APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-11900-BB

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO U. AKEL,
a.k.a. Tony Akel,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

ORDER:

Antonio Akel's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

/s/ Andrew L. Brasher
UNITED STATES CIRCUIT JUDGE

APPENDIX "B"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA

VS

CASE NO. 3:07cr136/LAC

ANTONIO U. AKEL

REFERRAL AND ORDER

Referred to Judge Lacey Collier on March 2, 2021

Motion/Pleadings: DEFENDANT'S MOTION TO REOPEN THE PROCEDURAL DEFECT IN THE INTEGRITY OF THE FEDERAL HABEAS PROCEEDING

Filed by Defendant on 3/1/21 Doc.# 430

RESPONSES:

_____ on _____ Doc.# _____

_____ on _____ Doc.# _____

_____ Stipulated _____ Joint Pldg.

_____ Unopposed _____ Consented

JESSICA J. LYUBLANOVITS, CLERK OF COURT

s/Keri Igney

Deputy Clerk: Keri Igney

ORDER

Upon consideration of the foregoing, it is ORDERED this 3rd day of March, 2021, that:

(a) The relief requested is DENIED.

(b) This motion is simply another attempt to relitigate issues that were or should have already been presented to the State Court, this Court, and brought before the Eleventh Circuit Court of Appeals for resolution.

s/L.A. Collier

LACEY A. COLLIER
Senior United States District Judge

APPENDIX "C"

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-11900-BB

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO U. AKEL,
a.k.a. Tony Akel,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

Before: JORDAN and BRASHER, Circuit Judges.

BY THE COURT:

Antonio Akel has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's October 7, 2021, order denying his motion for a certificate of appealability. Upon review, Akel's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDIX "D"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
(Pensacola Division)

ANTONIO U. AKEL
Plaintiff-movant

CASE # 3:11-CV-00035-LC-EMT
3:07-CR-00136-LC-EMT-1

V.

UNITED STATES OF AMERICA
Defendant-Respondent

PRO SE'

MOTION TO REOPEN THE "PROCEDURAL DEFECT IN THE INTEGRITY OF THE FEDERAL HABEAS PROCEEDING" UNDER FED.R. CIV.P 60(b) CLAUSE [6], See GONZALEZ v. CROSBY, 545 U.S. 524, 532 n.4 (2005); BUCKLON v. SEC'Y DEPT OF CORR., 2015 U.S. dist. lexis 178304 (M.D. FLA); PETERSON v. U.S., 2007 U.S. dist. lexis 52952 (M.D. FLA); U.S. v. ROBINSON, 917 F.3d 856, 863-864 (5th cir. 2019); PHELPS v. ALAMEIDA, 569 F.3d 1120, 1131-1134 (9th cir. 2009) AND MEMORANDUM OF LAW & FACT

Comes now the movant ANTONIO U. AKEL PRO SE' to this honorable court respectfully taking it up on its February 5, 2021 claim that "ALL RULES, REGULATIONS AND REQUIREMENTS OF THE LAW ARE BEING OBSERVED" (ECF#488) in this case., by presenting it with a claim for which is undeniable if this Court holds true to this statement, where:

(1). This District court and the United States should be well aware that the entire Federal Judiciary from the Supreme Court down to the middle district of Florida knows that A Rule 60(b) motion that attacks some procedural defect in the integrity of the federal habeas proceedings may be a reason that justifies relief under Rule 60(b)(6). See Gonzalez v. Crosby, 545 U.S. 524, 532 n.4 (2005), Phelps v. Alameida, 569 F.3d 1120, 1131-34 (9th cir 2009), Peterson v. US 2007 U.S. dist. lexis 52952 (M.D. FLA) and that a challenge to a "previous ruling that precluded a merits determination of an Ineffective Assistance of Counsel claim" is just such a claim for which is governed under clause [6] of the Rule. See U.S. v. ROBINSON, 917 F.3d 856, 863-864 (5th cir 2019); See also Bucklon v. Sec'y Dept. of Corr, 606 Fed. Appx. 490 (11th cir 2015) ATTACHED AT APPENDIX "A"

(2). In this 60(b)(6) proceeding the movant seeks to Reopen this Courts previous ruling that precluded a merits determination of his ineffective assistance of Counsel claim, A ruling found in the magistrates Report and Recommendation at (ECF #196 pg 13) for which it adopted on August 9, 2017 at (ECF# 321).

1.
It is the movants understanding of the law that this district court is required to review this pleading liberally despite its contentions of why there is no need too. Cummings v. U.S, 202 Fed. Appx. 374, 376 citing Mederos v. U.S, 218 F.3d 1252, 1254 (11th cir

(3). The movant advanced a meritorious claim in his amended §2255 motion at (ECF #187 pgs 5-17) that makes a Prima Facie Showing of being wrongfully convicted and as a consequence falsely imprisoned for which was never heard, and, continuing to permit this erroneous conviction to stand would undermine Public confidence in the Judicial system. See (ECF #220 pgs 51-52, 55-56)

(4). Both this District Court and the United States should be well aware that the exact procedural ruling that they utilized at (ECF #196 pg 12) to preclude a merits review of my habeas claim at (ECF # 187 pgs 5-17) was "INSTRUCTIVELY" clarafied as to be erroneous by Judge William H. Pryor and the Eleventh Circuit on MAY 5, 2017 in BROWN v. US, 688 Fed. Appx. 644, 651-652. Additionally, the very exact same "procedural BAR" that the U.S. Attorney in this case managed to get this Court to apply with no basis in law, see (ECF #164 pg 12) was also attempted by the U.S. Attorney in WARE v. US, 2018 u.s. dist. lexis 12839 (S.D. GA), however the district Court coherently explains why this procedural Ruling would be incorrect Stating:

> "Where a petitioner collaterally attacks his conviction based on a claim of Ineffective Assistance of Counsel where the petitioner has previously challenged the underlying deficiency, the petitioner has not merely repackaged the claim and the procedural Bar does not apply" Citing Perry v. US, 2011 u.s. dist. lexis 41538 (S.D. GA March 31, 2011) and Willis v. U.S., 2009 u.s. dist. lexis 52554 (S.D. GA June 22, 2009).

In fact, in a pure demonstration of just how unfair and contrary to law the movants habeas/§2255 proceeding has been before this Court is the fact that the Same legal premise that the Court in WARE put forth for why the "procedural Bar" does not apply is virtually identical to the argument the movant presented to this court in his timely filed Fed. R. Civ. P 59(e) motion over Four years previously in 2014 at (ECF #219 pgs 3-19)[2]

THAT IS: This Courts procedural Ruling found at (ECF #196 pg 12) was clearly Erroneous. See Denton v. US, 2019 u.s. dist. lexis 74406 (N.D. ALA) Citing Brown v. US, 688 Fed. Appx. 644, 651-652 (11th cir 2017) Stating:

> "Where, however, facts essential to a claim are not in the appellate record, the general rule in favor of a procedural bar does not apply and the issue may be raised on collateral review to permit further factual development. One example of a claim typically requiring further factual development through a 2255 proceeding is a claim based on ineffective assistance of counsel"

[redacted]

2. This Court denied this 59(e) motion based upon another false assertion put forth by the Govt. alleging that the underlying §2255 motion was already finalized with the denial of Appeal #14-11671 but the truth was the 2255 was still pending via the filing of the 59(e) at (ECF #219) see Fed. R. App. P 4(a)(4)(A)(iv) CF Appeal #15-15341

(5). Both this District Court and the United States should Know that the Supreme Court of the United States has defined "EXTRAORDINARY CIRCUMSTANCES" that Justify relief under Rule 60(b)(6) "AS ERRORS WHICH RISE ABOVE 'EXCUSABLE NEGLECT'." See Hamilton v. Lee, 188 F.Supp. 3d 221, 239 (E.D.NY 2016) (quoting Klapprott v. United States, 335 U.S. 601, 613 (1949)).

(6). In this case it is unequivocal that the errors, all errors, were injected into the habeas proceeding by the Govt. and Countenanced by the district Court despite the movants exemplar Diligence in getting the Court to recognize the error. See (ECF #'s 201, 219, 224, 257, 262, 267, 271, 279, 311, 315, 318, 367) See also Judicial Complaint #-11-16-90045 (11th cir) (Complaint that the District Courts procedural ruling at (ECF #196 pg 18), and, its intransigence thereof in refusing to correct, gives the appearance of a Concerted effort between the Court and government to hide a flagrant violation of the defendants Fourth and Sixth Amendment rights for which he expressed through Kimmelman v. Morrison, 477 U.S. 365 (1986) at (ECF #187 pg 5-17)).

(7). As Such, the movant Antonio U. AKEL has shown "EXTRAORDINARY CIRCUMSTANCES" justifying Rule 60(b)(6) relief, specifically: An "INSTRUCTIVE" Clarification of Federal Procedure By a Federal Appeals Court in BROWN v. U.S., 688 Fed. Appx 644, 651-652 (11th cir 2017) which has proven that this Courts prior understanding of the Procedural Bar Rules as it set out in (ECF #196 pg 18) was incorrect and wrong, thus ARBITRARILY DENYING the movant "A FULL AND FAIR OPPORTUNITY" to litigate his habeas claim at (ECF #187 pgs 5-17) and prevented the development of the evidence at, inter-alia, (ECF #164-1 pgs 2-3) and (ECF # 220 pgs 51-52 & 55-56) For which as a consequence prevented him from receiving adequate redress.

(8). As this Court and the united States are aware", Rule 60(b)(6) motions are not subject to the one-year limitations period and only have to be made within a "Reasonable Time" Weiss v. Warden, 703 Fed. Appx 789, 791 (11th cir 2017) and under the Standard within Fed. R. Civ. P 60(c)(1) "Reasonableness" can only be evaluated by reference to the circumstances of each case taking into account the reasons for the delay and the potential for prejudice to the non-movant for which part and parcel to a "timeliness" determination is the movants diligence in pursuit of the relief of the present claim. See Gonzalez v. Crosby, 545 U.S. 524, 537; Bucklon v. Secy Dept of Corr, 606 Fed. Appx. 490, 494 ("unlike the petitioner in Gonzalez, Bucklon advanced his claim that the district Court improperly found grounds 5 through 8 to procedurally defaulted in his appeal from the denial of his Section 2254 petition..."); See also Bynoe v. Baca, 966 F.3d 972 (9th cir 2020) ("The Diligence analysis overlaps

Significantly with the timeliness requirement in Rule 60(b)"); Jones v. Ryan, 733 F.3d 835, 839 (9th Cir 2013) (analyzing diligence by reference to the petitioner's delay in filing his Rule 60(b)(6) motion); Hall v. Haws 861 F.3d 977, 987-988 (9th Cir 2017) (evaluating diligence and timeliness together); Miller v. Mays, 879 F.3d 691, 699 (6th Cir 2018) (explaining that the timeliness of a Rule 60(b)(6) motion is measured by "considering a petitioners' diligence in seeking relief") Cf. C. Wright & A. Miller, Federal Practice and Procedure § 2866 ("Fact that an appeal had been pending may be considered in determining whether a motion was made in a reasonable time")

(9). The movant Antonio Akel has been the paragon of diligence in pursuit of this present issue to the district court, See (ECF #'s 201, 219, 224, 257, 262, 267, 271, 279, 311, 315, 318, 367, 389) never once failing to pursue relief in the Eleventh Circuit by way of Appeals and rehearings after the denials of the ("C.O.A's") within, See (Appeal #'s 15-15341; 17-14707; 20-10574) and, even petitioned the Supreme Court on the issue at Cert #16-6032, and, from the denial of 20-10574 CERT # NOT KNOWN YET as it was resubmitted to the court pursuant to Sup.Ct. Rule 14.5 on February 18, 2021 via U.S.P.S Certified mail receipt # 7020 2450 0000 9632 5276. In fact when this Court and the United States note that despite the lack of resources and legal training, preparing all of the aforementioned pleadings without counsel, writing from his prison cell, it could not imagine a more Sterling example of Diligence than this movant.

(10). The movant, Antonio U. Akel, has filed this instant Rule 60(b)(6) motion for relief from Judgment at (ECF #391) within a "Reasonable Time", not beyond 4 years from its issuance and less than 5 months from the date the Judgment went Final on OCTOBER 13, 2020, See CERT. # 20-5564, and GRAVAMEN to the Case Specific Reasonableness determination is the fact that the movant originally brought the Challenge to the Courts "previous ruling that precluded a merits review" in a Fed.R.Civ.P 60(b) motion at (ECF #367) 17 months and eleven days from Judgment but was thwarted by both this Courts and the governments misunderstanding of procedure and law, alleging the claim was governed by clause [1] of Rule 60(b) and thus untimely, See (ECF #383) For which the movant timely appealed at #20-10574 and is currently pending Review in the Supreme Court of the United States.

That is: The delay beyond the original filing of this very issue at (ECF #367) falls Squarely on the Shoulders of the United States and this Courts failure to have apprehended that a challenge to a "procedural ruling..." is precisely the manner permitted under Gonzalez v. Crosby, 545 U.S. 524, 532 n.4 correctly governed by clause [6] CF (ECF #383), and,

the fact that the movant has and continues to exhaust channels of appeal which, if successful, would render moot this instant Rule 60(b)(6) motion to coincide with the fact that there has been a world wide pandemic of Covid-19 for well over 1-year, the movant, an incarcerated pro se United States citizen has exhibited the effort that a reasonable person might be expected to deliver under his particular circumstances and as such he is timely here. See and Compare Thompson v. Bell, 580 F.3d 423, 443-444 (6th Cir 2010)(concluding that a four-year delay in filing a 60(b)(6) motion was timely in light of the petitioners diligence); See also Peterson v. United States, 2007 U.S. dist. lexis 53952 (M.D. FLA)(Chief Judge Patricia C. FawSETT finding Rule 60(b)(6) motion filed 8 years after judgment was reasonable in light of the petitioners repeated attempts to challenge his §924(c) conviction) See APPENDIX "B"; Klapprott v. United States, 335 U.S. 601, 613-614, 93 L.Ed. 266, 69 S.Ct 384 (1949)(permitting a judgment that had become final four years earlier to be reopened under Rule 60(b) in the interest of justice); Phelps v. Alameida, 569 F.3d 1120, 1137-1139 (9th Cir 2009)(finding petitioner timely after six years had passed since judgment where the petitioner presented sterling diligence and the governments interests in the finality of an erroneous procedural judgment were minor; and the delay prejudiced neither party).

(11). In this case the United States has an Abstract interest in the finality of its Criminal judgment. "But the 'whole purpose' of Rule 60(b)' is to make an exception to finality." See Buck v. Davis, 137 S.Ct 759, at 779 (2017)(quoting Gonzalez, 545 U.S. at 529). When a habeas petition is dismissed/denied on flawed procedural grounds, like that which was done in this case (ECF #196 pg 12), "There are no 'past effects' of the judgment that would be disturbed" if the habeas proceeding were reopened for further consideration, Phelps, 569 F.3d at 1138, and the United States 'interest in finality" Deserves little weight" See Buck v. Davis, 137 S.Ct at 779.

(12). The movant never had the opportunity to litigate his underlying claims (ECF #187 pg 5-17) on the merits in a federal habeas proceeding, and the United States never expended resources disputing them, and, meanwhile the movant would remain incarcerated, and "the parties would simply pick up where they left off," Phelps, 569 F.3d at 1138, wherefore the U.S. Attorney's interests in the finality of the erroneous procedural judgment in this case are minor if not non-existent.

(13). In addition to considering the prejudice to the United States interest in the finality of the Judgment, this Court must also consider the prejudice to the movant and "the risk of undermining the public's confidence in the Judicial process" Liljeberg v. Health Serv. Acquisition Corp, 486 U.S. 847, 863-64 (1988) as the Context and nature of the injustice borne by the movant absent a re-opening of the Judgment is at issue in this case. See, e.g., Buck v. DAVIS, 137 S.ct 759, 778-779, 197 L.Ed 2d 1 (2017).

(14). In this case the petitioner Submitted a Kimmelman v. Morrison, 477 U.S. 365 (1986) claim at (ECF #187 pg 5-17) for which is a "Stated" claim alleging the Denial of a Fourth Amendment Right to be free from unreasonable Searches and Seizures and Denial of his Sixth Amendment Right to the effective representation of that very Fourth Amendment Right. See Kimmelman, 477 U.S at 373-383

(15). The underlying Constitutional Claim at (ECF #187 pg 5-17) not only presents factual predicates and evidence for which were not in the record nor adjudicated by the Direct Appeal Court at (ECF #150) but also highlights a critical fact for which this Federal Jurisdiction as a whole has ignored, and, appears to have Strategically Suppressed, for over 13 years[3], and that is:

(A). This entire federal case arose from a State of FLORIDA Search warrant and the Fruits of evidence thereof, nothing more, and the Sole factual predicates for Probable Cause to have issued the warrant was the allegation that the movant conducted two Controlled Buys on MAY 31, and July 18, 2007. See Appendix "C" (Copy of the Grand Jury proceeding leading to the indictment in this case); See also (ECF #196 pg 9) (This court Stating: "The charges arose from Two Controlled Sales... a Trash Pull... and a Subsequent Search of defendants residence")

(B). The United States charged the movant with both the MAY 31 and July 18, 2007 "Two Controlled Sales" at Counts (4) and (5) of the indictment at (ECF #34 pgs 3-4) and explicitly placed these "TWO CONTROLLED BUYS" before the Jury to decide "THE ISSUES OF FACT AND ISSUES OF CREDIBILITY" at (ECF #134 pgs 203-204)

(C). The Jury explicitly found the movant "NOT GUILTY" of both the MAY 31, and July 18, 2007 Controlled Buy/Sales allegations charged at Counts (4) and (5), See (ECF #93 pg 3), the very Controlled Buys that are the probable cause predicates to have issued the Search warrant, the very Search Warrant For which is DISPOSITIVE TO THE INDICTMENT IN THIS CASE CF. Appendix "C"

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3. The movant is not Saying this Court has intentionally sought to hide these facts From the Habeas Record only it appears so

(D.). All attorney Etheridge had to do in this case was simply Renew the motion to Suppress under Binding precedent FRANKS v. DELAWARE, 438 U.S. 154, 98 S.Ct 2674 (1978) and put forth Inter Alia: the Jury acquittals of the "Controlled Buys"; the testimony of law enforcement admitting at (ECF #133 pg 119), in relation to the Controlled Buys;

Q. Okay. So you had May 31st, and then you go a whole month of June and then the 18th of July, a little over a month-and-a-half before you do the second alleged controlled buy, correct?
A. We attempted to do another one.
Q. Okay. But he never would cooperate, right, or it didn't go down?
A. We were never able to actually purchase drugs from him, correct.

That is: there were no "Controlled Buys" in this case and the contention otherwise was a Bold Faced Lie. See also: (ECF #77 pg's 31-32) Stating:

11:10:57 Q. At the time of the affidavit for the search warrant, you
11:11:00 personally couldn't prove that Mr. Akel had participated in any
11:11:05 drug transaction? Everything you talked about was based on
11:11:07 what the CI supposedly told you, right?
11:11:10 A. Are you talking about on -- both the controlled buys?
11:11:14 Q. Yeah. That's all you had, right?.
11:11:16 A. Yes, sir.

Compare the Honorable Judge Moody in U.S. v. ACUNA 2006 us.dist.lexis 28156 (MD FLA) Stating:

A. Controlled Buy.

A controlled buy occurs when a confidential informant conducts a transaction supervised and monitored by law enforcement. *Martin v. State*, 906 So. 2d 358, 360 (Fla. 5th DCA2005), citing *McCall v. State*, 684 So. 2d 260, 262 (Fla.4th DCA1996). The advantage of a controlled buy is that law enforcement does not need to independently establish the informant's reliability in the search warrant affidavit, because law enforcement is present, and can corroborate the truthfulness of the informant's actions and words. *See Martin* at 360, citing *Malone v. State*, 651 So.2d 733, 734 (Fla. 5th DCA1995).

From the face of the affidavit it is apparent that Detective Bermingham approached the confidential informant on the basis of a controlled buy. Further, it is apparent that Detective Bermingham presented the affidavit to the state court judge as a "controlled buy."

The affidavit states,in pertinent part, that "the CI was acting under the direction of the Hardee County Drug Task Force." Additionally, it is apparent to the Court that the language of the affidavit implies that the actions of the CI were being monitored and supervised by the Hardee County Drug Force, when in fact they were not, at least not at all times. From a review of the record, the Court concludes that the transaction at issue was not a "controlled buy," because the sale was not supervised or monitored by law enforcement officers.

; The Testimony of law enforcement at (ECF #133 pgs 108 & 122) admitting that how they "LINKED" the movant to the home per the probable cause requirement by stating in the affidavit for the search warrant:

and miscellaneous documents containing the address of 9518 Pouder Lane, Akel's name and Akel's live in girlfriend Danielle Rudinsky's name.

Was also a Bold Faced Lie, see and compare:

McDonough - Cross/Mr. Etheridge 108

A. There was documents with his name on it in the garbage.
Q. Yeah. It has his name on it and his daddy and mama's address, didn't it?
A. Correct.
Q. It sure didn't have XXXX XXXXXX Lane on it, did it?
A. Not in the trash pull, no.

....

Q. All right. Now, I believe we talked about, earlier talked about nothing addressed to my client at XXXX. And the stuff that you found in this trash pull, there wasn't one piece of mail addressed to my client on there, was there?
A. Not addressed to him, no, sir.

; and the testimony from the Confidential Informant at (ECF #133 pgs 7-8, 142) proving that Law enforcement lied by inference or omission that the C.I. led them to or even had the ability to speak upon the movants private residence in relation to illegal Activity, see:

Q. Okay. Let's talk about that. You've never stepped foot in that house in your life, have you?
A. No, I haven't.
Q. You've never been over there to buy drugs, have you?
A. No, I have not.
Q. You've never been over there and made any dope deals over there, did you?
A. Not at that house.

....

Q. You don't even know what that house looks like, do you, not at the time that you supposedly did these dope deals, right, because you've never been there, yes or no?
A. No.

Q. You were asked whether or not you ever went into XXXX XXXXXX Lane or had drugs at XXXX XXXXXX Lane. Do you recall that?
A. Yes.
Q. But have you been to at least a driveway of XXXX XXXXXX Lane and met with the defendant?
A. No.
Q. Okay. Have you ever been -- how do you know XXXX XXXXXX Lane or that XXXXXX Lane is the residence where the defendant and Danielle Rudinsky resided?
A. Because Danielle told me that that's where she resided, the street.
Q. Do you also have contact with any individuals on that street, friends that live on that street as well?
A. No.

and the district court would have been bound by precedent and Rule of law to exclude all evidence under FRANKS and its progeny, where after excising the lies that law enforcement knowingly and intentionally put forth in the warrant affidavit in relation to the "controlled buys," "link to the residence" and "material omissions" (ECF #187 pg 5-14) the remaining content would be wholly insufficient to establish a fair probability to search the movants home for "COCAINE and Ecstasy" where the whole country knows that "A SMALL AMOUNT OF MARIJUANA FOUND DURING A SINGLE TRASH PULL [IS] NOT SUFFICIENT TO ESTABLISH A FAIR PROBABILITY THAT MARIJUANA WOULD BE LOCATED INSIDE A RESIDENCE," See RAULERSON v. STATE OF FLORIDA, 714 So.2d 536, 537 (FLA. Dist. Ct. App. 1998), it cannot be sufficient to establish a fair probability that "COCAINE and

Ecstasy" would be found in ANTONIO AKELS private residence.

Indeed there was an additional LIE told in this case in effort to create the FALSE APPEARANCE that the evidence of marijuana found during the TRASH PULL, that is, evidence of marijuana use, not distribution in any regard, see (WARRANT AFFIDAVIT stating WORD for WORD:

Within the last ten days, members of the Okaloosa County Sheriff's Office Narcotics Unit conducted a "trash pull" at 9518 Pouder Lane (Akel's residence). A trash pull is an investigative technique that Law Enforcement Officers use in order to obtain more information/intelligence/evidence on a target/suspect which is not able to be obtained through a CI or other means. A search of the abandoned trash revealed the following items: flight itinerary for Delta Airlines (in Akel's name); owe sheets showing amounts of over $28,000.00; several empty large Zip-Loc food storage bags with one bag having the words "sour diesel" written on the side (through research "sour diesel" is a potent strain of cannabis that has very high levels of THC); numerous heat sealed storage bags, emanating a very strong odor of marijuana, containing marijuana residue; several dryer sheets which are commonly used to mask the odor of marijuana; loose tobacco which was purposely removed from a "blunt" cigar, your affiant knows that individuals who smoke marijuana routinely hollow out cigars to replace the tobacco with marijuana; loose marijuana which field tested with presumptive positive results for THC; several marijuana "blunt roaches" and miscellaneous documents containing the address of 9518 Pouder Lane, Akel's name and Akel's live in girlfriend Danielle Rudinsky's name.

Could Somehow be used to Refresh probable cause from the "Two earlier Controlled Buys" (ECF #77 pgs 83-84) [Notice that it is stated "Your Affiant Knows that individuals who Smoke marijuana" and nowhere does it state "Your Affiant Knows that individuals who DISTRIBUTE marijuana" within the "four corners" of the affidavit which in of itself proves that the District Court upheld probable cause based upon an additional LIE told during the Suppression hearing] See (ECF #187 pgs 14-17)

However, the testimony of the Affiant for the Search warrant himself, proves that any Contention that the Warrant application had anything to do with marijuana is an act of

Pure mendacity and fiction. See (ECF#133 pgs 254-255) Stating:

Q. I asked you that question a little while ago. The only thing you talked to the judge about for this search warrant were cocaine and ecstasy, correct?

A. Yes, based on my controlled buys, I did, yes.

Q. Okay.

A. Yes, sir.

Q. There wasn't anything in there about marijuana or firearms, was there?

A. No, sir.

(16) The underlying Constitutional claim at (ECF#187 pgs 5-17) is Supported and Substantiated beyond a "Proffer of Credible Evidence" as the pleading itself is Subscribed under 28 U.S.C §1746, CF Dominquez v. Lake Como club, 520 Fed. Appx. 937 (11th Cir 2013) ("A pro se plaintiffs' Complaint, if verified pursuant to 28 U.S.C §1746, is equivalent to an affidavit, and therefore may be viewed as evidence") (citation omitted), and, the "Smoking Gun" evidence of the trial Attorney's Sworn Affidavit at (ECF#164-1 pgs 2-3) and his Sworn Testimony taken at an evidentiary hearing on JAN. 28, 2014 (ECF#208) at (ECF#220 pgs 51-52 & 55-56) Stating Respectively:

GROUND ONE

1. I argued for suppression as indicated in the record. I did not cite or argue controlling precedent because I felt the issues were so clearly self-evident from the testimony of law enforcement that the trial court would rule on the merits and facts of the motion to suppress.

.....

Another question for you: Do you agree that the case in question, two controlled buys in this incident is dispositive to the whole case, correct?

A. As I recall, yes.

Q. And I don't know if you can recall, but if you can recall, Count IV and Count V of the Indictment were those controlled buys.

A. I don't remember.

Q. You can't recall the counts, but you can recall that --

A. Generally speaking, yes, sir.

Q. Okay. And I was acquitted of the -- I'm stating for the record I was acquitted of those two controlled buys, they were Count IV and Count V of the Indictment.

A. That's correct.

Q. Why would you not, if you were not intimidated by this judge or pressured by this judge, why would you not immediately move for dismissal of the indictment or file for a Franks hearing immediately after an acquittal of those charges?

A. Didn't do it.

Q. And one more time for the record, sir, just to be sure, you said that there wasn't any particular reason that you didn't file for dismissal of the indictment or the Franks hearing once evidence was discovered that those controlled buys were false?

A. I didn't file anything.

Q. You didn't file anything?

A. No, sir.

(17). That is: The movants Constitutional claim at (ECF#187 pgs 5-17) subscribed under 28 u.s.c §1746 and the evidence in support at (ECF#164-1 pgs 2-3) and (ECF#220 pgs 51-52 & 55-56) makes a PRIMA FACIE SHOWING OF BEING ACTUALLY INNOCENT OF THIS CASE AS EXPRESSED THROUGH Kimmelman v. Morrison, 477 u.s. 365, 106 S.ct 2574 (1986) VIA Franks v. Delaware, 438 u.s. 154, 98 S.ct 2674 (1978) and Wong Sun v. United States, 83 S.ct 407, 416, 418 (1963).

(18). As Such, this Courts erroneous Procedural Ruling at (ECF#196 pg 12) for which it adopted (ECF#321) has the FORCE and EFFECT of impeding the movant from holding the United States Government accountable to the Judiciary for his wrongful Conviction and false imprisonment, and there can be no circumstance for which "Would Undermine Public Confidence in the Judicial System" more than that of Knowingly holding an Actual Innocent U.S. Citizen in prison, as in this case the U.S. Attorney for the Northern District of Florida Knows that, but for the incompetent representation of Attorney Etheridge, the fact the Jury found the movant "NOT GUILTY" of the "Controlled Buys" dispositive to the indictment in of itself ends the cause of action in #3:07-cr-136-LAC-EMT. CF (Appendix "C") (Grand Jury Proceeding proving that without the Controlled Buys charged at Counts (4) and (5) this Case would be non-existent)

CONCLUSION FOR RELIEF

Wherefore to Recap:

(1). This instant challenge to the Procedural defect in the 28 U.S.C § 2255 proceeding, that is the previous ruling that precluded the merits review of the movants ineffective Assistance of Counsel claim, is properly raised and governed under Fed.R.Civ.P 60(b) clause [6] not clauses [1] thru [5].

(2). This motion has been filed within a "Reasonable" time, where, when this court makes the independent determination as required of Fed.R.Civ.P. 60(b), (c)(1), it will find that any delay in this matter is offset by the movants diligence during the interim time frame, and, Should be excused further by both the govts and this courts misunderstanding of what clause under Rule 60(b) governs when the movant attempted to raise this challenge previously, See (ECF #367) CF (ECF #383); See also (ECF #389) CF (ECF #391), thereby directly causing the delay beyond that of the original 17 month and 11 day interlude.

(3). It is without question that this courts Procedural Ruling within the habeas/§ 2255 proceeding at (ECF#196 pg 12) adopted by (ECF#321) was incorrect and wrong thus arbitrarily

denying the movant a "Full and Fair Opportunity" to litigate his habeas claim on the merits in a federal Court.

(4). It is without question that the Supreme Court has itself defined "Extraordinary CIRCUMSTANCES" that justify relief under Rule 60(b)(6) "AS ERRORS WHICH RISE ABOVE EXCUSABLE NEGLECT". Hamilton v. Lee, 188 F.Supp.3d 221, 239 (E.D.NY 2016)(quoting Klapprott v. U.S. 335 U.S. 601, 613 (1949))

(5). "Extraordinary Circumstances" are present in this case where Circuit Judge William H. Pryor and the federal Appeals Court for the Eleventh Circuit "INSTRUCTIVELY" clarafied in BROWN v. U.S., 688 Fed.Appx. 644, 651-652 (11th Cir 2017) that the very exact Same procedural Ruling that this Court utilized in this movants habeas proceeding was erroneous. CF (ECF#'s 201, 219 pgs 3-19, 224, 257, 262 etc etc (8 years straight of the Habeas movant informing this Court and the Govt. that the procedural Ruling at (ECF#196 pg 2) is contrary to law, fact and Honorable adjudication))

(6). The "underlying constitutional claim" is located at (ECF#187 pgs 5-17) and is a "Stated" claim alleging the denial of the Fourth Amendment Right to be free from unreasonable Searches and Seizures and denial of the Sixth Amendment Right to the effective Representation of that very Fourth Amendment Right, a Valid claim explicitly recognized by the Supreme Court of the United States over 34 years ago in Kimmelman v. Morrison, 477 U.S. 365 (1986) for which clearly satisfies the literal language of the Substantive Prong of Slack v. McDaniel, 529 U.S. 473, 484 (2000). See Gibson v. Klinger, 232 F.3d 799, 803 (10th Cir 2000)(Regarding the other prong of the Slack test "we will only take a 'QUICK' look at the federal habeas petition to determine whether the petitioner has facially alleged the denial of a constitutional Right); Jefferson v. Welborn, 222 F.3d 286, 289 (7th Cir 2000)(Same); Lambright v. Stewart, 220 F.3d 1022, 1026 (9th Cir 2000)(Same); Rouse v. Lee, 314 F.3d 698, 701-702 (4th Cir 2002)(Same) CF Dulworth v. Jones, 496 F.3d 1133 (10th Cir 2007)("Because the petitioner's Rule 60(b) claim was not Constitutional in nature... the Court had to determine where to look for the Source of the Constitutional claim for part one of the Standard... IF it looked Solely to [the] Rule 60(b) motion, a COA could never issue")(citing Reid v. Angelone, 369 F.3d 363 371 (4th Cir 2004) and Kellogg v. Strack, 269 F.3d 100, 104 (2d Cir 2001)).[4]

4. The Supreme Court has recently cautioned that the certificate of appealability (COA) inquiry is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.

(7). The movants underlying Constitutional claim at (ECF #187 pgs 5-17) and the evidence in support at (ECF #164-1 pgs 2-3) and (ECF #220 pgs 51-52 & 55-56) proves unequivocally that, but for the incompetent Stewardship of his Fourth Amendment Rights the movant would have proven his wrongful conviction and false imprisonment in the trial court, and, this courts erroneous procedural Ruling at (ECF #196 pg 9) has the "FORCE and EFFECT" of impeding the movant from establishing his wrongful conviction and false imprisonment on HABEAS CORPUS/ §2255, thus undermining public confidence in the Judicial System.

(8). The "whole purpose of Rule 60(b) is to make an exception to finality", See Buck v. Davis 137 S.Ct 759, 779 (2017) (quoting Gonzalez, 545 U.S. at 529)) and in this case the United States has no interests in the finality of the erroneous procedural judgment by virtue of its mandate to ensure fair, honest and impartial administration of the Rule of law for all of its citizens.

As Such, with Respect, if this Court pursuant to its Statutory and Constitutional duty, in accord with its oath of office and Judicial Canons, truly observes "All Rules, Regulations, and Requirements of the law" as it stated it was doing in this case on Feb. 2, 2021 at (ECF #408) the Rule of law provides the predictability and stability for the anticipated GRANTING of this instant Rule 60(b)(6) motion like that of the "Similarly Situated" throughout this GREAT NATION. See Peterson v. U.S, 2007 U.S. dist. lexis 52952 (M.D FLA) at Appendix "B"; See also Thompson v. Bell, 580 F.3d 423, 443-444 (6th cir 2010); Phelps v. Alameida, 569 F.3d 1120, 1137-1139 (9th cir 2009); Klapprott v. U.S., 335 U.S. 601, 613-614, 69 S.Ct 384 (1949).

Respectfully Submitted

Antonio U. Akel #06899-017 (prose)
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Inez, Ky 41224

Declaration

I, Antonio U. Akel, hereby declare under the penalty of persiury pursuant to 28 U.S.C §1746 that the foregoing Rule 60(b)(6) motion and memorandum are true and correct.

Date: _____ By: _____

Certificate of Service

I, hereby certify that a true and correct copy of the foregoing was sent to:

U.S. Attorney for the N.D.FLA
21 E. Garden Street Suite 400
Pensacola, FLORIDA 32502

Date: _____ By: _____

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Additional material from this filing is available in the Clerk's Office.