No. 22-1152

In The Supreme Court of the United States

NAJAM AZMAT,
A/K/A DR. AZMAT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Department of Justice have an obligation to charge the prosecutors and Federal Agents if they engage in criminal activity during the course of their investigation or prosecution in the very case they are investigating or prosecuting, just like any ordinary citizen engaged in similar conduct in consideration of EQUAL JUSTICE FOR ALL since their actions result in loss of immunity, having being specifically informed of violating 18 USC §242 pursuant to 28 USC §535 (b)?

2. Does 18 U.S. Code § 4 – Misprision of felony apply to Department of Justice officials, regardless of their title or ranking in the DOJ (including Attorney General), who were officially informed of criminal acts committed by prosecutors and Federal Agents in obtaining indictments and convictions when all four elements of misprision are satisfied and were in a position or were obligated to intervene, but failed to do so which essentially amounts to a constructive step to protect the criminals? Also, in such a situation does everyone who is aware and was in a position to intervene (including Attorney General) but did not in spite of being provided incontrovertible evidence of crimes, lose their immunity and should be charged with Misprision of Felony like any ordinary citizen because there should be EQUAL JUSTICE FOR ALL?

(Note: The Supreme Court's ruling on the above two questions would result in a better and far more meaningful reform of the prosecutorial misconduct than ever before and this case clearly shows how miserably failed and deficient our Justice System is when the DOJ is assigned the task of accountability amongst its own ranks with prosecutorial misconduct, including criminal acts being swept under the rug by the DOJ even upon being made aware of and provided with incontrovertible evidence to two US Attorneys, OPR-DOJ, IG-DOJ and two Attorney Generals Barr and Garland. The attached complaint to AG Barr is extremely revealing. (**APPENDIX C**)

3. Whereas it is unquestionable the Petitioner was a victim of crimes by the prosecutors/Govt. Agents, was there a miscarriage of justice when the Dist. and Circuit Court ignored the Rights of Crime Victims under 18 U.S.C §3771.... ***(a)****...person who has suffered physical.....financial, or emotional harm as a result of commission of a crime....(7) The right to proceedings free from unreasonable delay...(8) The right to be treated with fairness and with respect for the victim's dignity and privacy...****(d)(3)....*** *The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals .... The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed,*

unless the litigants, with the approval of the court, have stipulated to a different time period.... when the courts denied any hearing, much less even failed to address the crimes in any written opinion, thus denying the victim of crimes (Petitioner) the right to relief under §3771 that requires an expeditious review and opinion?

4. Can a Certificate of Appealability (COA) be denied by District and Circuit Court to review a claim of actual innocence that is based upon fraudulently obtained indictment that is verifiable from Grand Jury Transcript and DEA-6 reports, where copies of actual documents were also submitted to the court by the petitioner to show that the indictment in its entirety was fraudulently obtained using criminal conduct and other egregious misconduct by two prosecutors and two Federal Agents in addition to NINE (9) GJR (6)(e)(1) violations by meeting with the GJ off the record while the GJ was in session in violation of the accused's Due Process and Equal Protection clauses of V and XIV Amendments and then this fraudulent indictment was presented to the trial jury in violation of IV Amendment where the trial jury was fed with the *"fruit from a poisonous tree"* to obtain a conviction?

5. Should the trial verdict be vacated because *"fruit from a poisonous tree"* (of a fraudulent indictment) was knowingly presented to the trial jury in violation of IV Amendment rights?

6. Are the courts, District as well as Circuit, obligated to review a claim of actual innocence

pursuant to §2255(f) (4) that was 'newly discovered evidence' from the Grand Jury transcript not previously available to an incarcerated inmate and to which the statute of limitations is not applicable (because it was satisfied) instead of dismissing it and then denying a COA to preclude the issue from being appealed?

7. Can the Petitioner's trial attorney withhold from his/her client a transcript of Grand Jury that was released pretrial by making an excuse that he needs the court's permission to do so, as was done in this case? Also, is it appropriate for the court to deny the transcript of Grand Jury to a pro se when the transcript has already been released pretrial but the pro se did not have it in prison? And, is it a violation of Due Process rights by Govt. to oppose as well as miscarriage of justice by Dist. Court to deny the Petitioner the transcript of the already released superseding indictment that the Petitioner to this day is being denied access to and has prevented the Petitioner from fully presenting his case of actual innocence?

8. Does the Solicitor General have a moral, ethical and professional along with Constitutional obligation to immediately upon receipt of this Petition, inform the Supreme Court that the indictment of this petitioner was indeed fraudulently obtained in violation of **IV, V & XIV Amendments** using fabrication of evidence, fabricated witness, altering multiple records along with NINE (9) verified episodes of GJ Rule

6(e)(1) violations where the prosecutors met with the grand jury while in session, of which there is no transcribed record....similar to the precedent set by the Solicitor General in the famous **Mesarosh v. United States, 352 U.S. 1 (1956)** or what was stated in the famous **Napue, 360 U.S at 269-70** case so as not only to prevent the wasting of Supreme Court's time and resources as well as to protect the Equal Protection and Due Process rights of the accused that Government is Constitutionally mandated/ obligated to protect?

9. Should the two prosecutors that were involved in criminal conduct of fabricating evidence; fabricating witness; altering multiple records and also using a prisoner to present a totally fabricated testimony to the Grand Jury in spite of AG William Barr; AG Garland; IG-DOJ Horowitz; OPR having been informed with formal complaints along with the Dist. Court and Circuit Court being informed in court filings, be allowed to make court appearances which essentially is resulting in verified criminals prosecuting criminal?

10. Are the District and Circuit Courts obligated to address verified exposed evidence of criminal and other egregious prosecutorial misconduct that is carried out behind the veil of secrecy of the Grand Jury in violation of the Petitioner's **IV, V & XIV Amendments** rights and in failing to do so, have the District and Circuit Courts violated **Petitioner's IV, V & XIV Amendment rights**

in consideration of the Supervisory Power that the courts hold over the Grand Jury proceedings?

11. Should an amendment that is filed after the AEDPA clock has stopped but the amendment is timely and fully consistent with FRCP 15(a) be considered untimely when §2255 rules do not provide guidance to amendments and courts are applying Rule 15 to amendments? In other words, why should an amendment that properly follows a non-responsive pleading, e.g. a Motion to Dismiss, and is in compliance with 15(a) be considered untimely and subjected to court discretion to allow such an amendment pursuant to 15(c) when the rules pertaining to 15(c) specifically pertain to amendments filed <u>after</u> a responsive pleading while 15(a) rule is specifically meant to accommodate amendments after non-responsive pleadings and 15(a) has its own provisions for 'timeliness'?

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The Opinion of the United States Court of Appeals for the Eleventh Circuit was entered on September 28, 2022 and is located at Appendix page A1.

The Order on Rehearing of the United States Court of Appeals for the Eleventh Circuit was entered on December 30, 2022 and is located at Appendix page A9.

JURISDICTION

The Supreme Court has jurisdiction because the Petition for en banc review was denied on December 30, 2022.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 18 USC § 242 (see A159)
2. 28 USC § 535(b) (see A159)
3. 18 USC § 4 (see A160)
4. 18 USC § 3771 (see A160)
5. Grand Jury Rule 6(e)(1) (see A167)
6. 28 USC § 2255(f)(4) (see A167)
7. FRCP 15(a);(c) (see A168)
8. FRCP 60(b)(1);(b)(2);(b)(3);(b)(4) (see A169)
9. FRCP 60(d)(1);(d)(3) (see A170)

STATEMENT OF THE CASE

The Honorable Supreme Court is presented this case to seek justice for an actual innocent Petitioner whose indictment and conviction was fraudulently obtained while the courts violated the Petitioner's Due Process and Equal Protection Constitutional rights by dismissing the case on procedural basis that is also questionable, without reviewing the submitted evidence. Such violations of rules and laws served to knowingly inflict injustice upon an innocent person in total violation and absolute disregard of this Petitioner's Constitutional rights. This Petitioner suffered injustice in the face of undisputable/incontrovertible evidence that was also provided to the Court in the form of actual copies from Grand Jury transcript and DEA-6 reports for ease of verification and dispel any notions of speculation. The courts also had the option to review the evidence under the provision of Equitable Tolling that was pleaded but dismissed it as well.

Grand Jury Fraud that can be verified from Doc. 441, 447 and involved some of the following examples:

i) Patient Loomis stated he saw Dr. Azmat in Savannah and then upon realizing that Dr. Azmat was no longer working there at the time, the DEA-6 altered to state he saw Dr. Azmat in Atlanta area to which he testified before the GJ and was also made to identify Dr. Azmat's photo even though he was never seen or prescribed by Dr. Azmat!! Truth is that he was seen and treated by Dr. Sved in Atlanta because Dr. Azmat was not working in Atlanta at

the time. It was a total fake and fabricated witness who was only used before the Grand Jury (GJ) and not even presented at trial.....criminal act!!!

ii) Patient Bradley testified to a conversation with the clinic manager Dan Wise and described him as "bald" looking like "Mr. Burns" from TV show The Simpsons. AUSA Gilluly kept egging him on with repeated reminders of "Mr. Burns". Truth is that Wise has a head full of thick hair and AUSA Gilluly knew what Wise exactly looked like because Wise was not only their witness before the GJ, but also his photo was a GJ exhibit! As if this was not enough, Wise had not even started to work at the clinic at the time and when asked during trial testimony, Wise had no recollection of the fake encounter that was presented to the GJ!! It was total fake and fabricated testimony....criminal act!!!!

iii) The superseding indictment was obtained by fabricating a false narrative and using a prisoner from jail to state that his prescriptions were post-dated. This untruth was exposed when the prisoner at trial under oath admitted to lying when confronted with clinic records to show that he signed-in on the actual date when he was properly prescribed. This 'story' was fabricated by Govt. and the prisoner was used to deliver it to the GJ in return for what amounted to almost 'get out of jail for free' with dismissal of felony charge instead of "*dozens of years of incarceration*" that he faced for meth trafficking as he testified under oath.....criminal act!!!

iv) DEA Investigator Sikes testified that they interviewed 50 of Dr. Azmat's patients, yet Govt. used at least half a dozen prisoners' false

testimony to obtain an indictment.....what a shame!! **(Doc.441).**

v) The GJ was fed the false narrative that Dr. Azmat prescribed without examining patients. This was dispelled when the DEA-6 report of patient Rhorer was altered from initially stating that she was examined for 15 minutes to not being examined at all. However. Rhorer testified before the GJ that she was examined in detail. AUSA Gilluly knew the DEA-6 was altered but tried 3 times to get Rhorer to retract her testimony but she remained consistent. Moreover, clinic employee Afthinos testified that Dr. Azmat took 15-20 minutes with each patient and LeFrancois, the owner asked Wise the manager to talk to Dr. Azmat for taking too long with patients. This was a fabricated testimony...criminal act!!

vi) A false narrative was presented to the GJ that Dr. Azmat was prescribing to drug addicts with multiple witnesses being used to say that the waiting room was full of drug addicts and patients falling off the chairs. This was dispelled by Rhorer, a patient when she point blank contradicted what was stated in the DEA-6 stating: "I never said that"; and the testimony of Gable that there were 20-25 patients as described above, was dispelled by Bradley, another patient that there were only 3 other patients on the same day which is corroborated by the clinic sign-in sheet for the day! Moreover, employee Afthinos testified that Dr. Azmat never prescribed to anybody who failed a urine drug screen. This was fabricated evidence....criminal act!!!

vii) DEA Agent Kahn testified before the GJ that *"where he [Dr. Azmat] was involved with a procedure involving the heart in which many of people that he did surgery on passed away..."* Truth

is that Dr. Azmat is not a heart surgeon and never did procedures on the heart so *"many"* of the patients that he never operated upon could not have died. Moreover, *"many"* of Dr. Azmat's patients never *"passed away"* from ANY surgical procedure that Dr. Azmat performed. This was totally fabricated testimony and extremely prejudicial ... criminal act!!

viii) **Doc. 441/447** reveals 9 (nine) separate episodes of prosecutors meeting with the GJ, off the record in violation of **GJ Rule 6(e) (1)** that requires that "***all proceedings, except when the grand jury is deliberating or voting, be recorded....***" As an example, in the middle of his testimony, the witness was asked to step out so Gilluly could "address" the GJ, of which there is no transcribed record!! These off the record private meetings with the GJ in itself are grounds to dismiss the indictment!!

The above are only a few examples and a sample of what was presented to the GJ and details and several other examples can be found upon reviewing the 50 page **Doc.441** that can be verified from the copies of GJ transcript and DEA-6 reports presented in **Doc. 447.** Also see **APPENDIX C**, Letter to AG Barr that lists only TWELVE (12) such examples.

The violations of Constitutional rights were two-fold by government. **Firstly, by fraudulently obtaining an indictment** by falsifying evidence and then presenting falsified evidence, fabricating evidence, altering multiple records and NINE (9) Grand Jury Rule 6(e)(1) violations. **Secondly, by not accepting responsibility for these acts, that included several criminal acts, upon getting exposed,** and then vigorously fighting to get the case dismissed on procedural basis to protect the

prosecutors and government agents at the expense of incarceration and suffering of an innocent person, while letting the two verified accused criminals make court appearances and this was acceptable to the Dist. and Circuit Court!! The Honorable Supreme Court would certainly find such conduct unacceptable because it impacts each and every case that these verifiably accused criminals are presently prosecuting. How can the United States claim to be the leader in protecting the legal rights of its citizens when the prosecutors engage in all types of misconduct (including criminal conduct) while hiding behind the veil of secrecy of the Grand Jury proceedings and courts find excuses to protect them by dismissing the case?

The Supreme Court certainly should be very disturbed by such verifiable evidence as it must be agonizing to think of how many other GJs have similarly been corrupted and should, at a minimum demand answers from the Solicitor General.

A second major issue related to Constitutional violation was related to the Dist. Judge, in his very opening statement and very first sentence giving the jury the instruction regarding the indictment by directing that: ***"you must consider it as evidence of defendant's guilt...."*** This binding instruction sealed this Petitioner's fate to a fair trial in gross violation of Due Process right under the Constitution. There was no curative instruction given to the jury. This issue was presented in an Amended §2255 filed pursuant to FRCP 15(a) within court granted extension for filing a response to government's non-responsive Motion to Dismiss the original §2255. This issue has never been addressed by the Circuit Court since a COA was denied to kill

the issue by stating that there were no Constitutional issues. This Petitioner then followed by filing a **Rule 60 Motion** with issues related to **60(b)** as well as **60(d)**. **The 60(b) part was denied a COA for lack of Constitutional issues while the 60(d) part has never been addressed by either the Dist. or the Circuit Court**, as if it was never filed. The Rule 60 Motion (**APPENDIX B)** was submitted with issues related to **60(b)(1)**, **60(b)(2)**, **60(b)(3)**, **60(b)(4)** as well as **60(d)(1)** and **60(d)(3).** It was arbitrarily divided into two parts by the Courts as one part requiring a COA while the second part not requiring a COA related to the original §2255 that were totally unrelated to the Rule 60 Motion that Dr. Azmat had presented and then denying COA and dismissing it without explanation. In other words, it appeared to be a pre-determined denial using a convoluted non-reasoning that was used to deprive Due Process in order to avoid addressing any presented issues, even though it was made clear that it was a claim of actual innocence that was in part based upon 'newly discovered evidence' pursuant to §2255(f)(4) to which the statute of limitations was not applicable.

Dr. Azmat begs the Supreme Court to review the **Rule 60 Motion (Doc.503, APPENDIX B) and Motion for Reconsideration (USCA11 Case: 20-14262 Date Filed: 12/21/2020)**, to enable the Supreme Court to clearly see what 'games' the courts played on a pro se so as to avoid addressing the actual issues contained in the Motion, including the claim of actual innocence. The Supreme Court is rightly expected to be very disturbed by the legal wrangling and maneuvering used to inflict injustice upon an innocent pro se petitioner. To clarify, both

the Dist. as well as the Circuit Court steadfastly were stuck on the original §2255 and never allowed the Petitioner to challenge it or appeal the ruling and never addressed any of the reasoning to allow the amended §2255. The irony is that the Circuit Court gave COA to appeal the issues in the original complaint while Dr. Azmat was appealing that the original complaint was not even the operative pleading of the case and it was an error by the Dist. court to treat it as the operative pleading of the case. In other words, the manner in which the Dist. court dismissed the Amended Complaint was the basic issue that the Circuit Court was presented to resolve. The very basic issues of appeal were that **i)** the Amended Complaint was timely per Rule 15(a)(1) since Govt. had filed a Motion to Dismiss the original Complaint and court applied 15(c) to dismiss it; **ii)** A claim of actual innocence was alluded to in the **Amended Complaint ISSUE III (Doc.411)** that was subsequently proven upon obtaining the Grand Jury Transcript such that the Amended Complaint could not be dismissed as time-barred; **iii)** The claim of actual innocence was in-part based upon §2255(f)(4) which was 'newly discovered evidence' of criminal conduct that was used to fabricate a totally fraudulent indictment, verifiable from GJ transcript that was also provided to the Dist. court **(Doc. 441, 447)** to verify the claim of fraudulent indictment and conviction. **iv)** How could both, the Dist. and Circuit Court disingenuously dismiss the claim of actual innocence by stating/agreeing that the claim was not made in the Original and Amended Complaint **(Doc. 401/403, 411)** that the Dist. Court referenced **(APPENDIX B , page 47)**. While Dr. Azmat filed

over a dozen motions etc. to show that the amended complaint (**Doc.411**) contained the issue of fraudulent indictment and conviction based upon what transpired at the Grand Jury and the Trial Judge's opening instruction to the jury....but these issues were never addressed by either court. The **Rule 60 Motion** presented the court's errors etc. but was denied by the Dist. court without reviewing or ruling on or even commenting on a single issue and then denied the COA as well as IFP because the issues were "frivolous", in just this one word denial and the Circuit Court followed suit.

The very first obligation for the Solicitor General (SG) is to review the attached as well as other case documents and forthwith honorably inform the Supreme Court that this Petitioner's indictments were indeed a Fraud upon the Court. As such, the SG should honorably and immediately move to withdraw the fraudulently obtained indictments. This would be consistent with what the Solicitor General did in the famous **Mesarosh v. United States, 352 U.S. 1 (1956)**. Should the Solicitor General fail in her obligation to protect the Constitutional rights of the accused, the Supreme Court, upon verification of this Petitioner's claims should hold the Solicitor General in contempt for her ethical, moral and professional turpitude. While this pro se is not a lawyer, the question also comes up: is it not a crime to protect criminals per **18 U.S. § 4 Misprision of felony** (*Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or*

imprisoned not more than three years, or both) ...this is a serious question and a serious issue because each and every DOJ official who were informed (yes, including Attorney General Barr & Garland!!) and were in a position to act, satisfied all four elements of Misprision because their silence and inaction even upon being specifically informed was a constructive step to protect the criminals, keeping in mind that there is no immunity for criminal conduct such as Misprision!!!!. Also, an official in his/her official capacity has no legal authority to protect a criminal, even amongst its own ranks (**18 USC § 242; 28 USC 535 (b).....APPENDIX B, pages A25, 27-28,134**). There are a dozen examples that were reported in the complaint that Dr. Azmat sent to AG William Barr and is attached as **APPENDIX C.**

Such a demand of the Solicitor General is entirely reasonable given the fact that formal complaints were submitted to AG William Barr; AG Merrick Garland; IG-DOJ Horowitz, OPR, USA Bobby Christine and present USA Davis Estes, each of whom was provided copies of the record to verify the claims. Everyone in DOJ has maintained their steadfast silence in total disregard to this Petitioner's actual innocence. Solicitor General's confession would serve to exonerate an innocent person while serving justice and conserving Supreme Court's needless time and resources.

The Supreme Court should rightly be appalled and enraged at the revelation of how the DOJ is abusing the sanctity of solemn judicial proceedings before the Grand Jury where being honorable without oversight is paramount and the Supreme Court should be equally appalled at the total lack of accountability by any office of the DOJ upon

receiving formal complaints of misconduct, including criminal conduct and not lift a finger to even respond, much less hold the perpetrators to account for their actions. In USA, we laugh at others in lesser developed countries where the rights of citizens are nonexistent and at the mercy of prosecutors and 'kangaroo courts' while the very same is happening in this great Nation, albeit behind the veil of secrecy of the Grand Jury. While it is not known how many other cases are similarly affected, one such case is one too many, and reveals how the prosecutors abuse the GJ in every possible manner that they are able to....indeed an extremely sad revelation of how corrupt our DOJ actually is. Who is to believe that this was the first time that that these prosecutors engaged in such misconduct or these are the only ones in DOJ that freely engaged in misconduct before the GJ. **Dr. Azmat asks if any of the Honorable Supreme Court Justices has seen the amount and type of misconduct before the GJ (Doc. 441,447) in a single case in their entire career.** The Supreme Court should send a clear message to deter others in DOJ by setting an everlasting example. Misconduct by the prosecutors is not new and only flourishes because traditionally the courts refer it back to the DOJ for accountability which has been proven to be no more than 'lipstick on a pig' or a 'window dressing' at best. AUSA Gilluly was rewarded with a promotion following this case! Upon reviewing the record and verifying the claims, the Supreme Court should certainly be distressed to learn that presently in our justice system two verifiably accused criminals (AUSAs Knoche and Gilluly) are prosecuting criminals while the Dist. and Circuit

Court, even after being informed are indifferent to this revelation. How did our justice system stoop so low and why have the Courts allowed it to happen in the face of verifiable information that has also been provided to the courts?

The Supreme Court needs to step in ...because... We the people deserve better.....

BACKGROUND

Dr. Azmat was charged with all the usual offenses that the DOJ uses to charge physicians that run a so called "pill mill" including conspiracy. This was in total disregard to the fact that Dr. Azmat only worked for 19 (nineteen) days at the clinic and **was fired** because he reduced everybody's medication up to 66%; did not prescribe to those that failed the drug screen; spent 15-20 minutes examining each patient; *"did not write enough"* per the clinic manager's sworn testimony; verified every patient's record before seeing and prescribing (e.g. on 3.11.2011 while 30 patients signed-in, only 2 were seen and prescribed!); told the clinic manager that *"he wasn't going to do what they [clinic manager] told him told him to do"* because *"his license was on the line"* per the clinic manager's sworn testimony; called the Savannah Counter Narcotic Taskforce (CNT) Agent Tyrone asking for guidance because Dr. Azmat said *"I want to do the right thing"*, which are Dr. Azmat's words in a recorded conversation! Who would doubt that Dr. Azmat had any intention or was running a "pill mill" with this kind of actual evidence from clinic records and employee testimony and not just denials by Dr. Azmat? Yet, he was also

charged with conspiracy when the Clinic owner testified that he called a recruiter to look for a replacement on the very first day **and fired after only working 19 days at the clinic upon finding a replacement**. As another example, upon discovering that a patient had deceptively obtained a prescription, Dr. Azmat called the pharmacy and there is a note on the chart that states that the prescriptions were actually destroyed. Do "pill mill" doctors make such calls?

Based upon the above information, that is verifiable from the record in the court, any jurist of reason or any medical professional or even a lay person would solidly agree that Dr. Azmat's actions and sworn testimony of employees leaves absolutely no doubt that Dr. Azmat neither had any intention nor was running a so called "pill mill" that he was accused of and charged with.

The next obvious question relates to how and why Dr. Azmat ended up working at a pain clinic. The answer once again implicates the DOJ's misconduct.

The DOJ at the time was extremely busy charging physicians and hospitals under the **False Claims Act (FCA)** and collecting billions in settlements. Dr. Azmat was a victim of such an ill-conceived undertaking by the DOJ (**CV: 507-092 SD Ga)**. Dr. Azmat stood up against the DOJ as a pro-se, refused to settle the case and in fact made the DOJ withdraw the bogus case after signing to release the DOJ of any liability for its ill-conceived charges for free, immediately after a status conference in the Judge's chamber when laid bare was the made-up evidence that DOJ was working on (much like this case!). Prior to this, and in order to

win the FCA case, the HHS started harassing Dr. Azmat with threats to excluded Dr. Azmat from all Govt. related health programs like Medicare, Medicaid, Tricare etc. to ensure the DOJ of a victory in the FCA case and to coax Dr. Azmat into a settlement. Once again, knowing that it was a bogus threat, Dr. Azmat showed up at the HHS in Washington DC and gave a power-point presentation to the IG-HHS and other senior officials and demanded the witch-hunt to stop. This is exactly what happened and the HHS harassment came to a screeching halt. At the time when all this was going on, government agents were busy following Dr. Azmat and threatening each and every place of Dr. Azmat's employment with consequences for Dr. Azmat's work. The CEO of the hospital in Baxley Georgia is an example of such a call/visit. A VA Hospital and a diet clinic are other examples.

All that is stated here is verifiable from court records, yet the courts have paid no heed. This is no different from what happens in banana republics that we laugh at while living with a false sense of satisfaction that this does not happen in our Great Nation where our prosecutors are honorable and Attorney Generals vigilantly hold the violators to account. Evidence in court records (**Doc. 411,441,444,447,479,503**) conclusively put such ill-conceived notions to rest.

Given the above background, it is no wonder that Govt. wanted to get even with Dr. Azmat. Since they could not find anything substantive to charge Dr. Azmat with, the DOJ had to engage in misconduct that included criminal and other egregious misconduct by the prosecutors and DEA Agents while hiding behind the veil of secrecy of the Grand

Jury to fraudulently obtain a fraudulent indictment. There would have been no need to go to lengths of criminal and other egregious misconduct if Govt. had any truthful evidence to obtain an indictment. This in itself speaks volumes for Dr. Azmat's innocence.

The **superseding indictment** was just as fraudulently obtained by recruiting a prisoner from jail who was facing "dozens of years of incarceration" and in return was rewarded with a short halfway house stay for providing testimony that was totally fabricated by prosecutors/DEA Agents of Dr. Azmat postdating his prescriptions. The prisoner under oath admitted that the prescriptions were not postdated, which are verifiable from court records **(Doc.441)** ... .**and Dr. Azmat had to go to jail to pay for the crimes committed by the prosecutors**, while the AGs, OIG, OPR, Dist. Court and Circuit Court even after being provided with actual transcripts for verification, did not intervene. This Petitioner has confidence and great respect for the Supreme Court and fully expects the Supreme Court to intervene and hold the perpetrators of this crime accountable and long due justice can finally be served.

The irony here is that those engaged in such conduct have never been held accountable....not by the DOJ (AG, IG and OPR); not by the Dist. Court and not by the Circuit Court even though each has been provided not just references but with copies of actual documents to verify each claim.

It is apparent that the Govt. and courts have thus far failed to step in to rescue an innocent person. Dr. Azmat, an honorable person and physician whose surgical training included world renowned institutions like Cornell Univ. Medical

Center and Cleveland Clinic has had his life, career and family destroyed by the Govt. while protecting the real criminals amongst its own ranks. The Supreme Court is surely not going to let Dr. Azmat down, that is unless the Solicitor General first steps in to fulfill her obligation to save the Court's time and resources. This case goes far beyond what the corrupt prosecutors did to Dr. Azmat because it involves misconduct before the Grand Jury that more than likely extends far beyond this case. The Supreme Court is fully expected to set an example that will refrain the DOJ from engaging in such misconduct and abuse of the Grand Jury proceedings that will also serve to protect the rights of those whose fate is being or yet to be determined by the Grand Jury. It would certainly not have escaped the Honorable Court's attention that the evidence that this Petitioner has provided shows that the DOJ miserably fails to so much as lift a finger to hold anyone amongst its ranks accountable even at the cost of seeing an innocent person languish in captivity. It is indeed a sorry state of affairs at the DOJ as far as accountability is concerned that desperately needs the Supreme Court's intervention to make the DOJ wake up to reality and dispel the false sense of invincibility for which this Petition seeks the Supreme Court's intervention. Dr. Azmat's case serves as a perfect example and excuse; the benefits of which should extend to countless other cases that do not have access to the Grand Jury transcript.

The Circuit Court should have intervened, having been repeatedly made aware that this was an issue of actual innocence and fraudulently obtained indictment in multiple court filings (**Doc.**

411,441,444,447,479) (APPENDIX 2, Doc.503). Of note in APPENDIX 1 is a letter written to the Chief Judge of the 11th Circuit by the Petitioner from prison pleading for an expeditious relief for an innocent person. Instead of relief, the Judge denied the COA and the actual Court Order was never delivered to Dr. Azmat in prison. So, when Dr. Azmat asked for it, it was construed by the court as a Motion for Reconsideration and denied because no new issues were pled!!!!! We are not living in a 3rd World banana republic or are we? (APPENDIX B, PAGE 28).

Should the Supreme Court decide not to intervene, imagine the joy and enthusiasm that would spread across the entire DOJ which would embolden the prosecutors and Federal agents to freely engage in any misconduct knowing that there would be no consequences from OPR, OIG, AG, Dist. Court; Circuit Court or Supreme Court while being rewarded with career advancement as AUSA Greg Gilluly was promoted to deputy head of the criminal division following this case...imagine, a criminal being rewarded for his criminal acts.....what a sad state of affairs.....

We the people, deserve better justice.....

REASONS FOR GRANTING PETITION

Of course, it needs to be re-reiterated with the expectation that the Solicitor General would confirm the evidence in the record and honorably withdraw the fraudulently obtained indictment to spare the Supreme Court's intervention and ensure her name to be mentioned forever and every time with the

famous **Mesarosh v. United States, 352 U.S. 1 (1956)** or **Napue, 360 U.S. at 269-70** cases.

1. This is a simple case of an innocent person who was fraudulently indicted and has been made complicated by Govt. not taking responsibility of its misconduct that included criminal conduct and then fighting to get the case dismissed on procedural basis in order to protect the prosecutors' misconduct in Grand Jury proceedings. It is equally regrettable that the courts in this case have lost sight of finding ways to exonerate an innocent while using stringent and perhaps inapplicable rules and procedures knowing that it will result in injustice when laws/procedures specifically exist to enable courts to remedy any shortcoming by pro se litigants pleading actual innocence. Equitable Tolling would be one such way that was actually pled by this Petitioner, but was denied. The following was presented in the Rule 60 Motion, page 46 (**APPENDIX B**) and ignored by the Circuit Court:

> "Applicable here is what the Circuit court stated: *Federal Courts have an obligation to look behind the label of a motion filed by a pro se inmate and determine whether the motion is, in effect cognizable under a different remedial statutory framework",* **United States v. Jordan, 915 F.2d 622, 624-5 (11th Cir 1990).** Also, **Gilbert v. U. S., 640 F.3d 1293, 1323 (11th Cir. 2011) (en banc).**
>
> Dr. Azmat is mentioning this 11th. Circuit precedent to state that upon reviewing the contents of the summary judgment motion (**Doc.441**), and discovering

that the magnitude and extent of misconduct perhaps was unprecedented, the Court was absolutely obligated to intervene by finding a *"remedial statutory framework"* to address it and not find an excuse to brush it aside. The allegations that Dr. Azmat made were not unsubstantiated, because Dr. Azmat presented copies from the records to confirm the allegations. (**Doc.447**). This issue was not one to be ignored and dismissed if justice was to be served, because it related to gross abuse of the grand jury clause of the V Amendment, which required the Court to exert its supervisory power over the grand jury matter."

Also applicable here is:

> **Harris v. Nelson, 394 U.S. 286,291 (1969)** (habeas affords federal courts the *"ability to cut through barriers of form and procedural rules"*); **Frank v. Mangum, 237 U.S. 309, 346 (1915).** See also **Dretke v. Haley, 541 U.S. 386, 396, 398 (2004)** *"The unending search for symmetry in the law can cause judges to forget about justice.... the State has forgotten its overriding 'obligation to serve the cause of justice'.....Habeas corpus is, and has for centuries been, a 'bulwark against convictions that violate fundamental fairness.'"*

How ironic is it that after initially exposing and confirming the Fraud upon the Court in a **Motion for Summary Judgment (Doc.441, 444, 447)**

filed on **July 27, 2018**, Dr. Azmat has for almost FIVE (5) years been repeating this claim in dozens of court filings while the courts have paid no attention to it. It is well known that the moment Govt. is accused of any wrongdoing, Govt. files a Motion to Dismiss before the sun sets on it and courts take pride in filling pages upon pages of reasoning for dismissing bogus claims. **Why is it that in almost FIVE years of this case, Govt. has never filed such a motion, much less even denied a single claim or any accusation against it**? Govt. never responded to the summary judgment motion (**Doc.441**) with a sworn statement as required by **Rule 56** and the Dist. Court never addressed the issue in spite of being informed by this Petitioner. In fact, a **Motion for Default Judgment** (**Doc. 453**) was filed since Govt. never responded with a sworn statement, but the Dist. Court still avoided addressing the issue, perhaps knowing it was a pro se inmate at the other end! Ironically, the Motion for Summary Judgment to dismiss the fraudulent indictment (**Doc.441, 447**) was dismissed as "second amended complaint" notwithstanding the fact that it related back to substantiate the claim of prosecutorial misconduct and malicious prosecution that was ISSUE III of the Amended Complaint (**Doc.411**):

> **"III. Whether prosecutorial misconduct resulted from government using untruthful and/or perjured testimony from its DEA agent, patient witnesses and expert witnesses that the government knew was false and perjured, first to get a grand jury**

indictment and then a conviction which was a result of malicious prosecution and violation of the constitutional rights of the petitioner to a fair trial."

The allegations were clearly made in the Amended Complaint and upon receiving the Grand Jury transcript were substantiated in the Motion for Summary Judgment (**Doc.441,447**) to dismiss the fraudulently obtained indictment. As such, the Motion for Summary Judgment could not be dismissed as a "second amended complaint" because it related back to the Amended Complaint and the Amended Complaint could not be dismissed as time-barred because the claim of malicious prosecution and grand jury misconduct was the basis of actual innocence claim. Moreover, the claim, in addition was based upon timely filed 'newly discovered evidence' (**§2255 (f)(4)**) of criminal conduct ***((f)*** *1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—*

(*4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.)*

. Of consideration here is that the Dist. Court dismissed the Amended Complaint, and Motion for Summary Judgment and Motion for Default Judgment and requests for Grand Jury transcript even though it was released and Dr. Azmat did not have it in prison, in a single and same ruling (**Doc.455**). The court's error was not inadvertent.

Justice should not be one sided...Govt. should be held just as accountable for its wrongdoings as are the ordinary citizens. Such injustice is seen in lesser

developed countries and so called 'banana republics'. We are better than that.....

We the people deserve better from our courts.....

2. Applicable here is the recent decision by the Supreme Court in the **Kahn v. United States, 20-1410** that pertains to the burden of proving intent to do harm in prescribing narcotics, and pursuant to the Supreme Court Decision, this case should be remanded to the Circuit Court. The evidence presented supra relates to the fact that the sworn testimony of Clinic Manager states that Dr. Azmat told the manager that he was not going to do what they (clinic) wanted him to do because his license was on the line. Relevant here is also the call that Dr. Azmat made to law enforcement (CNT Agent Ron Tyran) seeking guidance because Dr. Azmat wanted "to do the right thing".

3. The Dist. as well as Circuit Court did not comply with their own precedent in ruling Dr. Azmat's Amended Complaint (**Doc.411**) as time-barred and dismissing it even though the courts were repeatedly reminded of their precedent which the courts totally ignored and first presented in **Doc. 503, 508** (below) as well in each subsequent filing.

Dr. Azmat produced Dist. Court's precedent in the Rule 60 Motion, where an amendment was allowed, and that too, over a year after the original was filed, but in a timely manner following a Motion to Dismiss filed by Govt., and here it is, once again:

> **Lee v. United States, CIVIL ACTION No. 2:16-cv-93, at *1 (S.D. Ga. Jan. 6, 2017) *"Lee filed a Motion to Vacate, Set Aside, or Correct his Sentence pursuant***

> ***to 28 U.S.C. § 2255 contesting his conviction obtained in this Court on July 23, 2015. (Doc. 1.) Respondent filed a Motion to Dismiss on July 27, 2016, and on August 8, 2016, Lee filed a Motion to Amend his Motion to Vacate, Set Aside, or Correct his Sentence. (Docs. 3, 4.).....Lee filed his leave to amend within the twenty-one day window for filing as a matter of right. Accordingly, Lee may amend his Motion to Vacate, Set Aside or Correct Sentence as a matter of course, and the Court, therefore, GRANTS Lee's Motion to Amend."***

Dr. Azmat presented (below) a precedent from the 11th Circuit where an amendment was allowed even after the statute of limitations had expired and the plaintiff could not even satisfy the tolling requirement. This precedent was presented in the Rule 60 Motion (**APPENDIX B**) and should dispel any reasoning that the Circuit Court used to deny Dr. Azmat's Amended Complaint (**Doc.411**):

> **Patel v. Diplomat 1419VA Hotels, LLC, 605 Fed. Appx. 965, 965-966, 2015 U.S. App. LEXIS 9225, *3-5, 2015 WL 3482932** , ***"the dates alleged in the complaint make it clear that the statute of limitations bars Paresh's claims unless Paresh alleged facts supporting tolling of the statute of limitations.....But Paresh's allegation....is insufficient to satisfy the pleading requirements as to***

> ***tolling*****.....***The district court did err, however, in not granting Paresh leave to amend. ... Federal Rule of Civil Procedure 15(a) directs that district courts give leave to amend freely [**5] "when justice so requires."* See **Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir. 2001)**. *"Generally.....a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice.'"* *Id.* *(alteration in original) (quoting* **Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991))**. *Accordingly, the district court's order dismissing the complaint with prejudice is reversed, and the case is remanded to allow Paresh the opportunity to amend the complaint.* (Emphasis added).

As recently as **4.17.2023** the Circuit Court (**USCA 11 Case: 21-12570**) in EXACTLY the same date-line as this case allowed an Amended Complaint pursuant to 15(a). The original complaint was filed a day before the statute of limitations expired on March 20, 2020 (just like in Dr. Azmat's case when it was filed on 5.15.2017) and the Circuit Court ruled that the amendment was allowed that was filed 8 months later on 11.19.2020 because there was no responsive pleading (just like in Dr. Azmat's case when the amendment was filed on 10.10.2017 following Govt.'s non responsive Motion to Dismiss) and Court stated:

> *"At the time of filing of the amendment, no Defendant had filed any responsive pleading—a fact which the*

> *government does not contest. Thus, under Rule 15(a)(1), [] was entitled to file its amended complaint without consent from Defendants or leave from the district court."*

It is glaringly apparent that both, the Dist. as well as the Circuit Court paid no attention to when their own precedent was presented (**Rule 60 Motion: APPENDIX B**) and Dr. Azmat can rightly state that justice was denied. The Supreme Court is requested to intervene not only to provide relief, but also re-set a precedent that others may not suffer as Dr. Azmat has suffered.

4. Dr. Azmat qualified for relief under **60(b)(4)** (Judgment was void) because due process was denied when the Dist. as well as Circuit Court never evaluated or addressed the claim of actual innocence that was presented as **§2255(f)(4)** based upon newly discovered evidence of fraudulent indictment after gaining access to the Grand Jury transcript and submitted as a **Motion for Summary Judgment** (**Doc.441,447**). The Magistrate Judge dismissed it as "second amended complaint" and "dead on arrival". As if this was not enough, the Dist. Court denied the claim of actual innocence by stating that the claim was not made in either the original §2255 or the Amended Complaint. As such, Dist. Court confessed that both the original §2255 as well as the Amended Complaint were reviewed. (**Doc.461**). **The Dist. Court did not have the authority to review the contents of the Amended Complaints and rule on any issue in it unless it was first admitted as the operative proceeding of the case. In which case the original complaint is rendered moot. What the Dist. Court, by its own ruling**

state that the Court reviewed both, the Original and Amended Complaints and then decided to dismiss the Amended Complaint and revert back to the Original Complaint as the operative pleading of the case. How could the Court review both complaints...and the Circuit Court ignored it when it was presented. This issue was presented by Dr. Azmat in **Doc. 508, pages 16-19** where **Coventry First, LLC v. McCarty, 605 F. 3d 865,870 (11th Cir. 2010)** was presented as a precedent where the Court stated that it had no authority to review the contents of an amended complaint unless it was filed a Motion to Amend instead of an amended complaint as a matter of course. Here, the Dist. Court de novo construed Dr. Azmat's Amended Complaint, that was filed as a matter of course as a Motion to Amend (without explanation!) and then exerted its authority to look into it and dismissed it without addressing any issues it contained and reverted back to the original complaint that had been rendered moot and abandoned upon the court's review of the Amended Complaint and then resurrected from the dead the original complaint to issue an R&R. In other words, the court was free-wheeling to find an excuse to dismiss the Amended Complaint. (**APPENDIX B Doc.503, page 18**).

The transcript of superseding indictment was also released by Govt. but Dr. Azmat's trial attorney refused to provide it to Dr. Azmat. A motion was filed and Govt. responded by arguing that the transcript was not needed because Dr. Azmat was time-barred notwithstanding the fact the transcript was needed to fight the time-barred argument that Govt. was making because actual innocence is not

time-barred. In any event Govt. had no authority to decide on Dr. Azmat's behalf what pre-trial documents to use in post-trial proceedings. What is even **more prejudicial is the court's denial by stating that "document unsealing without a relevancy" would be a "fishing expedition for the sake of turning up new potential 2255 claims". (Doc. 455)**. Such a ruling by the Dist. Court was made after the Court had already been informed that the transcript had been released and Govt. never denied that it had been released but Dr. Azmat did not have it in prison, having being taken into custody at the end of the trial without so much as a piece of paper! And, this ruling by the court was made over 6 months after the Dr. Azmat had filed the Motion for Summary Judgment based upon the transcript of the original Grand Jury indictment and also provided evidence from the already released transcript of superseding indictment to the court showing how the superseding indictment was also fraudulently obtained by fabricating evidence and using a prisoner to present it to the Grand Jury **(#iii page 3 supra)**. Dr. Azmat had every right to that transcript and the irony is that TO THIS DAY THE GRAND JURY TRANSCRIPT OF THE SUPERSEDING INDICTMENT IS BEING WITHHELD FROM DR. AZMAT IN VIOLATION OF DR. AZMAT'S DUE PROCESS RIGHTS UNDER THE CONSTITUTION AND NEITHER THE DISTRICT NOR THE CIRCUIT COURT, HAVING BEEN WELL INFORMED HAVE TOTALLY IGNORED THE ISSUE....AS IF IT WAS NEVER PRESENTED TO THE COURT!! Assuming that the transcript has not been released, it was still incumbent upon the Courts to review and release the

transcript based upon what transpired before the original GJ and the fraud exposed in fraudulently obtaining the superseding indictment (**APPENDIX B, page A16 & Doc.441 pages 42-45**.).

There is plenty more evidence from the record which will be provided in the BRIEF OF PETITIONER because Dr. Azmat holds the belief that the Supreme Court would certainly intervene to restore the dignity and confidence in the justice system after seeing the amount of injustice that Dr. Azmat has suffered as an innocent person and the record is clear that Govt. has never denied or contested ANY allegation, to ensure that such is never repeated to harm another in the future.

SUMMARY

The Honorable Supreme Court must have figured out that the disconnect here is that the both, the Dist. as well as the Circuit Court have continued to deny relief to Dr. Azmat by steadfastly treating the original §2255 as the operative pleading of the case while totally ignoring and not even considering or reviewing what Dr. Azmat was repeatedly reminding the Dist. and Circuit Court that it was contradictory to the Circuit and Dist. Court's precedent (as quoted above!). The Circuit Courts never entertained an appeal to challenge this as an erroneous ruling by the Dist. Court. This served the interest of the Court because it ignored the opening instruction to the jury that they ***"must"*** consider the indictment as evidence of defendant's guilt as well as covered all the misconduct by Govt. to obtain a fraudulent indictment as well as the misconduct by Govt. at trial (**Amended Complaint,Doc.411**) was

totally ignored and dismissed without consideration even though it was presented as a case of actual innocence based upon 2255(f)(4). In adopting and following through with this strategy the courts totally ignored and never considered or addressed whatever Dr. Azmat was presenting at the cost of knowingly violating Dr. Azmat's Constitutional rights of DUE PROCESS &EQUAL PROTECTION UNDER THE LAW (**V & XIV Amendments**). As an example, consider how the courts dismissed Dr. Azmat's Rule 60 Motion (**APPENDIX B)** by arbitrarily dividing it into two parts without specifying what sections or issues belonged to what section when it was clearly filed pursuant to 60(b)(1),(2),(3),(4) & 60(d)(1),(3) subsections of Rule 60. The Circuit Court went a step further by stating that a COA was granted for the issues that the Dist. Court had addressed and dismissed the Rule 60 Motion by stating that Dr. Azmat had not contested any of those issues while ignoring the fact that the very issue of treating the original complaint as the operative pleading of the case was being appealed and was central in the **Rule 60 Motion (APPENDIX B)**. The Circuit Court has not addressed this issue and if a COA was required, it should have been granted.

A review of what Dr. Azmat filed as the Rule 60 Motion and the Dist. Court's ruling leaves no doubt that that NONE OF THE ISSUES THAT DR. AZMAT PRESENTED IN THE RULE 60 MOTION WERE DIRECTLY OR INDIRECTLY ADDRESSED BY THE DIST. COURT, AND AS SUCH DID NOT EVEN REQUIRED A COA! MOREOVER, THE **60(d)(1) & (3) issues were not subject to COA, yet were never addressed by either the Dist. or**

Circuit Court....as if they were never presented!!

Regardless, what the courts avoided addressing was what Dr. Azmat kept repeatedly pleading that the Amended Complaint could not be dismissed as time-barred for TWO REASONS: Firstly, because it contained the allegation of actual innocence based upon fraudulent indictment that was proven in the Motion of Summary Judgment (**Doc.441**); Secondly, it was filed pursuant to 15(a) in a timely manner per rules governing Rule 15 following Govt.'s NON RESPONSIVE Motion to Dismiss the original complaint per Circuit Court's own precedent!!! The entire appeal was based upon these two basic issues that the Circuit Court never addressed by denying COA to avoid addressing the issues.

This strategy to keep everything vague is with the expectation that the Supreme Court is unlikely to take up a pro se's appeal and the case would die. How sad is it to see the courts manipulate the justice system. The courts have become a party to this case instead of arbitrators, while Govt. is sitting on the bench because the courts are fighting the case for the Govt!

Regardless of any arguments, HOW and WHY did the courts not address the claim of actual innocence when the indisputable evidence was also submitted to enable the Dist. as well as the Circuit Court to substantiate the claim when the courts had the option of invoking Equitable Tolling that was actually pled by Dr. Azmat but was dismissed by the court?

***Phelps v. Alameida*, 569 F.3d 1120, 1141 (9th Cir. 2009)** *("in wading through*

> *this endless morass of procedural questions, and frequently answering them incorrectly, a crucially important point has been repeatedly overlooked: Over eleven years ago, a man came to federal court and told a federal judge that he was being unlawfully imprisoned in violation of the rights guaranteed to him by the Constitution of the United States. More than eleven years later, not a single federal judge has ever once been allowed to seek to discover whether that claim is true. The United States Supreme Court has made clear that the equitable power embodied in Rule 60(b) is the power "to vacate judgments whenever such action is appropriate to accomplish justice."")*

This is exactly what Dr. Azmat has been going through!

CONCLUSION

In conclusion, based upon what has been stated and submitted, this Petitioner makes a heartfelt plea and begs the Supreme Court for intervention by GRANTING A WRIT OF CERTIORARI such that justice is finally served to exonerate an innocent person who was fraudulently indicted (verifiable evidence!) and has thus far been deprived of his day in court.

This Petitioner also begs the Honorable Court's forgiveness for a rather long petition along with the hand scribbling on some documents included in the

APPENDIX and referenced court documents, which was done as a crude form of note taking in prison by a novice pro se! Also, the referenced documents are from Dist. Court Docket: CR: 413-28.

Respectfully submitted,

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