes an equitable exception to the AEDPA's one-year statute of limitations; when an otherwise time-barred habeas petitioner demonstrates that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt, the petitioner may have his constitutional claims heard on the merits. See *Lee v. Lampert*, 653 F.3d 929, at 938 (9th Cir. 2011) - to present a claim under the equitable actual innocence exception to AEDPA' one-year statute of limitations a petitioner must produce sufficient proof of his actual innocence to bring him within the narrow class of cases implicating a fundamental miscarriage of justice; and evidence must be so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of non-harmless constitutional error. See *Schlup v. Delo*, at 314 (quoting *McClesky*, at 494). See *House v. Bell*, 547 U.S. 518, at 538 (2006) (quoting *Schlup*, at 327).

61. **Again, Affiant's credible claims of a fundamental manifest miscarriage of justice and actual innocence stated herein meet the equitable exception standard of *Sawyer v. Whitley* announced in *Schlup v. Delo* – no juror returned any verdict of guilt at for 18 U.S.C. § 2(b).** See *Lee v. Lampert*, 653 F.3d 929, at 938-939 (9th Cir. 2011) - Petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence; this exacting standard permits review only in the extraordinary case, **but it does not require absolute certainty about the petitioner's guilt or innocence.**

62. **And again, Affiant's credible claims of a fundamental manifest miscarriage of justice and actual innocence stated herein meet the equitable exception standard of *Sawyer v. Whitley* announced in *Schlup v. Delo* – no juror returned any verdict of guilt at for 18 U.S.C. § 2(b).** See *Lee v. Lampert*, 653 F.3d 929, at 938-939 (9th Cir. 2011) -when post-conviction evidence casts doubt on the conviction by undercutting the reliability of the proof of guilt, but not by affirmatively proving innocence, that can be enough to "pass through the *Schlup* gateway" and present otherwise time-barred claims to a federal habeas court, under the equitable actual innocence exception to the AEDPA. In accord see *Sistrunk v. Armenakis*, 292 F.2d 669, 673 (9th Cir. 2002)(en banc) (citing *Carriger v. Stewart*, 132 F.3d 463, 478-479 (9th Cir. 1999)(en banc).

63. Affiant is factually "actually innocent" and the Indictment, Verdict, Judgment, and Sentence of C.D.Cal. # 2:14-cr-00725-CAS are wholly fundamental manifest miscarriages of justice. See *House v. Bell*, 547 U.S. 518, at 537-538 (2006) – a prisoner's proof of actual innocence may provide a gateway for federal habeas corpus review of a procedurally defaulted claim of constitutional error. In accord see *Bousley v. United States*, 523 U.S. 614 (1998). In accord see *Johnson v. Knowles*, 542 F.3d 933, at 935-936 (9th Cir. 2008) – the *Schlup v.*

Delo, 513 U.S. 298 (1995) standard governs the miscarriage of justice exception. In accord see *Cook v. Schiro*, 516 F.3d 802, 829 (9th Cir. 2008) – holding that "to qualify for the 'fundamental miscarriage of justice' exception to the procedural default rule, ...[the petitioner] must show that a constitutional violation has 'probably resulted' in the conviction when he was 'actually innocent' of the offense." In accord see *Smith v. Baldwin*, 510 F.3d 1127, 1139 (9th Cir. 2007)(en banc) – holding that to establish a miscarriage of justice exception, the petitioner must show that his case "falls within the narrow class of cases... [involving] extraordinary instances when a violation probably has caused the conviction of one innocent of the crime."

IX. Conclusion

64. For all of the foregoing reasons, Affiant respectfully invites the Court to grant an Order issuing the writ of habeas corpus affecting Affiant's immediate and unconditional discharge from unlawful and unconstitutional detainment, false imprisonment, genocide, crimes against humanity, apartheid (systemic racial discrimination), and prolonged arbitrary detention — expeditiously and without delay — on his own recognizance pendent lite, appeal, and/or certiorari, as the foregoing is the requisite showing of unusual, exceptional, special circumstances that the indictment, verdict, conviction, judgment, and sentence of C.D.Cal # 2:14-cr-00725-CAS were imposed in violation of the Constitution and/or laws of the United States and/or treaties, and the high probability that Affiant will succeed in this appeal. See Fed. R. App. P. 23(b),(d). See S. Ct. R. 36.3(a), 36.4. See *Hilton v. Braunskill*, 481 U.S. 770, 773 (1987). See *Blair v. McCarthy*, 881 F.2d 602, 603 (9th Cir. 1989), vac'd & remanded on other grounds, 498 U.S. 954 (1990). See *Marino v. Vasquez*, 812 F.2d 499, 508, n.12 (9th Cir. 1987).

65. Affiant respectfully invites the Court to grant an Order vacating and setting aside the verdict, conviction, judgment, and sentence, of C.D.Cal. # 2:14-cr-00725-CAS, and dismissing the defective duplicitous indictment with prejudice.

66. Affiant respectfully invites the Court to grant a Certificate of Appealability as jurists of reason would find the Grounds (1-3) debatable.

67. Affiant respectfully invites all such other relief and further relief, in accord with Natural Equity, for the honorable resolution of this matter as law and justice require.

In Honor

Ameen

Commercial Verification

I, Taquan Gullett, also called Maalik Rahshe El d/b/a Moorish Science Temple of America / Court of Equity and Truth (10105905 Tax Immunity Number for the Asiatic Nation of North America (see C.D.Cal. 2:21-cv-05720-JAK-JDE, Doc. 5, **EXHIBIT A**)), On Behalf of Himself: General Executor-Caveator for Autochthonous American Moor Alien (Friend) Republican Universal Government [AAMARU] Religious Consul Association Testamentary Trust – Divine Immortal Spirit in Living Flesh and Blood Competent Natural Man of majority by firm sound mind and righteous upright moral integrity, In Propria Persona proceeding in Sui Juris capacity, Settlor / Beneficiary / Paramount Security Interest Holder (Authenticated Birth Certificate; Registered Copyright /Trademark – USPO No. RE 246 590 423 US; Registered Fictitious Business Name – Florida Department of State No. G15000018576 (see C.D.Cal. 2:21-cv-05720-JAK-JDE, Doc. 5, **EXHIBIT B**); Maritime Lien No. RE 246 590 573 US – Putnam County Florida. Inst. No. 20105471421; California UCC #'s 10-7225252349, 10-7253610631, 14-7415317710, Kentucky UCC # 2014-2695084-41.01) over DEBTOR / INDIVIDUAL "GULLETT-EL, TAQUAN RASHE" (any and all alphabetical and/or numerical variations and/or derivations); do hereby declare and affirm under penalty of perjury under the Universal Law of Allah The Exalted and Majestic, then under the laws of the United States, that the foregoing is true, correct, certain, complete to the best of my own first-hand personal knowledge, not misleading, admissible as evidence, and in accord with the righteous upright moral integrity of my honorable intent, and if called upon to offer testimony as to the veracity of the evidence herein proffered and preferred, I shall so state. 28 U.S.C. § 1746. Fed. R. Evid. 201, 301, 902(10). Title 3 Cal.Civ.P. § 2015.5. Cal. Evid. Code §§ 450 *et seq.* Cal. Evid. Code §§ 1400 *et seq.* Fla. Stat. §§ 92.525, 90.301, 90.902.

This affidavit is dated on or about the Twenty-First (21st) day of Jumada Al-Akhirah in the Year of Al-Fattah, Al-Mannan, Al-Muti, As-Shaafi, Ar-Rafeeq, As-Sabur,

Allah The Exalted and Majestic

Fourteen Hundred Forty Three (1443)

[Gregorian Calendar Year (G.C.Y.) 2022 – January, 24]

Witness My Hand and Seal:

under protest; without prejudice; under reserves and with reservation of all our rights
Maalik Taquan Rahshe Gullett El, Autochthonous American Moor Alien Friend UCC 1-308

Maalik Taquan Rahshe Gullett El d/b/a Moorish Science Temple of America / Court of Equity and Truth

10105905 (Tax Immunity Number for the Asiatic Nation of North America)

General Executor-Caveator for AAMARU Religious Consul Association Testamentary Trust