No. _____

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

APPENDIX

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[DO NOT PUBLISH]

FILED: September 28, 2022

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-14262
Non-Argument Calendar

NAJAM AZMAT,
a.k.a. Dr. Azmat,
Petitioner-Appellant,
versus
UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:17-cv-00086-WTM-BKE

Opinion of the Court

Before ROSENBAUM, GRANT and DUBINA, Circuit Judges. PER CURIAM:

Appellant Najam Azmat, proceeding pro se, appeals the district court's order dismissing in part, as an impermissible successive 28 U.S.C. § 2255 motion, his Federal Rule of Civil Procedure 60(b) motion. On appeal, Azmat argues that the district court erred in construing his Rule 60(b) motion in part as a successive § 2255 motion and dismissing it for lack of jurisdiction because Azmat had not received authorization from us to file a successive § 2255 motion. After reviewing the record and reading the parties' briefs, we affirm the district court's order of dismissal.

I.

While we typically review the district court's denial of a Rule 60(b) motion for an abuse of discretion, we review the district court's legal conclusions in a § 2255 proceeding *de novo* and the underlying facts for clear error. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003). As a preliminary matter, although a certificate of appealability (COA) generally is required to appeal a final order in a proceeding under § 2255, *see* 28 U.S.C. §-2253(c)(1)(B), we have held that the dismissal of a successive habeas petition for lack of subject-matter jurisdiction does not constitute a "final order in a habeas corpus proceeding," for purposes of § 2253(c). *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). Consequently, our jurisdiction to review the dismissal of Azmat's second Rule 60(b) motion, to the extent that it was

construed as a successive § 2255 motion, arises under 28 U.S.C. § 1291, and no COA is required. *See Hubbard*, 379 F.3d at 1247.

II.

We construe documents filed by pro se litigants liberally and hold them to less stringent standards than documents drafted by attorneys. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 292 (1976). When a *pro se* plaintiff brings a motion under Rule 60(b), the district court may construe it as a § 2255 motion, and, if applicable, treat it as an unauthorized second or successive motion. *Farris*, 333 F.3d at 1216. Specifically, Rule 60(b) motions are subject to the restrictions on successive habeas petitions if the prisoner is attempting to raise a new ground for relief or to attack a federal court's previous resolution of a claim on the merits, even if "couched in the language of a true Rule 60(b) motion." *Gonzalez v. Crosby*, 545 U.S. 524, 531-32, 125 S. Ct. 2641, 2647-48 (2005); *Farris*, 333 F.3d at 1216.

Before a prisoner may file a second or successive § 2255 motion in a district court, he first must obtain an order from the court of appeals authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Without such authorization, the district court lacks jurisdiction to consider a second or successive § 2255 motion. *Farris*, 333 F.3d at 1216. Further, "until a COA has been issued[,] federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners." *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039 (2003).

III.

Here, even when construed liberally, Azmat's arguments in his brief do not discuss the sole issue on appeal concerning the district court's determination that Azmat's Rule 60(b) motion is a successive § 2255 motion. Rather, Azmat raises several claims that are not within the scope of this appeal. We could treat the sole issue on appeal as abandoned, but considering Azmat's *pro se* status, we still evaluate the district court's successive determination. We do not have jurisdiction, however, over his claims concerning the denial of his Rule 60(b) motion on the merits because he did not receive a COA as to these issues. *See Miller-El*, 537 U.S. at 336, 123 S. Ct. at 1039.

As to the merits of the successive determination, we conclude that the district court did not err in construing Azmat's Rule 60(b) motion in part as a successive § 2255 motion and dismissing it for lack of jurisdiction. The record indicates that Azmat was attempting to relitigate his claims, had filed a prior § 2255 motion that the district court denied, and failed to seek permission from us to file a successive § 2255 motion. Accordingly, based on the aforementioned reasons, we affirm the district court's order dismissing Azmat's Rule 60(b) motion.

AFFIRMED.

FILED: October 26, 2020

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA SAVANNAH DIVISION

CASE NOS. CR413-028
CV417-086

NAJAM AZMAT,
Petitioner,
versus

UNITED STATES OF AMERICA,
Respondent.

ORDER

Before the Court is Petitioner Najam Azmat's Rule 60 Motion (Doc. 503), which the Government has opposed (Doc. 504).[1] In his motion, Petitioner attempts to challenge the Court's denial of his § 2255 petition and other various motions. (Doc. 503 at 1.) After careful consideration, Petitioner's motion (Doc. 503) is **DENIED.**

Despite the labeling of his motion, Petitioner's request primarily attacks the Court's resolution of his § 2255 claims on the merits. "[A] Rule 60 (b) motion that seeks to revisit the federal court's denial on the merits of a claim for relief should be treated as a successive habeas petition." Gonzalez v. Crosby,

[1] Unless otherwise stated, all citations are to Petitioner's criminal docket on this Court's electronic filing system, CR413-028.

545 U.S. 524, 534, 125 S. Ct. 2641, 2649, 162 L. Ed. 2d 480 (2005) ("Virtually every Court of Appeals to consider the question has held that such a pleading, although labeled a Rule 60(b) motion, is in substance a successive habeas petition and should be treated accordingly."). Because Petitioner has already filed a § 2255 petition (Docs. 401, 403) which has been fully considered and rejected by this Court (Doc. 466), Petitioner "need[s] to obtain an order from [the Eleventh Circuit Court of Appeals] authorizing the district court to consider the motion." Peters v. United States, 678 F. App'x 890, 892 (11th Cir. 2017.) The Eleventh Circuit has already denied Petitioner leave to file a second or successive § 2255 motion on many of the grounds Petitioner asserts in his current motion. (See Doc. 471.) Because Petitioner has not received authorization from the Eleventh Circuit to file a second or successive § 2255 petition, this Court lacks jurisdiction to consider his motion.

In his motion, Petitioner also challenges the Court's denial of his motion for leave to amend his § 2255 petition. (Doc. 503 at 2.) In his motion for leave to amend, Petitioner sought to add six new claims to his§ 2255 petition. (Doc. 411.) The Magistrate Judge concluded that Petitioner's new claims were untimely and denied his motion to amend. (Doc. 455 at 2-5.) Petitioner appealed the denial to this Court and argued that the Court should allow him to amend his petition for several reasons. (Doc. 457.) The Court rejected Petitioner's arguments and affirmed the Magistrate Judge's conclusion that Petitioner was not entitled to file an amended petition that raised untimely claims factually untethered from his properly filed petition. (Doc. 461

at 9.) Now, Petitioner challenges the Court's denial of his motion to amend his § 2255 petition under Rule 60 (b). (Doc. 503 at 2, 16.)

Rule 60(b) permits the Court to relieve a party from a final judgment, order, or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic) , misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Additionally, relief under Rule 60(b) (6) is an "extraordinary remedy which may be invoked only upon a showing of exceptional circumstances." Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984) (citation omitted); see also Arthur v. Thomas, 73 9 F.3d 611, 628 (11th Cir. 2014).

After a careful review of Petitioner's motion and the record in this case, the Court concludes that Petitioner is not entitled to relief. This Court rejected many of Petitioner's arguments in its order

affirming the Magistrate Judge's denial of Petitioner's motion for leave to amend. (Doc. 461 at 4-9.) Petitioner has not raised any new arguments in his Rule 60 motion which the Court considers sufficient grounds for relief under Federal Rule of Civil Procedure 60 (b). Accordingly, Petitioner's motion (Doc . 503) is **DENIED.**

SO ORDERED this 26th day of October 2020 .

/s/ William T. Moore, Jr.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

FILED: December 30, 2022

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 20-14262-JJ

NAJAM AZMAT,
a.k.a. Dr. Hazmat,
Petitioner - Appellant,
versus

UNITED STATES OF AMERICA,
Respondent - Appellee.

Appeal from the United States District Court for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: ROSENBAUM, GRANT, and DUBINA, Circuit Judges. PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

DAVID J. SMITH, Clerk of Court

United States District Court
For the Southern District of Georgia

Najam Azmat
Petitioner

v.

No: CR 413-28
No: CV 417-86

United States of America
Respondent

****

PETITIONER DR. NAJAM AZMAT'S RULE 60 MOTION

Comes Now, Dr. Najam Azmat (Dr. Azmat), pro se Petitioner with a RULE 60 MOTION. This Motion is pursuant to Rule 60(b)(1); 60(b)(2); 60(b)(3); 60(b)(4); 60(d)(1); 60(d)(3) and specifically presented to show and prove that the final judgment by this Court was not only fraudulently obtained by the Govt., but was a mistake by the Court; contrary to the law; moreover, also clearly biased when the Court not only repeatedly failed to follow its own precedent, but also advocated for the Govt. with a *de novo* (and erroneous) argument, in order to preserve its own interest. As such, the final judgment should be rightfully voided to serve justice that Dr. Azmat truly deserves.

Dr. Azmat's Rule 60 Motion is appropriate because, what Dr. Azmat presents below is specific

evidence ***"to attack a defect in the integrity of the [] 2255 proceedings and escape the treatment as an impermissibly successive []2255 motion"***. See **Gonzalez, 545 U.S. at 532 & nna.4-5.** Also applicable is what the Court further stated ***"[t]he Rule 60(b) motion must allege a fraud on the court, or allege a procedural error that prevented the court from reaching the merits of the []2255 motion."*** Also, **Williams, 510 F. 3d at 1295**, as quoted in **Bryant v. United States, 776 Fed. Appx 592 (11th Cir. 2019).** In **Gonzalez Id.**, the Supreme Court went so far as stating that ***"we erred in holding that the petitioner did not qualify to seek Rule 60(b) relief when his motion challenged only the district's court's statue-of-limitations ruling, which prevented disposition on the merits of his []2255claim". 545 U.S. at 535-36, 538***, as quoted in **Bryant Id**. The Supreme Court in **Gonzalez Id.** held that challenging a ***"defect in the integrity of the federal habeas proceedings" is properly brought under Rule 60(b).***

Dr. Azmat's Motion satisfies the requirements and restrictions of Rule 60. Presented below are examples of defect in the integrity of Dr. Azmat's [] 2255 proceedings. As such, the Dist. Court has jurisdiction over this matter.

I- 60(b)(3) FRAUD UPON THE COURT

Govt.'s fraud upon the court was deliberate and knowingly perpetrated, such that it deliberately deprived Dr. Azmat's of due process rights pursuant to IV, V and XIV amendments. This continued in

spite of being exposed and brought to the Govt.'s and Court's attention by Dr. Azmat in several court filings. This is clearly evident by the examples presented below.

1) *GOVT.'S TIME-BARRED ARGUMENT*

Govt.'s 'time-barred' argument was the very basis for its opposition to Dr. Azmat's Amended § 2255 complaint. (**Doc.411**). Govt. opposed the amended complaint based upon its Rule 15(c) argument stating that the amended complaint did not relate back to the timely filed original § 2255. Dr. Azmat replied by clearly stating that since Govt. had filed the Motion to Dismiss (**Doc.406**) Dr. Azmat's original complaint, (**Doc.403**), it was a non responsive pleading and the amended complaint was filed 'as a matter of course', responsive to Rule 15(a)(1), to which 15(c) did not apply. Also of note is that Govt. never presented any rule, law, precedent or any other example to show the application of 15(c) to a situation where an amendment was filed 'as a matter of course' in response to a non responsive pleading, OR how 15(c) was applicable in such a situation, OR how 15(c) overruled 15(a)(1) in this particular case, OR to show where an amended complaint filed 'as a matter of course' following an unresponsive pleading was declared 'time-barred'. None of the court cases quoted by Govt. related to the situation at hand in this case. This was a very simple and straightforward argument which the experienced prosecutors were fully aware of and did not need Dr. Azmat's reminder or lesson. Dr. Azmat made the 15(a) argument in **Doc.439,440,444,449452,479,482,** yet Govt.

continued to fraudulently make the "time-barred" argument again and again, (**Doc. 416,430,448,454**) in response to whatever issues Dr. Azmat raised during an almost two year back and forth, over 30 documents exchange between Govt. and Dr. Azmat. This was a knowingly deliberate undertaking to mislead and fraudulently influence the Dist. Court. Simply stated, the AEDEPA clock had stopped while Dr. Azmat's timely filed original complaint was pending, at which point Rule 15 took over and was applicable. The only question at the time was whether the Amended Complaint was related to 15(a) or 15(c). This was an easy call which was unequivocally answered by the fact that Govt.'s Motion to Dismiss, a non responsive pleading, opened the door for Dr. Azmat to file the Amended complaint, 'as a matter of course', without the Court's leave, pursuant to 15(a)(1), since the Court had not made any ruling at the time. Govt. knew only too well that the limitations period for 'matter of course' pursuant to 15(a) starts upon the filing of a non responsive pleading, like the Motion to Dismiss that Govt. had filed. There is no ambiguity or confusion in the interpretation of the statute in this respect. Dr. Azmat was not late even by a single day because of the extensions granted by the Court, which Govt. did not oppose in the first place. Govt. was a victim of its own folly and fraudulently influenced the Court with its inapplicable argument which it kept repeatedly repeating even after Dr. had set the record straight. Govt.'s fraud upon the court succeeded when the Court dismissed Dr. Azmat's Amended Complaint along Govt.'s line of argument, using 15(c) and **Davenport, 217 F.3d 1341, 1344 (11th Cir. 2000)** case as authority, both

of which are inapplicable in this case, as explained above and in the referenced documents filed during the course of this §2255 litigation.

2) *GOVT.S OPPOSITION TO GRAND JURY TRANSCRIPT*

In the Amended Complaint, Dr. Azmat specifically stated that the indictment was fraudulently obtained (**Doc. 411, ISSUE III and pages 40-42; Doc. 413; Doc. 420**). To prove this, Dr. Azmat needed the grand jury transcript (GJT). Dr. Azmat filed motion to be provided the GJT and specifically stated that the GJT had been released pre trial and was no longer secret. Also, Dr. Azmat did not have access to it since he was taken into custody at the conclusion of the trial and that Dr. Azmat's trial attorney had refused to provide Dr. Azmat a copy unless ordered by the court. In **Doc. 413** Dr. Azmat stated:

"The Grand Jury transcript is central to proving that the truth seeking function of Dr. Azmat's trial was compromised by the Govt.'s malicious misconduct resulting in a fundamental compromise of Dr. Azmat's Constitutional rights to a fair trial. Any attempt by the Govt. to oppose ....would further ...argument that the govt. is creating obstacles to prevent the truth from exposing its wrongdoing". Dr. Azmat again made a similar argument in **Doc. 422**

Govt.'s response was quite interesting in that it argued that Dr. Azmat did not need the GJT to argue a time-barred complaint. (**Doc.416,430**). Firstly, Govt. never contested that the GJT was a

secret or sealed document, nor was an admission ever made that Govt. itself had unsealed and released it in pre trial discovery. Secondly, Govt. had absolutely no right to decide on Dr. Azmat's behalf what document Dr. Azmat needed or should use in any court filing. This argument was obviously in violation of Dr. Azmat's Constitutional due process rights to withhold any document that had been released in pre trial discovery to prevent its use in any way that Dr. Azmat considered appropriate and relevant to present his case. Only Dr. Azmat had the right to make such a decision. Of course, Govt. could oppose the argument but not the document. There could only be one reason for Govt. to take such an un-Constitutional stand and it becomes clear upon the revelation from the GJT that Govt., in fact was vigorously attempting to conceal the extensive criminal conduct by two prosecutors and agents to obtain the indictment, in violation of IV amendment, (The exclusionary rule is one way the amendment is enforced. Established in **Weeks v. United States (1914)**, evidence obtained as a result of a Fourth Amendment violation is generally inadmissible at criminal trials, because Govt. knew that what Govt. had presented to the trial jury was "*fruit of the poisonous tree*"). Govt. stated:

"A § 2255 movant is generally "not entitled to discovery"...must instead demonstrate "good cause".....as the government has already argued, all of Azmat's claims to which the grand jury transcript might relate are untimely. (CV Doc.25). He does not need transcripts to pursue those time-barred claims". **(Doc. 430 at 3).**

Govt. knew that this was not a discovery request because Govt. had itself unsealed and released (both, original and superseding indictment) in pre trial discovery. This was a fraudulent attempt to block access to documents that had already been released in pre trial discovery in order to conceal the *"fruit of the poisonous tree"*. Moreover, Govt's response was submitted AFTER Dr. Azmat's in his earlier court filing (**Doc. 429 at 3**) clearly stated:

"...Govt. used perjured testimony to obtain an indictment....which translates into miscarriage of justice and violation of Dr. Azmat's Constitutional rights.....[GJT] is not only exculpatory but also corroborating evidence of Govt.'s misconduct....secrecy of the [GJT] is not applicable since the transcript was released....pre trial"

In **Doc. 432**, Dr. Azmat wrote: *"The Grand Jury Transcript was released by the Govt. when Dr. Azmat was represented by counsel but since he is a pro-se, the Govt. wants to change the 'rules of the game' and using excuses to withhold exculpatory evidence.....Govt. has already made its "time-barred" argument and now is attempting to obstruct justice by preventing Dr. Azmat to respond in a meaningful manner. The Govt. is doing so at the peril of risking miscarriage of justice by standing in way of the truth seeking function of judicial proceedings"*.

It is quite evident that Govt.'s ulterior motive was to deliberately and fraudulently conceal its criminal and other egregious misconduct that Govt. knowingly and freely engaged in before the grand

jury. This was a successful fraud upon the court which influenced the Dist. Court to deny the GJT request, because Govt. never admitted to the fact that the GJT had already been unsealed and released. In fact, what Govt. filed gave the opposite impression. Without Govt.'s admission, there was no way for the Court to be certain if the GJT had indeed been released. (Court's role in this matter is discussed separately in a different section below).

The GJT has a second issue, and it relates to the transcript of the superseding indictment. The transcript of the superseding indictment was also released by Govt. in the pre-trial discovery and specifically was requested by Dr. Azmat (**Doc 441 at 50**). The superseding indictment was also shown to be fraudulently obtained as presented in **Doc.441, pages 42-45**. The GJT of the superseding indictment, even today, continues to be kept out of Dr. Azmat's hands in violation of Dr. Azmat's Constitutional due process rights. **In Doc.443, Govt. stated *"Azmat has not come close to meeting his burden to justify disclosure of the grand jury transcript"***. Govt. also quoted "***Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222, 99 S.Ct. 1667, 1675, 60 L.Ed.2d 156 (1979)** in its fraudulent and untruthful declaration to the court that the GJT had not been released so as to influence the Court to deny Dr. Azmat's request for GJT. Just as in the previous example, Govt. made this declaration to the Court AFTER Dr. Azmat had clearly stated in **Doc. 441, pages 42-45**, that the transcript of the superseding indictment had also been released. This, was an ill conceived and fraudulent undertaking by Govt., with an ulterior motive to mislead the Court by implying

that Dr. Azmat had to ***"justify disclosure of the grand jury transcript"***, that also had been released by Govt. in pre trial discovery!! Dr. Azmat did not need to meet any burden to justify his request for a document that was his right to acquire. In **Doc. 437, page 7**, Dr. Azmat had stated:

"The Govt. has no legal standing to prevent or oppose Dr. Azmat from using any or all of his pre trial discovery material to defend himself in any post conviction proceedings....By arguing against Dr. Azmat's acquisition of the GJ transcript the Govt. is effectively preventing the truth seeking function of the Court which in the eyes of the law amounts to obstruction of justice.

The evidence is conclusive that all that the Govt. was doing was to fraudulently give the impression to the Court that the transcript had not been released. This fraud upon the court was successful when Govt.'s argument was bought by the Dist. Court over all the yelling and screaming by Dr. Azmat, as sampled above, by denying the motion requesting the Court to order Dr. Azmat's trial lawyer or Govt. to provide Dr.Azmat with a copy of the GJT, that was Dr. Azmat's Constitutional right to due process. Just to clarify, the reason Dr. Azmat was asking for the GJT was because Dr. Azmat did not have it in prison, having been taken into custody at the conclusion of the trial. Also, Dr. Azmat had made it quite clear that Dr. Azmat needed the GJT to answer Govt.'s "time-barred" argument. In **Doc. 432**, Dr. Azmat stated: *"Dr. Azmat has made it quite clear that he needs the information in...Grand Jury transcript to adequately respond to Govt.'s opposition*

to Dr. Azmat's amended complaint", but Govt. persisted with its ill conceived argument, knowing that such an argument was in denial of Dr. Azmat's due process rights and equal protection of the law. **(V & XIV amendments).** The obvious conclusion is that Govt. was so desperate to conceal something in the GJT of superseding indictment that it engaged in fraud upon the court to hide it, even after Govt. itself had unsealed it. Dr. Azmat rightfully needs to be provided this GJT.

Essentially, what Govt. did is release the GJT (both, original and superseding) and then turned around and successfully argued and prevailed upon the Court to prevent the use of these transcripts by Dr. Azmat. In order to do so, Govt. not only presented an inapplicable argument, as explained above, but took refuge behind **Mechanik, 475 U.S. 66 (1986)**, which was not applicable as well. **(Doc. 438)**. Dr. Azmat answered by stating: *"The Government magically pulled a rabbit out of the hat as a distraction which has plenty of entertainment value but no relevance to this case."* **(Doc.439 at 4)**. Dr. Azmat informed the Court by stating that **Nova Scotia, 487 U.S. 250 (1988)** clearly controlled this case as quoted in **U.S. v Sigma International, 244 F. 3d 841 (11th Cir. 2001).** (**Doc.439 and 441**). This did not prevent Govt. from fraudulently using the same argument again in **Doc. 443**, even after Dr. Azmat had made it absolutely clear in two documents (**Doc.439,441**) before that, that **Mechanic, Id.** was inapplicable to this case because of the prejudice Dr. Azmat suffered from a fraudulently obtained indictment. Perhaps, Govt. could perceivably be forgiven the first time as an excusable oversight or neglect, but shamelessly

using an inapplicable legal precedent AFTER being caught and informed was a deliberate attempt to fraudulently influence and mislead the Court. This Court should simply find it unacceptable. **Mechanik, Id.** related to two agents testifying together before the grand jury, whereas, **Nova Scotia Id.** specifically makes it clear the indictment could be dismissed even after the petit jury had rendered its verdict, but requires the demonstration of prejudice, which Dr. Azmat had been screaming about at the top of his lungs starting with the amended complaint **(Doc. 411, ISSUE III and pages 40-42),** and culminating with Dr. Azmat providing proof in **Doc. 441**, that the indictment was indeed fraudulently obtained. Dr. Azmat had earlier in **Doc.439 at 19** stated: *"...by quoting Mechanik case, is the Government revealing that the experienced AUSA James Stuchell is unaware of the Bank of Nova Scotia case...as the lesser informed pro se has quoted".* It still did not register with the Govt. because it once again invoked the **Mechanik** in **Doc. 443**, which was in response to **Doc. 441**. Of course it would have been acceptable had Govt. used the **Mechanik. Id.** to argue against the holding of **Nova Scotia. Id.**, as it pertained to this case. Just because Govt. could not find a legal precedent to justify its illegitimate and inapplicable argument does not give Govt. the right to mislead the court. In doing so, the US Attorney violated his oath of office by not only failing to protect the rights, but also blatantly infringing upon the rights of those that the US Attorney was prosecuting by knowingly and deliberately presenting inapplicable argument to the Court. Dr. Azmat, a third time made it clear that **Mechanik Id.** was inapplicable in **Doc.444**, but the

Court still bought into Govt.'s fraud upon the Court, and in fact actually quoted **Mechanik** when denying Dr. Azmat's GJT request (**Doc. 455**). Dr. Azmat is at a loss to explain, which part of this straightforward argument and SC cases both, Govt. and Court, did not understand.

U.S. v. Sigma International, 244 F.3d 841, 853-54 (11th Cir. 2001) ***("The court's reliance on*** **Mechanik** ***was an erroneous application of the law, and, as such, constituted an abuse of discretion.*** ***Bank of Nova Scotia*** ***eviscerated*** **Mechanik's** ***central holding, and clearly stated that a guilty verdict is no longer sufficient to validate the underlying indictment.***

U.S. v. Sigma International, 244 F.3d 841, 874 (11th Cir. 2001) ***,"After an exhaustive review of the complete grand jury transcripts on rehearing, we are convinced that the record requires one result: dismissal of the indictment. We find that the improperly introduced evidence "substantially influenced the grand jury's decision to indict,"*** **Bank of Nova Scotia, 487 U.S. at 256, 108 S.Ct. at 2374 (internal quotation omitted),** ***and therefore hold that the appellants were deprived of "an investigative body acting independently of either prosecuting attorney or judge,"*** **Williams, 504 U.S. at 49, 112 S.Ct. at 1743 (internal quotation and emphasis omitted).....** ***For the foregoing reasons, we REVERSE the appellants' convictions and direct the district court to DISMISS the indictment.***

As seen here, there is no doubt or question as to the deliberate misapplication of **Mechanik** that Govt. was relying upon. The transcript of the superseding indictment (already unsealed by Govt. pre trial) is still being withheld from Dr. Azmat. This transcript needs to be immediately provided to Dr. Azmat to see what else is Govt. attempting to hide. It is a violation of Dr. Azmat's Constitutional due process rights and equal protection rights (V & XIV amendments, also IV amendment) to withhold an unsealed document that was released in pre trial discovery to maliciously prevent its use by Dr. Azmat in judicial proceedings to win his freedom, that Govt.'s successful fraud upon the court has kept out of Dr. Azmat's hand. This is also a Brady violation that Govt. continues to deliberately engage in.

3) *GOVT'S TAMPERING WITH EVIDENCE*

Tampering of evidence did not take place during the §2255 litigation and so, the merits of the issue are not being presented or contested here, since it would be outside the scope of Rule 60. What is being presented here is specifically to argue the Govt.'s response related to the issue during the course of §2255 proceedings. It is true that Dr. Azmat filed Motion for Brady material. (**Doc.424**). While Dr. Azmat labeled it as a Brady request, it was, in fact a Brady violation, and a relevant discovery request pursuant to **§2255 Rule6(b)**, as Dr. Azmat clearly stated: *"It is an undisputed fact that such misconduct by the Govt. was and continues as a Brady violation that simply cannot be justified by*

any plausible excuse nor ignored because it is exculpatory and material in value." (**Doc424 at3-4**)

Govt. pounced upon it to have it dismissed by arguing that Brady is not valid upon the conclusion of the trial (**Doc.427**). Whether it was or was not a Brady request is irrelevant and is not the issue, because no matter how it was labeled, it still very clearly stated that it was a case of tampering with evidence and obstruction of justice, of which clear and conclusive proof was provided using the testimony and statement of Govt.'s own witnesses, (**Doc.431**), no doubt, a criminal act. While Dr. Azmat exposed a criminal act, Govt. attacked the label in an attempt to prevent resolution of the issue on its merits with the ulterior motive to conceal a crime and succeeded. This was a fraud upon the court that was every bit deliberate and knowingly perpetrated. Govt. once again succeeded because the Court bought Govt.'s erroneous argument and denied the motion that exposed the Brady violation. (**Doc.455, 461**).

This very court reversed a conviction on the basis of Brady violation in post conviction proceedings. (**Williams v. Williams CV415-292, at *14 (S.D. Ga. Jan. 3, 2017).** The Court further stated *"Brady violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend".* **United States v. Olsen, 737 F. 3d 625, 631 (9th Cir. 2013); id at 632** *("When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are*

acknowledged yet forgiven by the courts, we endorse and invite their repetition."); **id. At 626** *("There is an epidemic of Brady violations abroad in the land. Only judges can put a stop to it.").*

Upon reviewing this Court's concern, it is clear that while the Court expresses concerns of Brady violations, when it came time to rectify the issue, as in this case, the Court, unfortunately dismissed Dr. Azmat's claim without actually either acknowledging or addressing the merits of the violation, having been fraudulently influenced and misguided by Govt.. Dr. Azmat's issue was related to a very specific document, of which verified proof was also provided, it was not a "*fishing expedition*" that the Court used as an excuse to ridicule and dismiss it. The Court was not mindful of what was stated in **Gunn v. Newsome,881 F. 2d 949 (11th. Cir. 1989)**, *"...deliberate tampering with evidence, if proven, amount to constitutional claims"*, quoting **Allen v. Newsome, 795 F. 2d 934, 939 (11th Cir. 1986)**. This was exactly the issue with Brady violation and was very clearly presented with irrefutable evidence and testimony of Govt.'s own witnesses as confirmatory proof, a far cry from a "*fishing expedition*" as ridiculed by the Court, and without getting into details, was very much material.

4) *GOVT'S SILENCE*

In the §2255 proceedings, Dr. Azmat presented conclusive proof (**Doc.411, 444**) that was verifiable from the records that were also submitted as Exhibits (**Doc.447**) to show criminal conduct by prosecutors and federal agents was used to obtain Dr. Azmat's indictment and then this was presented

to the petit jury knowing that Dr. Azmat stood trial on the evidence that was tainted and fraudulently obtained (IV amendment violation). This was not related to a single or a few isolated events, but encompassed almost the entirety of the evidence presented to the grand jury to obtain the indictment. Dr. Azmat refrains from discussing specific examples because they are beyond the scope of Rule 60(b). However, Govt.'s criminal activity deserves mention in the context of Rule 60(b) because once such conduct was exposed during the §2255 proceedings, it was absolutely mandatory for Govt. to acknowledge it before the Court. Dr. Azmat had earlier stated in **Doc. 439**: *"Government deliberately allowed Dr. Azmat to stand trial on a tainted indictment in violation of Dr. Azmat's Constitutional rights. This was not only a fraud upon the Court, but also a criminal misconduct...No Court is expected to accept any explanation by the Government to justify such misconduct...The Government has maintained a total silence because Dr. Azmat's allegations are factually based upon records of this case."* Govt.'s silence was fraud upon the Court. In reality, the silence left the Court guessing because the Court never heard Govt.'s side of the argument. Govt. never addressed the issue while taking cover behind its inapplicable "time-barred" argument, as addressed supra. In short, Govt. behaved dishonestly and fraudulently to compromise the truth seeking function of the Court in a deliberate manner.

*"if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. * * * That the district attorney's silence was not the result*

of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair. **Napue, 360 U.S. at 269-70 (quotes and cite omitted); Hayes, 399 F.3d at 978** *("the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears").* As quoted in **Williams v. Williams CV415-292, at *14 (S.D. Ga. Jan. 3, 2017)**

Not only did Dr. Azmat bring this matter to the attention of the US Attorney Bobby Christine by writing to him but also filed complaint with the Office of Professional Responsibility; wrote to the IG-DOJ and wrote to the Attorney General William Barr. (**see Exhibits attached to Doc.479**). The silence that spread across the leadership of the DOJ furthers the magnitude of the fraud upon the court because each and every one was individually informed of ***"crimes involving Government officers and employees"* 28 USC § 535.** Moreover, it was DOJ's duty to inform the Court once the crimes were exposed and to do what the Solicitor General did in **Mesarosh, *352 U.S. 1 (1956)***. Dr. Azmat quoted **Mesarosh** in **Doc.422 at 4.**

Also applicable here, in context is: ***"[i]f the prosecutor has in his possession evidence which would cast doubt on the credibility of a witness before the grand jury, he has an ethical duty to disclose it"*** **(U.S. v. DiBernardo, 552 F. Supp. 1315 (11th Cir. 1982))**. The silence of the US Attorney and his subordinate AUSA's, who were in possession of such information and much much more is reflective of a serious moral, ethical and

professional turpitude that is unacceptable in the halls of justice and each and every one involved should have at least received a show cause notice by the Court to set the record straight, for justice to be served.

Dr. Azmat's letter to the Attorney General (**attached as Exhibit to Doc.479**) was specifically meant to bring to the Attorney General's attention the violation of **28 USC § 535(b),** according to which the US Attorney, the OPR and the OIG-DOJ were obligated to report the exposed misconduct to the Attorney General. This was not done even after having been specifically informed of this obligation by Dr. Azmat. (**See Complaint to OPR, IG-DOJ and letters to US Attorney Bobby Christine attached as Exhibits to Doc.479**). According to **U.S C 535(a)**, the Attorney General is not obligated, but may investigate a crime. The issue here is not to question the Attorney General's discretion in this matter, but to highlight the negligence of those that were obligated to report and never did, as the statute states: "....**shall be expeditiously reported**...."

USC 535 - ***Investigation of crimes involving Government officers and employees;***
(b) ***Any information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency of the executive branch of the Government relating to violations of Federal criminal law involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, or the witness, discoverer, or recipient, as appropriate.***

None of the above referenced officers of the Department of Justice (US Attorney, IG-DOJ, OPR) can claim ignorance of the crimes because Dr. Azmat provided each and every one, not only a report of the crime but copies of Motion for Summary Judgment and Exhibits which confirmed the allegations. (**Doc.441,447**).

Reporting to the Attorney General would have also required Govt. to acknowledge the crimes to the Dist. Court. This silence was used to conceal several crimes by engaging in a criminal act (misprision), on top of the crimes. The repeated filing of bogus allegations of "time barred" were constructive steps to conceal the crimes. **(18 USC 4).** Govt.'s silence was equivalent to deliberate ignorance. 11th Circuit considers ***"deliberate ignorance of criminal activity as equivalent to knowledge"*** **U.S. v. Maitre, 898 F.3d 1151 (11th Cir.2018).** Govt.'s silence and ignorance of its criminal activity was fraud upon the court. Govt. has neither denied nor challenged the validity of its exposed criminal conduct. Govt. had a duty to take responsibility for its criminal conduct, **(Napue, Id, Mesarosh, Id.)**, especially after it was exposed during the course of the §2255 proceeding, but in fact knowingly and shamelessly engaged in further criminal conduct to conceal the original crimes.

Moreover, the involved prosecutors should have been charged under **18 USC § 242**, *"A prosecutor who, while acting within the scope of his duties in initiating and prosecuting a case, willfully deprives the accused of his constitutional rights is subject to criminal punishment.."*

The involved prosecutors satisfy all four elements of §242:

1) *Defendant's acts must have deprived someone of a right secured or protected by the Constitution or laws of United States.*
2) *Defendant's illegal acts must have been committed under color of law*
3) *The person deprived of his rights must have been an inhabitant of a state, territory or district*
4) *Defendant must have acted willfully.*

The presented evidence (supra) conclusively reveals that the involved prosecutors satisfied all four elements and should have been charged pursuant to §242.

"the moving party must prove by clear and convincing evidence that the adverse party obtained the [judgment] through fraud, misrepresentation, or other misconduct" **Wadell v. Hemerson, 329 F.3d 1300,1309 (11th Cir. 2003).** ***The moving party must also show that the conduct prevented the losing party from fully and fairly presenting his case or defense'.*** **Frederick v. Kirby Tankships, Inc., 205 F. 3d 1277, 1287 (11th Cir. 2000).**

The evidence presented supra, more than adequately, is satisfactory to the fact that Govt. knowingly and deliberately engaged in repeatedly misleading the Court with its inapplicable and misrepresented "time-barred" argument (**Doc.416,430,448,454**); fraudulent argument to withhold the superseding GJT from Dr. Azmat, that

Govt. had itself released pre trial (**Doc. 441 at 42-45**); with its silence, instead of accepting responsibility of its exposed criminal conduct before the grand jury and tampering with evidence along with Brady violations, knowing that it was at the expense of flagrant deprivation of Dr. Azmat's Constitutional due process rights. (**IV, V & XIV**). This fraud upon the court extended from the US Attorney's office in Savannah Georgia to the occupants of the wood-paneled offices of the Department of Justice in Washington, DC. The US Attorney, OPR, OIG-DOJ and AG were each personally informed and provided evidence of criminal conduct used to indict Dr. Azmat. This evidence was then presented to the Court in **Doc.479**. How can the citizens expect justice when the Department of Justice is itself engaged in either criminal activity or remains silent to conceal the crime in order to protect its own that committed crimes and the Court, having been fully informed and aware, looks the other way?

"To prevail on a 60(b)(3) motion, the movant must "prove by clear and convincing evidence that an adverse party has obtained the verdict through fraud, misrepresentation, or other misconduct." **Cox Nuclear Pharmacy, Inc. v. CTI, Inc., 478 F.3d 1303, 1314 (11th Cir. 2007)** *(internal quotations, citations, and alterations omitted). Additionally, "the moving party must show that the conduct prevented the losing party from fully and fairly presenting his case or defense."* **Barne v. Carani, CV 116-015, at*4 (S.D.Ga.Mar.16,2018).**

In summary, the evidence that Dr. Azmat has presented abundantly and conclusively proves that Govt. obtained the decision by fraud,

misrepresentation and misconduct, which is every bit satisfactory to Dr. Azmat's 60(b)(3) claim of fraud upon the Court. As an example, the transcript of the superseding indictment, which had been unsealed prior to the trial, is still being withheld from Dr. Azmat, which prevents Dr. Azmat from fully presenting his case, that includes this Motion as well. This is extremely significant based upon the conduct of Govt. that was revealed in the original indictment, that Govt. must be hiding something very significant which is why it is going to the lengths of committing fraud upon the court to keep the GJT out of Dr. Azmat's hands.

II- 60(b)(2)NEWLY DISCOVERED EVIDENCE

Dr. Azmat made the allegations of malicious prosecution and fraudulent indictment in the Amended Complaint (**Doc. 411, ISSUE III, pages 40-43**). These allegations were made even though Dr. Azmat did not have the GJT, and were alleged partly based upon exposure of perjury and suborned perjury that Govt. had presented at trial as detailed in the Amended Complaint (Doc.411) and also on Dr. Azmat's belief that he was innocent and should not have been indicted. Earlier, Dr. Azmat went to trial because he believed he was innocent and even claimed his innocence at the sentencing hearing. Dr. Azmat clearly alluded to actual innocence in the Amended complaint. Dr. Azmat did not have the GJT at the time to prove it. Dr. Azmat knew that the GJT had been released by Govt. in pre trial discovery but Dr. Azmat had not actually seen it and did not have it in prison, having been immediately taken into custody at the conclusion of the trial. Dr.

Azmat's trial lawyer refused to provide Dr. Azmat with a copy unless ordered by the Court. Consequently, Dr. Azmat filed Motion to this effect. (**Doc.413**). Govt. came out in opposition. Govt.'s bogus and inapplicable argument stating that the GJT should be denied because Dr. Azmat is time-barred, has been detailed above, consequently, Dr. Azmat would refrain from repetition. After an exhaustive search, Dr. Azmat's family was eventually able to find the GJT. Upon reviewing the GJT, Dr. Azmat not only confirmed what Dr. Azmat had alleged in the Amended Complaint that the indictment was fraudulently obtained, but much more disturbing was the discovery that the indictment was almost in its entirety, as pertaining to Dr. Azmat, based upon criminal conduct where the Govt. agents and prosecutors knowingly fabricated evidence etc. etc., and then presented it to the grand jury. Equally shocking was the revelation that the prosecutors were repeatedly meeting with the grand jury, off the record, in a flagrant violation of Grand Jury Rule 6(e)(1). Dr. Azmat has documented NINE (9) such meetings and perhaps there could be more that escaped Dr. Azmat's search. (**Doc.441,444,447**).

The flagrant infringement of the independence of the GJ was a pattern that was willful, knowing and deliberate violation of the grand jury clause of the V Amendment, that was a standalone reason to dismiss the indictment. Without getting into the merits of such an argument and remaining within the confines of Rule 60(b), the issue presented here is that Motion for Summary Judgment was based upon "newly discovered evidence", which was satisfactory to §

2255(f)(4), and to which any of Govt.'s argument fails. The Dist. Court never addressed Dr. Azmat's **§2255(f)(4)** argument (**Clisby v. Jones, 960 F.2d at 936**) and dismissed the Motion for Summary Judgment that Dr. Azmat had filed based upon the "newly discovered evidence" (**Doc.441**), which was repeatedly brought to the Dist. Court's attention (**Doc. 462,469,482**), but was still totally ignored. Moreover, the evidence presented was at the heart of Dr. Azmat's actual innocence claim because in the end Dr. Azmat asked for dismissal of the indictment and a Certificate of Innocence. (**Doc.444 page 19, Doc. 453 page 5**). Earlier, in **Doc. 437 at 14**, Dr. Azmat stated: *"[Court] order the U.S. Attorney to report the misconduct to the DOJ Inspector General as well as to the Office of Professional Responsibility (OPR) to investigate the criminal misconduct of above named [Knoche and Gilluly] attorneys".* Also of note is what Dr. Azmat stated in **Doc.439 at 19**: *"Government deliberately allowed Dr. Azmat to stand trial on a tainted indictment in violation of Dr. Azmat's Constitutional rights. This was not only a fraud upon the court, but also a criminal misconduct."*

Dr. Azmat's claim of actual innocence should not have been subjected to any procedural impediment. The "newly discovered evidence" related back to and proved the claims of prosecutorial misconduct, malicious prosecution, fraudulent indictment etc. that were made in the Amended Complaint. (**Doc. 411, ISSUE III and pages 40-42; Doc. 423; Doc. 420**). As such, it certainly was not a "*second amended complaint*" and "*dead on arrival*", used as reasons by the Dist. Court to dismiss it. The Motion for Summary Judgment (**Doc.441**) was based upon

§2255(f)(4) and was procedurally dismissed, in error. Dr. Azmat's claim of actual innocence has never been evaluated in light of the actual evidence that was presented in the Motion for Summary Judgment which revealed evidence of fraudulent indictment. This error by the Court is further presented in detail in a separate section below.

Hill v. Green, 2:9-cv-29 (S.D. Ga. May 14,2020:"*For the court to grant relief based upon newly discovered evidence under* **Rule 60(b)(2)**, *a movant must meet a five-part test:(1) the evidence must be newly discovered since the trial, 2) due diligence on the part of the of the movant to discover the new evidence must be shown, 3) the evidence must not be merely cumulative or impeaching, 4) the evidence must be material, 5) the evidence must be such that a new trial would probably produce a new result.* **Williams v. Darden, No CV 411-213, 2016 WL 6139926, at *1 n.2 (S.D. Ga. Oct.21,2016).** Same in **Weddell v. Hemerson, 329 F.3d 1300, 1309 (11th Cir. 2003).**

The evidence presented by Dr. Azmat not only satisfies but far exceeds some of the above stated elements. If the fraudulently obtained evidence, as presented by Dr. Azmat, is excluded, a new trial producing a new result would be a foregone conclusion, given the nature, extent and scope of misconduct that has been exposed, which would have to be eliminated from the record. In fact, with the exclusion of all the ill gotten evidence there would have been no indictment to start with, as Dr. Azmat had stated in amended complaint (**Doc.411 and Doc.439 at 19**). Above all, soon as all this 'newly

discovered evidence' was presented, it was absolutely incumbent upon US Attorney Bobby Christine, to act honorably by withdrawing the ill conceived and fraudulently obtained indictment, so that there would have been no need for this Petitioner to waste the Honorable Court's valuable time and resources for the past two years. **Napue. Id.** ; **Mesarosh. Id.** **28 U.S.C. § 2255(f)(4)** *specifically calls for discovery of the "facts supporting the claim" and not the legal issue.*

The Court abused its discretion by not making any discovery of the ***"facts supporting the claim"*** at the cost of violation of Dr. Azmat's Constitutional due process rights and equal protection of the law, **V & XIV and also IV** amendments. **(Clisby, Id.)**. What is indeed troubling is the fact that the Court showed no interest in finding out if indeed there was any truth to these allegations. In fact, truth to these allegations was also presented to the Court by submitting the evidence to back up each claim as **EXHIBITS (Doc.447)**, so the Court would not have to sift through a voluminous record to verify each claim. What is even more troubling is that the Court, in fact advocated for and *de novo* made the argument to bail out the Govt. by labeling the 'newly discovered evidence' as a "*second amended complaint*", when Govt. never presented such an argument. The reason Govt. never claimed it as a "*second amended complaint*" is because Govt. knew that the claims made by Dr. Azmat relate back to prove the allegations of fraudulent indictment, prosecutorial misconduct, malicious prosecution that were clearly and repeatedly made in the amended complaint (**Doc. 411, ISSUE III and pages 40-42, Also Doc. 437,439 as quoted above**), and as such

was not a "*second amended com*plaint". The court's interest in procedurally dismissing it is discussed in the section pertaining to 60(d)(3).

***Alford v. Consolidated Gov. of Columbus*, 438 F. App'x 837, 3-4 (11th Cir. 2011),** "*Federal courts generally abide by the "principle of party presentation," relying "on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present."* **Greenlaw v. United States, 554 U.S. 237, 243 (2008).** *As the Supreme Court has emphasized, "our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." Id. To the extent that courts have varied from this general principle, they usually have done so in order to protect the rights of pro se litigants. Id. at 244-45.* **e.g., Castro v. United States, 540 U. S. 375, 381–383 (2003)**

Also, the Court should not "*serve as de facto counsel for a party... "* **GJR Investments, Inc. v. Cnty. of Escambia, Fla., 132 F.3d 1359, 1369 (11th Cir. 1998)**

III 60(b)(1) and 60(d)(1)

The mistakes and errors presented under this section pertain to defective and erroneous rulings by the Dist. Court that affected the ***"integrity of federal habeas proceeding"*, Gonzalez v. Crosby, 545 U.S. 524 (2005).**

Parks v. U.S. Life Credit Corp.677 F.2d 838 (11th Cir. 1982) **Rule 60(b)(1)** *authorizes a court to grant relief from judgments for "mistake, inadvertence, surprise, or excusable neglect." The "mistakes" of judges may be remedied under this provision.* **Meadows v. Cohen, 409 F.2d 750, 752 n. 4 (5th Cir. 1969).** *The rule encompasses mistakes in the application of the law.* **Oliver v. Home Indemnity Co., 470 F.2d 329 (5th Cir. 1972).**

The essential elements of an independent **Rule 60(d)** action were recited in **Bankers Mortg. Co., 423 F.2d at 79, (5th. Cir. 1970), as follows:**

(1) a judgment which ought not, in equity and good conscience, to be enforced;
(2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud . . . which prevented the [movant] . . . from obtaining the benefit of his [position]; (4) the absence of fault or negligence on the part of [movant]; and (5) the absence of any adequate remedy at law.... For an error to affect substantial rights, it generally "must have been prejudicial: It must have affected the outcome of the district court proceedings. **"United States v. Olano, 507 U.S. 725, 734, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993).**

The evidence presented below pertains to mistakes by the Court **(60(b)(1)** and *"judgment which ought not, in equity and good conscience, to be enforced"* **(60(d)(1)**. The Court will notice that these mistakes were not limited to an odd issue or two, but spread across the entire spectrum of issues that Dr. Azmat presented in the post conviction proceedings and *"affected the outcome of the district court proceedings".*

1) *DENIAL OF AMENDED COMPLAINT*

The time-line is important in any analysis of the Amended Complaint (**Doc. 411**). No argument for or against it is valid without reviewing the dates when each event took place, because after all it was argued by Govt. and denied by the Dist. Court as "time-barred".

- **5.16.2017 :** AEDPA deadline
- **5.15.2017:** Dr. Azmat's retained attorney filed original §2255
- **6.23.2017:** Govt. filed Motion to Dismiss (non responsive pleading)
- **6.28.2017:** Dr. Azmat's attorney asked for an extension to file reply, (unopposed)
- **7.01.2017:** Extension granted by Court till 8.14.2017
- **8.14.2017:** Dr. Azmat's attorney asked for a second extension, (unopposed)
- **8.14.2017:** Extension granted by Court till 10.13.2017
- **10.10.2017:** As a pro se, Dr Azmat filed the Amended Complaint
- **11.21.2017:** Court ORDER construed the amended complaint as Motion to Amend

Dr. Azmat's Amended Complaint which was docketed on 10.10.2017 as **Doc.** 411, was within the Court granted two extensions. It is interesting to note that Govt. first did not oppose either extension and then, when an amended complaint was filed 'as a matter of course' within the time allowed by the Court, Govt. turned around and argued that the amended complaint was time barred. Govt. simply

cannot have it both ways. Govt. opposed it as 'time-barred', on the basis of Rule 15(c), using **Davenport, 217 F.3d 1341, 1344 (11th Cir. 2000)**, because additional claims raised by Dr. Azmat did not relate back to the original complaint. Dr. Azmat made it very clear that the filing was an Amended Complaint and not a Motion to Amend. Dr. Azmat stated in **(Doc. 440 at 2)**:

"it was an amendment "as a matter of course" according to rule 15(a)....Govt. had not filed a "responsive pleading" and the Court had not ruled on it.....it should have been construed as an 'amended complaint' instead of a 'Motion to Amend'.....Govt.'s reliance on Davenport...defeats its own argument because Davenport is not related to either Rile 15(a) or "non responsive pleading"...Govt.'s seasoned prosecutors deliberately and knowingly continue to repeatedly make attempts to mislead the court at the expense of obstructing the truth seeking function of the judicial proceedings ***(Doc.425,430,438)."*** **(Alsosee Doc.439, 444, 449, 452, 479, 457, 469, 482).**

It is quite interesting to note that the Court specifically stated in its ruling: ***"although the Rules Governing Section 2255 does [sic] not address the procedure for amending motions, courts have typically applied Federal Rule of Civil Procedure 15".*** **(Doc. 455 at 2-3)**. The Court then proceeded to misconstrue Rule 15 and placed Dr. Azmat filing in 15(c) instead of a straightforward rule (15(a)(1) that actually was applicable. As if this was not enough, the Court did not follow its own precedent and the command of the 11th. Circuit related to 15(a)(1), which applied to Dr. Azmat's

filing, as presented below.

The Court's denial of Amended Complaint as "time-barred" was a mistake/error and should be reviewed in light of the above time-line of events, for the following reasons:

a) Court construed the Amended Complaint as a Motion to Amend. It was clearly filed as a 'matter of course', and did not require court's leave, because Govt. had filed a non responsive pleading and the Court had not ruled on it at the time. Also of consideration in this respect is the fact that there was not a single day's lapse because the time to file "as a matter of course" was extended and granted by the Court itself till 10.13.2017 and the Amendment was docketed on 10.10.2017, as detailed in the time-line above. There is no confusion here. The amended complaint was every bit timely pursuant to Rule 15(a)(1), and did not need the court's leave, as such, it was not a Motion to Amend.

b) In construing Dr. Azmat's Amended Complaint as a Motion to Amend and dismissing it as time-barred, the Court did not follow the precedent from its own Court.

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."

Same in **Holmes v. Williams, CIVIL ACTION NO.: 6:15-cv-12, at *6-7 (S.D. Ga.July20,2015) ("Federal Rule ofCivilProcedure 15(a) ("Rule 15(a)")** *provides that a party "may amend its pleading once as a matter of course" either within twenty-one days after serving it or within twenty-one days after service of a required responsive pleading or motion.* **Fed. R. Civ. P. 15(a)(1).**

In reviewing the details of **Lee Id.,** it becomes glaringly apparent that Govt. filed its Motion to Dismiss one year and four days after the original complaint was filed and the plaintiff filed his leave to amend (one year and around fifteen days later) as a matter of course ***"within the 21 day window for filing as a matter of right".*** **Id.** There was no consideration of untimeliness here because the 21 day window of 'matter of course' starts following the filing of unresponsive pleading, and unrelated to the AEDPA clock, as the statute was properly interpreted and clearly stated by the court in the above examples

Based upon the examples and precedent of this very court, it is evident that in Dr. Azmat's case the Court not only misconstrued the statute and/or failed to apply the applicable statute (15(a)(1)). In addition, the Court also did not follow its own

precedent. It was a clear error by the Court and abuse of discretion to construe Dr. Azmat's amended complaint as a Motion to Amend per 15(a)(2), when it was filed 'as a matter of course' pursuant to 15(a)(1). Dr. Azmat never did ask for the Court's leave. The Court clearly misapplied the law.

Telchi v. Israel Military Indus., Ltd. No. 16-17094 (11th Cir. Dec. 12, 2017)

With respect to rulings on motions brought under Fed. R. Civ. P. 60(b)(1), "the district court has discretion to relieve a party from a final judgment 'from mistake, inadvertence, surprise, or excusable neglect.'" **Architectural Ingenieria Siglo XXI, LLC v. Dominican Republic, 788 F.3d 1329, 1343 (11th Cir. 2015) (quoting R. 60(b)(1)).** *An abuse of discretion occurs where the district court misapplies the law or bases its conclusions on clearly erroneous factual findings."* **Id. at 1338.**

Also stated in **Architectural Ingenieria** *:* ***"Under Rule 60(b)(1),*** *the district court has discretion to relieve a party from a final judgment for "mistake, inadvertence, surprise, or excusable neglect." Even so, in ruling on a Rule 60(b)(1) motion, "the discretion of the district court is not unbounded, and must be exercised in light of the balance that is struck by Rule 60(b) between the desideratum of finality and the demands of justice."* **Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir.1981).** *Our review of the district court's ruling is informed by that same consideration; "and where denial of relief precludes examination of the full merits of the cause, even a slight abuse may justify reversal."* **Id.**

Evidence presented clearly shows that not only was this an abuse of discretion and a fatal error that was extremely prejudicial, but more importantly, deprived Dr. Azmat of his Constitutional due process and equal protection rights because the denial precluded examination of the *"full merits"* of Dr. Azmat's case. **Id.,** which would have changed the entire outcome of the case.

c) Dr. Azmat did not file a Motion to Amend. There was no valid reason for the Court to construe it as a Motion to Amend when it was an Amended Complaint per 15(a)(1), 'as a matter of course', which did not require leave of the court, and none was requested by Dr. Azmat. The Court *de novo* made the argument; Govt. never made this argument. Had the Court not construed it as a Motion to Amend, it would have opened the door to review the issues presented in the Amended Complaint on their merit and would not have been dismissed on procedural basis, because it was timely 'as a matter of course'. Although. Dr Azmat repeatedly brought this to the Court's attention (in Doc. cited above), neither the Mag. Judge nor the Dist. Judge addressed or considered this important distinction. The irony here is that traditionally the courts favorably construe pro se filings to make them inclusive, whereas in Dr. Azmat's case it was erroneously construed, without justification or explanation to enable the Court to exclude it. As if this was not enough, shockingly, the court invited Govt. to file a motion to dismiss if Govt. opposed the Motion to Amend, instead of a response! (**Doc.423**).

Greenlaw v. United States, 554 U. S. *237, 243.*
"In both civil and criminal cases, . . . we rely on the

parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." ***Id., at 243.*** *In criminal cases, departures from the party presentation principle have usually occurred "to protect a pro se litigant's rights."* ***Id., at 244;see, e.g., Castro v. United States, 540 U. S. 375, 381–383 (2003)*** *(affirming courts' authority to recast pro se litigants' motions to "avoid an unnecessary dismissal"* or *"inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis" (citation omitted)).*

Also, Dr. Azmat clearly made the argument that it was an amendment as a matter of course; the Court never addressed the issue. **(Doc. 439,440,441,444, 449,452,479,457,482)**. *"The Court has no discretion to reject an amended complaint submitted as a matter of course under Rule 15(a)".* **(Williams v. Bd. of Regents of Univ. Sys. of Georgia, 477 F.3d 1282, 1292 n.6 (11th Cir. 2007).)**

Even if it was construed as a Motion to Amend, its dismissal was contrary to what this Court stated in **Clayton v. Evans, CIVIL ACTION NO.: 6:17-cv-158, at *7 (S.D. Ga. May 10, 2019)** *("Eleventh Circuit case law suggests that, when a pro se plaintiff moves to amend instead of amending as a matter of course, courts should always grant leave to amend (no matter how futile) before dismissing an action (no matter how frivolous).* **Toenniges v. Ga. Dep't of Corr., 502 F. App'x 888, 889-90 (11th Cir. 2012)**.

d) Court used 15(c) as the argument to dismiss the Amended Complaint, using the **Davenport Id.** as precedent. The Court made an inapplicable argument, as explained above. Dr. Azmat repeatedly brought to the Court's attention that 15(c) does not apply to amendments filed 'as a matter of course', because Govt. had filed a non-responsive pleading. (**Doc.439,440,444**). Also, 15(c) is only applicable where leave of court is requested and cannot be used in this situation, because, filed 'as a matter of course', it did not require the court's leave, (see Doc. Referenced above). The reason Court used 15(c) is because it construed Dr. Azmat's Amended Complaint as a Motion to Amend, then denied it based on untimeliness and applied 15(c) to reason that the new issues do not relate back to the original complaint. Of course, it did not help Dr. Azmat's cause that Govt. had earlier made the same argument for want of something to say and effectively misguided/misled the Court (Issue I (1) supra) to successfully perpetrate fraud upon the court.

e) Dr. Azmat's Amended Complaint could not be untimely because the AEDPA clock had stopped while a timely §2255 was pending. *"28 U.S.C. § 2244(d)(1)(A) ticks so long as the petitioner does not have a direct appeal or collateral proceeding in play."* ***Everett v. Barrow*, 861 F. Supp. 2d 1373, 1375 (S.D. Ga. 2012)**. It is well established that rules that apply to §2254 are equally applicable to §2255. (**Sandvik,177 F. 3d. 1269**, *"There is no obvious cause [that] interpretation of §2244's statute of limitations should not be equally valid for §2255's"*). There is only one AEDPA clock which is

either running or stopped. It cannot be stopped and running at the same time. The original complaint effectively stopped the clock and the amended complaint was a continuation of litigation 'as a matter of course' pursuant to Rule 15(a)(1). The Amended Complaint could not be timely 'as a matter of course' and untimely at the same time, because, as stated above, there is only one AEDEPA clock. The bottom line is that even if an amendment is untimely, Rule 15 takes over and is applicable to situations past the AEDPA deadline. Once Rule 15 takes over, then it is governed by the subsections of Rule 15 because there is no other guidance provided by the AEDPA clock, as the Court itself acknowledged in this case (**Doc.455**). Rule 15(a) and 15(c) are clearly distinguished by whether a 'responsive pleading' has been filed or not. Simply stated, 15(c) is not applicable where a 'non responsive pleading' has been filed. There is no confusion there, unless one is created to find an excuse to dismiss a claim. This is exactly what Govt. and Court did in this case. (60(d)(1) is applicable here, and it appears that 60(d)(3) may be applicable as well, because 15(c) was fraudulently applied to a simple and straightforward situation in order to dismiss the claim. (Court's motive presented below).

f) Govt. had actually forfeited its time-barred argument in more than one court filing when it responded to the issue of GJ Rule 6(e)(1) violation in **Doc. 443** and claimed time-barred to the other issues in the same filing. Govt., a second time forfeited the time bar issue when it clearly stated that all of Dr. Azmat's contentions were *"without merit and/or time-barred"* in **Doc. 448**. Dr. Azmat

made it clear that Govt. cannot have it both ways where it picks and chooses to respond to R.6(e)(1), tells the Court that all issues are *"without merit"*, which was Govt.'s full response, and then turns around and also claims *"time barred"* in the same breath. This was brought to the Court's attention in **Doc. 444, 449, 453,479**. The Court should not have been advocating on behalf of Govt. once the claim was forfeited by Govt., and by the continuing to make the argument, the Court in effect became a party instead of a neutral arbitrator of the case. This was brought to Court's attention in **Doc. 444, 453**. The Court never addressed the issue. **(Clisby v. Jones, 960 F.2d at 936).**

The implications of the Court's erroneous ruling/mistake, some of which as listed here, had an impact on the entire proceeding of the §2255 and precluded review and adjudication of any of the issues that Dr. Azmat had presented in the habeas on merit, **Id.**, including Dr. Azmat's claim of actual innocence. All this is even more evident and disturbing upon review of what is presented in the next section. Moreover, it was a Constitutional violation of due process because it prevented Dr. Azmat from presenting his case, as already stated above.

2) *ABANDONED OPERATIVE PLEADING WAS ADMITTED*

The Amended Complaint actually superseded the original complaint and became the operative pleading of the case upon being filed. The Dist. Court prevented this from happening. For almost two

years the § 2255 continued to be litigated back and forth with over 30 filings, as if the amended complaint was the operative pleading, while the original §2255 sat without any activity, collecting dust. In between Dr. Azmat obtained the GJT that confirmed the allegations made in the amended complaint; filed Motion for Summary Judgment to dismiss the fraudulently obtained indictment and proved his innocence; followed by Motion for Default Judgment since Govt. had not answered the Summary Judgment motion with a sworn statement, pursuant to Rule 56. At which point the Court unlawfully stepped in to rescue the Govt., by dismissing the amended complaint (**Doc. 455**), and FOUR days later issued a R&R based upon the original complaint and Govt.'s Motion for Default Judgment, both of which effectively had been rendered moot and inapplicable by the amended complaint. This should have been the other way around. The original complaint should have been dismissed, having been rendered moot by the Amended Complaint, and the Amended Complaint treated as the operative pleading. The R&R should have been issued on the amended complaint, and if the Court decided it was untimely, it could have been then dismissed. Dr. Azmat brought this to the attention of the Dist. Court in four court filings (**Doc. 462,463,469,482**). It mattered not, because the Court never addressed the issue, much less even acknowledged any of the four times it was presented. The Court's silence was meaningful. The Court, in an unlawful way inserted its jurisdiction (by misconstruing Dr. Azmat's amended complaint as a Motion to Amend), in order to dismiss the amended complaint on procedural grounds so as to avoid

addressing the merits of any issue contain in the amended complaint (**Doc.411**) or the Motion for Summary Judgment (**Doc.441,444,447**).

Horton v. Reeves, CV 118-165, (S.D. Ga. Sep. 27, 2019), *"As an initial matter, the Court DENIES AS MOOT Defendant Davis's motion to dismiss (Doc. 14). After Defendant Davis filed his motion, Plaintiff filed an amended complaint. "It is well- established that an amended complaint super[s]edes an original complaint and renders the original complaint without legal effect."* **Renal Treatment Ctrs.-Mid-Atl., Inc. v. Franklin Chevrolet-Cadillac-Pontiac-GMC, No. 608CV087, 2009 WL 995564, at *1 (S.D. Ga. Apr. 13, 2009)** (quoting **In re Wireless Tel. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 928 (8th Cir. 2005))** (citing **Fritz v. Standard Sec. Life Ins. Co. of N.Y., 676 F.2d 1356, 1358 (11th Cir. 1982)); accord Dresdner Bank AG v. M/V Olympia Voyager, 463 F.3d 1210, 1215 (11th Cir. 2006)** *(finding that the prior complaint "is no longer a part of the pleader's averments against his adversary");* **Malowney v. Fed. Collection Deposit Grp., 193 F.3d 1342, 1345 n.1 (11th Cir. 1999)** *("An amended complaint supersedes an original complaint."). Here, the amended complaint supersedes the original complaint effectively mooting Defendant Davis's motion to dismiss".*

This Court also made a similar ruling in **McRea v. S. Ga. Cargo, LLC, 374 F. Supp 3d 1336 (S.D. Ga 2019)** to state that an amended complaint that was filed as a matter of course "*supersedes the former pleading such that "the original pleading is*

abandoned by the amendment, and is no longer a part of pleader's avertments against its adversary" and "Under Federal Rules, an amended complaint supersedes the original complaint" (citations omitted).

Toenniges v. Ga. Dep't of Corr., 502 F. App'x 888, 889-90 (11th Cir. 2012) *(observing that when a pro se plaintiff requests leave to amend during the time to amend as a matter of course, trial courts should grant leave to amend even when the action, as amended, would still be dismissed).* As quoted by this Court in **Clayton v. Evans, CIVIL ACTION NO.: 6:17-cv-158, at *7 (S.D. Ga. May 10, 2019)** .

According to Court's own precedent, the original complaint was rendered inapplicable and was superseded by the amended complaint upon its filing 'as a matter of course', and Govt's Motion to Dismiss became moot and should have been dismissed. Instead, the Court first dismissed, what should have been the actual operative pleading (i.e. amended complaint) and then issued the R&R on a filing (i.e. original complaint), that was moot. There is no argument that the amended complaint was filed as 'a matter of course' and automatically became the operative pleading, and should have been admitted as such. The time-bar issue, as related to the amended complaint should only have been litigated after it was admitted as the operative pleading of the case. Precedent from this very Court is quite unambiguous; **Clayton, Id.** as quoted makes it very clear that Dr. Azmat's amended complaint should have been admitted and then its fate should have been decided. The original complaint, which in

reality had been rendered moot by the amended complaint, could not be resurrected from the dead to make it the operative pleading for the sake of killing it once again in order to issue an R&R on it. This was the proper sequence, satisfactory to Rule 15(a)(1) and this Court's precedent that should have been followed This was a major error by the Dist Court, which cannot be taken lightly because Dr. Azmat brought this to the Dist. Court's attention four times, yet it was never acknowledged by the Court. **(Doc.462,463,469,482).** In desperation, Dr. Azmat filed motion to withdraw the original complaint, **(Doc. 463)**, but was denied by the Court. **(Doc.466)**. The Court had no jurisdiction to review the issues contained in the amended complaint that was filed as a matter of course before it was admitted. As is also stated in **Toenniges, Id.** *"the merits of [] amendment, at that stage were irrelevant."*

If the Dist. Court had followed its own precedent **(Lee. Id., Clayton. Id. McRea. Id.)** to admit the Amended Complaint as the operative complaint, the outcome of the §2255 would have changed. It would not have enabled Govt. to hide behind its erroneous and inapplicable 'time-barred' argument that Govt. used as an excuse to prevent review of its misconduct. In fact, it was used by Govt. to cover-up its criminal conduct and other egregious misconduct that was used to fraudulently obtain the indictment that Dr. Azmat had to stand trial on (*"fruit of the poisonous tree."*) This would have prevented the grave injustice that Dr. Azmat continues to suffer as a result of close to seven years of incarceration from an indictment that Dr. Azmat never earned nor deserved.

3) *DENIAL OF GRAND JURY TRANSCRIPT*

Dr. Azmat clearly made allegations of prosecutorial misconduct, fraudulent indictment and malicious prosecution in the Amended Complaint **(Doc. 411, Issue III and pages 40-43)**. Following this, Dr. Azmat filed several Motions to be provided the grand jury transcript **(GJT)** and made it very clear in multiple filings that the requested GJT was not a secret, having been released by Govt. in pre trial discovery. **(Doc.413,420,422,429,431,432,434, 437,439,441)**. Dr. Azmat did not have the GJT in prison, having been taken into custody at the conclusion of the trial. It was also made clear that Dr. Azmat's trial attorney had refused to provide the transcript unless ordered by the Court. Govt.'s opposition to it each time has been presented supra and Dr. Azmat will refrain from repetition except to state that Govt., having released the GJT itself, never admitted to it in any of its filings **(Doc. 416, 430, 443)** and continued to argue against Dr. Azmat's access to it. In fact, Govt. stated that *"A §2255 must demonstrate "good cause"..."*. This is quite an interesting argument where Govt. releases a document pre trial, which the incarcerated pro se does not have in prison and Govt. wants the pro se to demonstrate *"good cause"* to gain access to a discovery released document!! Actually, Govt. itself provided and satisfied the "good cause" requirement by releasing the transcripts (original and superseding)! This should have been laughed out of Court except that the Dist. Court denied Dr. Azmat access to the GJT using the very same argument by stating ***"Nor has he made any showing***

demonstrating the need to disclose the grand jury transcript". **(Doc.455).** Such a ruling only served to confirm a successful perpetration of fraud upon the court by Govt.. This denial is a very serious issue of deprivation of Dr. Azmat's Constitutional due process rights because Dr. Azmat was not asking to unseal a secret document or the secrecy of GJT to be lifted, which Dr. Azmat had clearly stated in several of the 10 (TEN) documents that were submitted related to GJT that both, the original as well as the superseding GJT were released by Govt. pre trial and were no longer a secret document. In **Doc. 432**, Dr. Azmat stated: *"Dr. Azmat has made it quite clear that he needs the information in...Grand Jury transcript to adequately respond to Govt.'s opposition to Dr. Azmat's amended complaint".* A bigger issue related to this denial by the Dist. Court relates to the proceedings of the grand jury, the details of which are not being discussed here. However, what needs to be stated is that upon receipt of GJT of the original indictment, a Motion for Summary Judgment was filed by Dr. Azmat (**Doc. 441**). This was a fifty page document which exposed criminal conduct by prosecutors and Govt. Agents along with at least NINE documented episodes of Grand Jury R. 6(e)(1) violations, where the prosecutors met with the jury off the record. Although Dr. Azmat did not have the GJT of the superseding indictment, Dr. Azmat presented evidence from the trial that in order to obtain the superseding indictment, Govt.'s modus operandi was not at all dissimilar to what Govt. used to obtain the original indictment. It was also stated that since the original indictment was never withdrawn, all the evidence presented in the Motion for Summary

Judgment was valid. (**Doc.441**). The GJT of the superseding indictment was also released but Dr. Azmat did not and still does not have access to it. (**Doc.441, 42-45**). Denial of access to a document released in discovery is a violation of Constitutional right of due process (V & XIV), because it did and continues to prevent Dr. Azmat from fully presenting his claims. Dr. Azmat has every right to its access and should not be required to show a ***"need to disclose"***, as the Court ruled.

Govt.'s conduct regarding the original as well as the superseding indictment stood fully exposed, because Dr. Azmat had already provided verifiable proof of criminal conduct by prosecutors and agents to obtain both, the original as well as the superseding indictment. What else could Dr. Azmat present to Court to satisfy the ***"need to disclose"*** requirement that the Court was looking for? What could possibly be bigger or more important when not just exposure, but verified proof of criminal activity related to grand jury proceedings that failed to satisfy the Court? Court's requirement would not have been valid even if the GJT had not been already unsealed and released. This was not the case, because Dr. Azmat had made it abundantly clear in several filings that the GJT had been released pre trial. Simply stated, the Court was not looking at any "*good cause*" or "*need to disclose*", and this cannot be seen as anything other than a pre determined denial which was not based upon any facts or arguments that were presented.

United States v. Hall, CR316-001 (S.D. Ga. 2016)*Unsubstantiated allegations of grand jury manipulation do not satisfy the particularized need'*

standard." **United States v. Cole, 755 F.2d 748, 758-59 (11th Cir. 1985); United States v. Tucker, 526 F.2d 279, 282 (5th Cir. 1976)**

This very Court rightly ruled that ***"unsubstantiated allegations.... do not satisfy the particularized need standard"***, and when Dr. Azmat provided the substantiated allegations, it satisfied the standard but not the Court.

The irony here is that the Court denied the GJT request almost 10 months after Dr. Azmat had filed the Motion for Summary Judgment upon obtaining the GJT. However, Dr. Azmat is still being deprived access to the GJT of the superseding indictment, which was also released pre trial. (**Doc.441**). Substantiated proof of misconduct in the form of sworn testimony by Govt.'s own witness that confirmed the fabrication of evidence that was used to obtain the superseding indictment was also provided by Dr. Azmat. (**Doc. 441, pages 42-45**). The withholding of an already released discovery document from Dr. Azmat is a gross violation of Dr. Azmat's Constitutional rights to due process and equal rights protection (V & XIV amendments) because it is preventing Dr. Azmat from fully presenting his case, which is also applicable and affecting this very filing as well. Both, Govt. and Court are equally responsible for this violation. This was not a complicated issue and an independent action by the Court pursuant to 60(d)(1) is warranted. In fact, this certainly is also consistent with a joint undertaking by Govt. and Court satisfactory to 60(d)(3), because not only was a blind eye turned to all the criminal activity exposed in the original grand jury transcripts, but the revelations of

what transpired in the superseding indictment was effectively kept under wraps, in what the evidence points to was a deliberate effort to undermine judicial proceedings, at the expense of knowingly inflicting injustice upon Dr. Azmat. The question is: what is Govt. trying to hide and why did the Court help Govt. hide it?

4) *DISMISSAL OF MOTION FOR SUMMARY JUDGMENT*

The Court dismissed the Motion for Summary Judgment without taking into consideration any of the evidence that was presented. The Court justified the dismissal by stating that the Motion was a *"second amended complaint"* and *"dead upon arrival"*. (**Doc.455**). The Court's ruling was in error for all the following reasons:

a) The Motion for Summary Judgment related back and proved the allegations of fraudulent indictment and prosecutorial misconduct that Dr. Azmat had made in the amended complaint. As such, it was not a *"second amended complaint"*. (**Doc. 411, ISSUE III and pages 40-43**). Also, in **Doc. 420** Dr. Azmat stated: *"In his Motion to obtain grand jury transcript (Doc.13) Dr. Azmat made it clear that the Grand Jury transcript contains corroborating evidence to Dr. Azmat's assertions made in his response (Doc.11)..."*, (amended complaint). This was conclusive proof that the Motion for Summary judgment related back to the allegations made in the amended complaint that Dr. Azmat had already clearly conveyed to the Court. It was not a *"second amended complaint"*, at all.

b) The Motion for Summary Judgment was based upon 'newly discovered evidence', that confirmed the allegations made in the amended complaint, and as such, it should have been admitted pursuant to §2255(f)(4). Dr. Azmat was taken into custody straight from the courtroom following the trial and ended up in a jumpsuit without any personal belongings or so much as a piece of paper. Dr. Azmat had clearly described the diligence with which Dr. Azmat pursued his efforts to obtain the GJT by first trying to obtain it from his trial attorney, followed by pursuing it through the Court by filing numerous motions/court filings (**Doc. 413, 420, 422, 429, 431, 432, 434, 437, 439**) and all this while continuing to urge his family to conduct repeated searches of three storage units where Dr. Azmat's family had stored their household belongings. All this relentless diligence paid off when the GJT was finally discovered by the family. Upon receiving the GJT, Dr. Azmat was shocked to discover the amount of criminal conduct and nine documented violations of Grand Jury R. 6(e)(1), that were used to obtain the indictment. This was 'newly discovered evidence' pursuant to §2255(f)(4). Since the uncovered information proved the allegations that Dr. Azmat had made in the amended complaint, the only logical next step was to file the Motion for Summary Judgment to dismiss the indictment, since Dr. Azmat had finally obtained the evidence that was needed to prove the allegations that Dr. Azmat had made in the amended complaint related to fraudulent indictment, prosecutorial misconduct, malicious prosecution etc.. (**Doc. 411, Issue III and pages 40-42**). In fact, Dr. Azmat had alluded to the

actual innocence claim in the amended complaint where Dr. Azmat stated that *"It is apparent that the indictment and subsequent conviction were both fraudulently obtained by the Govt."*. **(Doc.411 page 40). (Haines v. Kerner, 404 U.S. 519, 520 (1972).**

Lest there be any misgiving, Dr. Azmat had made it very clear that dismissal of summary judgment motion pertained to both, the original as well as the superseding indictment because issues related to the superseding indictment were presented to show that the superseding indictment was also fraudulently obtained. (**Doc.441, at 42-45**). It may also be mentioned here that the relentless diligence with which Dr. Azmat pursued the acquisition of the GJT far exceeded the "reasonable diligence" that the standard requires. The **§2255(f)(4)** argument was presented to the Court by Dr. Azmat, but was never addressed or considered by the Court. (**Doc. 462,469,482**). **(Clisby v. Jones, 960 F.2d at 936).** Based upon all the evidence presented, it is quite obvious that the Motion for Summary Judgment was not a *"second amended complaint"* and certainly was not *"dead on arrival"* by any stretch. This error by the Court had grave consequences in that it deprived Dr. Azmat of his Constitutional due process rights because it precluded consideration of Dr. Azmat's actual innocence claim, as described in the next section.

c) Lost in all these erroneous rulings by the Dist. Court was Dr. Azmat's actual innocence claim. This claim was actually made in the amended complaint:

Issue III of the amended complaint stated: *"GOVERNMENT USING UNTRUTHFUL AND/OR*

PERJURED TESTIMONY..... THAT THE GOVERNMENT KNEW WAS FALSE AND PERJURED, FIRST TO GET A GRAND JURY INDICTMENT AND THEN A CONVICTION WHICH WAS A RESULT OF VIOLATION OF CONSTITUTIONAL RIGHTS OF THE PETITIONER TO A FAIR TRIAL". (**Doc. 411 at 2**).

Also see Doc.411 page 40,41,42: *"[w]hen filter is applied...Govt. would not have been left with enough meaningful evidence to seek and [sic]indictment from the Grand Jury, in the first place..... It is apparent that the indictment and subsequent conviction were both fraudulently obtained by the Govt.....conclusively demonstrated that this case involves prosecutorial misconduct, the deliberate deception of the Court, and a corruption of the truth-seeking function of the trial process...misconduct...was initiated at the Grand Jury and continued until the Govt.'s closing argument...hope that this Honorable Court will hold the Govt. in contempt for obstruction of justice for their very deliberate misconduct....Govt. was not seeking justice...promoting and facilitating its own witnesses to give perjured testimony along with itself being repeatedly untruthful in front of this Court without fear of any consequences...belief that the Court will deal with the Govt. in an exemplary manner since it is just not acceptable for the advocates of law (Govt.) to engage in the same conduct for which the Govt. prosecutes its citizens...Dr. Azmat's firm belief that the Court will hold the Govt. accountable for its dishonesty and lack of integrity in its zeal to prosecute its citizens because such moral turpitude should have no place in the*

halls of justice....[Govt.] was very much complicit in eliciting such testimony from its witnesses' not only before the Grand Jury but also the trial jury."

It is abundantly clear from what has been quoted directly from the amended complaint that Dr. Azmat did actually make a claim of actual innocence. **(Haines v. Kerner, 404 U.S. 519, 520 (1972))**. It is relevant to state here that **Haines Id.** was actually quoted by Dr. Azmat on the first page of the amended complaint , **Doc.411**, because that document was the very first such court filing by Dr. Azmat and wished it to be liberally construed. Dr. Azmat could not specifically provide confirmatory proof because Dr. Azmat did not have the GJT at the time. The overriding reason that Dr. Azmat relentlessly pursued to obtain the grand jury transcript was to prove his innocence. This pursuit was very unfairly termed as a *"fishing expedition"* by the Court. (**Doc.455**). Once the GJT was received, the evidence contained in the summary judgment motion corroborated all the allegations and claims that Dr. Azmat had made in the amended complaint to prove his actual innocence. In fact, Dr Azmat wrote in **Doc. 469 at 8**, *"This was a far cry from a "fishing expedition". Dr. Azmat had had already caught a net full of fish and presented filets to the Court to 'fry the* fish'". The only reason Govt. engaged in criminal activity and other egregious misconduct was to indict an innocent person, because if Govt. had any evidence to the contrary, there should have been no need to fabricate evidence etc. etc., (**as detailed in Doc.441**). Probable cause standard has a very low threshold. It is obvious that Govt. could not satisfy even a low threshold that it had to

fabricate the evidence to indict Dr. Azmat. And, as if this was not enough, on top of it, Govt. had to engage in NINE known violations of **GJ Rule 6(e)(1)** to ensure an indictment.(**Doc. 441, page 2**). Lest there be any doubt, it is essential to state here that Govt.'s lame response that it was "inadvertent", was an extremely foolish and childish excuse because there was nothing "inadvertent" about a pattern of NINE documented violations. One such violation is one too many and, in this case perhaps there could be more than the nine revealed examples, that escaped Dr. Azmat's review. The independence of the grand jury was irreparably and fatally harmed by a very deliberate pattern of repeated Govt. interference. Of note here is that it took three or four different grand juries to issue the original indictment, which makes Govt.'s criminal conduct and interference with the independence of the grand jury (**R.6(e)(1) violations**) all the more important to consider. The mountain of evidence presented by Dr. Azmat amounted to an egregious violation of the **grand jury clause of the V Amendment** that Govt. knowingly and repeatedly engaged in, which is simply inexcusable. The irony is that upon getting caught 'with both hands in the cookie jar and a mouthful of cookies', instead of taking responsibility, Govt. foolishly resorted to making a lame excuse that nobody should be deceived by, least of all, the Court. Bluntly and rightfully stated: shame on US Attorney Bobby Christine for such flagrant disregard to his Oath of Office. Upon reviewing the Motion for Summary Judgment (**Doc. 441**), Dr. Azmat is confident that the Court may not have seen this much amount of criminal and other egregious misconduct before a grand jury in a single case, and

would appreciate the urgent need to rein in the hubris of this totally out of control US District Attorney's office that has forgotten to, firstly act honorably to conduct grand jury proceedings, over which there is no oversight, and secondly, to accept responsibility upon getting caught. Any latitude by the Court would further embolden such conduct without fear of any retribution. Following Govt.'s response to the summary judgment motion (**Doc.443**), Dr. Azmat, at the end of his reply asked for dismissal of the indictment and to be issued a "Certificate of Innocence". Dr. Azmat would not be asking for a certificate of innocence if Dr. Azmat was not making a claim of actual innocence. **(Doc. 444 at 19). (Hanes v. Kerner, 404 U.S. 519 (1972).**

Both, Govt. and the Court have stated that there was *"overwhelming evidence"* presented at trial to convict Dr. Azmat. This ill conceived notion needs to be put to rest: if Govt. had "overwhelming evidence" to obtain a conviction, why did Govt. not present it to the grand jury instead of manufacturing all the evidence to obtain a fraudulent indictment, in the first place? Dr. Azmat, in the amended complaint, debunked such a claim by presenting overwhelming verified evidence to the contrary to irrefutably reveal that the same pattern of untruthful modus operandi that the prosecutors had used to obtain the indictment was used at trial. The evidence presented at trial was "*fruit of the poisonous tree*", in violation of IV amendment rights. In the amended complaint, Dr. Azmat clearly stated: *"[w]hen filter is applied...Govt. would not have been left with enough meaningful evidence to seek and [sic]indictment from the Grand Jury, in the first place ....It is apparent that the indictment and subsequent conviction were*

both fraudulently obtained by the Govt.". **(Doc.411at 40-45)**. Also, in **Doc. 457 at 6** Dr. Azmat stated: *"..if the govt. did not have enough evidence to seek a lawful indictment, the Govt. certainly did not have "independent and overwhelming" truthful evidence for a fair conviction",* in response to the grossly misleading assertion by Govt. and Court that *"overwhelming independent evidence"* was presented at trial. The verifiable evidence to effectively dispel this ill-conceived and deceptive notion was presented in the amended complaint, and when added to the *'fruit of the poisonous tree'*, speaks for itself, and of Dr. Azmat's innocence.

What is most troublesome is the Court's role in dismissing Dr. Azmat's claim of actual innocence. The Mag. Judge dismissed all of Dr. Azmat's claims on procedural grounds and when Dr. Azmat appealed, the Dist. Judge simply stated that Dr. Azmat *"has never raised an actual innocence claim in his properly filed petition or his later untimely petition filed on his own behalf. (see Doc. 401; Doc; 403; Doc.411)."* The Court also stated *"Petitioner has not cited any new reliable evidence".* Dr. Azmat, in fact did allude to this when Dr. Azmat made it very clear in stating that when all the perjured testimony is filtered, there is nothing left to obtain a conviction or indictment (**Doc. 411, page 40-42**). No reference was made by the Court to the Motion for Summary Judgment (**Doc.441**), where the "*new reliable evidence*" was presented pursuant to §2255(f)(4). The Court (both, the Mag. Judge as well as the Dist. Judge) simply ignored a 50 page submission detailing evidence related to innocence (**Doc. 441**) and at the end (**Doc.444, page 19**) stated, ***"Dr.***

Azmat prays that the Honorable Court dismiss ALL indictments against Dr Azmat using its Supervisory Power and issue a Certificate of Innocence to exonerate Dr. Azmat". As if all this was not enough, Dr. Azmat went further to present copies from the record as EXHIBITS (**Doc. 447**), which was around a 100 page document and stated ***" on realization that the Honorable Court would be burdened to sift through an extensive record, Dr. Azmat is making it easier for the Court by printing the referenced evidence and submitting them as Exhibits"***. Dr. Azmat had made a very well substantiated claim of actual innocence. The Court's ruling made it quite obvious that the Dist. Judge had not considered all the evidence that was submitted to the Court. It is inconceivable that the Court inadvertently missed review of all the Court submitted record and stated that Dr. Azmat had never made a claim of actual innocence or presented any new evidence related to such a claim. The Court, in fact, did not miss any submitted evidence because the Court actually dismissed **Doc. 447** which was exclusively made up of EXHIBITS to substantiate the claim of actual innocence. (**Doc.455**). What is clear is that the Court never took into consideration all the submitted evidence in issuing denial of actual innocence claim. Court referenced **Doc.401, 403, 411** as the documents that the court had reviewed which clearly proves that the Court never considered **Doc.441/444**, where the claim of actual innocence was actually stated. In fact, the Court missed all the evidence related to innocence that was presented in the amended complaint as well, as presented above and in **Doc. 411, pages 40-42.** This was not a benign

mistake when taken into consideration that at stake is the liberty of an innocent person. Court filings by Dr. Azmat, related to issues in the Motion for Summary Judgment included **Doc. 441,444,445,447,449,452,453,479,457,482**. If indeed the Dist. Judge failed to review any of these documents, it is a grave issue because the court issued its judgment without reviewing court submitted documents. On the other hand, the problem is compounded if the Court reviewed these documents and then in the Court Order stated that "*Petitioner has not cited any new reliable evidence*", because the new information was the basis of Motion for Summary Judgment and reliability of the new information was contained in the Motion to admit Exhibits **(Doc.447),** where Dr. Azmat copied the references from the record to enable the Court to substantiate and verify the allegations, which speaks volumes for the reliability of Dr. Azmat's allegations. As if this was not enough, Dr. Azmat, three times brought to the Court's attention that this was 'newly discovered evidence' pursuant to **§2255(f)(4),** in **Doc.462,469,482**. Once again a direct reference to the claim of actual innocence was made when Dr. Azmat filed Motion for Default Judgment and asked for a Certificate of Innocence. **(Doc.453, page 5)**. How is it possible that all this screaming by Dr. Azmat failed to attract the Dist. Court's attention? The Court was obligated to review the merits of Dr. Azmat's claims of actual innocence before dismissing them in order to serve justice, given the extensive and elaborate evidence that Dr. Azmat had submitted to the Court. To reiterate, the Court had no justifiable reason to brush aside and dismiss the Motion for Summary Judgment as a

"second amended complaint" when, (i) it related back and proved the allegations of fraudulent indictment and innocence that were made in the amended complaint; (ii) was based upon 'newly discovered evidence', pursuant to §2255(f)(4); (iii) when the claim of actual innocence was made in the Motion for Summary Judgment. (iv) the amended complaint could not be dismissed as time-barred (in addition to other reasons already stated), because it contained the initial assertion of actual innocence which was substantiated by the Motion for Summary Judgment, which in turn was based upon 'newly discovered evidence'. The amended complaint and the summary judgment motion was, in fact a continuation of the same argument of actual innocence, which was the basis of this entire litigation. The amended complaint and the summary judgment motion were intricately attached and should not have been looked at or evaluated separately. Moreover, it was the Court that *de novo* made the argument of *"second amended complaint"* on behalf of the Govt. to use it as an excuse to dismiss it, notwithstanding the fact that in doing so, the claim of actual innocence was being purged without review. (Also applicable is 60(d)(3) presented below).

Rivera v. Sellers, CV 113-161 (S.D. Ga. 2019) *"To show actual innocence, Petitioner must present "new reliable evidence that was not presented at trial ... to show that it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt in light of the new evidence."* **Id. at 1011** *(internal citations and quotation marks omitted) . The new evidence used to*

show actual innocence may include, but need not be limited to, "exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence." **Schlup v. Delo, 513 U.S. 298, 324 (1995); accord Rozzelle, 672 F.3d at 1017**. *Petitioner must do more than "counterbalance the evidence that sustained [his] conviction."* **Rozzelle, 672 F.3d at 1017-18.**

Dr. Azmat's summary judgment motion was based upon newly discovered evidence which was related to the proceedings of the grand jury and had not been presented at trial. When the evidence that Dr. Azmat uncovered and presented is reviewed, it becomes clear that absent the misconduct, Govt. could never have been able to obtain the indictment. And, if Govt. argues against this conclusion, the question then becomes: if Govt. had enough reliable information that could have been honestly and honorably presented to the grand jury, Govt. would have never needed to resort to criminal conduct in manufacturing and fabricating evidence along with NINE grand jury 6(e)(1) violations to fraudulently obtaining an indictment. This misconduct (or, rather criminal conduct) related to the grand jury was not one or two or even a few odd instances that can be forgiven, but in fact covered the entire spectrum and formed the core of Govt.'s case that directly related to Dr. Azmat. This speaks loud and clear of Dr. Azmat's actual innocence.

Kingland, 369 F.3d 1210 (11th Cir. 2004), *"Falsifying facts to establish probable cause is patently unconstitutional...See, e.g.,* ***Riley v. City of Montgomery, 104 F. 3d 1247, 1253 (11th Cir.***

1997)) *("It is well established...that fabricating incriminating evidence violated constitutional right.")* **(Doc. 444 at 17)**. Dr. Azmat has presented evidence to this effect.

As Dr. Azmat stated above (and needs to be repeated): the Court may have never seen the amount and the kind of misconduct before a grand jury in a single case. Govt. then carried this tainted indictment to the trial jury, knowing that it was fraudulently obtained. (IV amendment violation: "*fruit of the poisonous tree*". (Also V & XIV amendments).

*"[i]f it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. * * * That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair.* **Napue, 360 U.S. at 269-70).** Also see, **Mesarosh v. United States, 352 U.S. 1 (1956)** *"[t]he dignity of the United States Government will not permit the conviction of any person on tainted testimony."* **Id. at 9,**

Of course, the US Attorney or any of his subordinate AUSA's, in this case have shamelessly displayed no consideration whatsoever to the ***"dignity of the United States Government"*** **Id.** and, that too, after being repeatedly reminded by Dr. Azmat **(Doc. 411,422,432,434,437,439)** that ***"the district attorney has a responsibility and duty to correct what he knows to be false..."*** **Id.** Although the silence of the DOJ has been described above in some detail, it is mentioned here to state

that the Court, having been fully informed of what transpired, regrettably did not hold to account the perpetrators that committed fraud upon the court by plundering the sanctity of solemn judicial proceedings, where they had no oversight and were obligated to display honor and honesty. The Court dismissed it without considering the merits of Dr. Azmat's argument and claim of innocence.

Let this Motion serve as another opportunity for the US Attorney to display honor (personal and in his official capacity) by finally accepting responsibility and holding his subordinates accountable for their acts by asking for the Court's forgiveness and by doing what his predecessor did in **Ippolito, 2015 U.S. Dist. LEXIS 15478** before this Court. In fact, the Court has no justification NOT to follow its own precedent, as in **Ippolito. Id.** After all, what this case contains makes the Ippolito case pale in comparison. Along with this, the Court is urged to issue a show cause notice to the US Attorney demanding a response as to why the Court should not order a criminal investigation into the acts of those under the US Attorney's command, that committed crimes as well as ALL those high officials in the DOJ who have thus far remained silent to protect the accused, so that justice may be served. The Court already has verified evidence in the court record that is more than satisfactory to serve as a probable cause to take such an appropriate action. Just because the involved individuals carry a Govt. title does not exempt them from being held accountable for their criminal conduct as well as other egregious misconduct, which is no different than what ordinary citizens get charged with on a daily basis by these very prosecutors. In fact, the

prosecutors should be held to a higher standard, because they knew better than others, not only that they were breaking the law, but knowingly doing it.

United States v. DiBernardo, 552 F.Supp. 1315, 1327 (S.D. Fla. 1982)
"under its supervisory power a court may dismiss an indictment as a prophylactic tool for discouraging governmental impropriety...The prosecution has a good faith duty to the Court, the grand jury and the defendant. **United States v. Basurto, 497 F.2d 781, 786 (9th Cir.1974).** *In this regard, if the prosecutor has in his possession evidence which would cast doubt on the credibility of a witness before the grand jury, he has an ethical duty to disclose it.*
Id.at 1328: *The right to indictment by an unbiased grand jury is guaranteed by the Fifth Amendment.* **Costello v. United States, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed. 397 (1956).**

Evidence presented by Dr. Azmat, confirmed by the records that were also presented to the Court, more than adequately show that Dr. Azmat's rights were freely and deliberately and knowingly not just violated but plundered by the prosecutors and Govt. Agents, while the US Attorney and higher ups, all the way to the top of the DOJ, having been fully and adequately informed, failed to intervene. The **EXHIBITS attached to Doc. 479** are a must read, and the Court should undoubtedly be extremely moved after reviewing them. This could be termed a Constitutional violation upon a Constitutional violation. Same applies to the Dist. Court, the first time around. This is a second opportunity and time has now come for the Court to hold each and every

one, who was fully informed, accountable, so that true and rightful justice, that has eluded Dr. Azmat for so long, is finally served, to prevent further prejudice and restore Dr. Azmat's Constitutional rights.

d) It is quite interesting to also note that, whereas Dr. Azmat filed "WRIT OF HABEAS, MOTION FOR SUMMARY JUDGMENT AND MOTION TO PROVIDE TRANSCRIPT OF SUPERSEDING INDICTMENT", (**Doc. 441**), Govt.'s response was titled: "GOVERNMENT'S OPPOSITION TO AZMAT'S MOTION TO DISMISS INDICTMENT AND MOTION FOR COPY OF GRAND JURY TRANSCRIPT FROM SUPERSEDING INDICTMENT". (**Doc 443**). In other words, Govt. never recognized that it was a Motion for Summary Judgment, and never even mentioned the words, 'summary judgment' in its response; even though Govt. was served with a Notice that it was a Rule 56 Motion by the court clerk. (**Doc.442)**. It is quite clear that Govt. never did respond to the "Writ of Habeas, Motion for Summary Judgment" that was filed. **This motion should have been granted because Govt. clearly defaulted in its response.**

Dr. Azmat's Motion for Default Judgment, **Doc.453**, should have been granted, for the same reason. Also, it needs to be restated: shame on US Attorney Bobby Christine for blatantly attempting to deceive the Court. When the shoe is put on the other foot, the pertinent question is: how many times has the Court granted Govt.'s Motion for Summary Judgment where a pro se petitioner either did not adequately respond or failed to respond with a sworn statement? Actually, the requirement of sworn

statements in response to Rule 56 Motion was not lost on Dr. Azmat ;(**Doc. 453,457,480**), it was brought to the Court's attention that Govt. had not presented a sworn statement in reply to Govt.'s response: *"The Govt. failed to respond...since it relied on its own unsworn pleading. See Gordon v. Watson. 622 F. 2d 120,123 (5th Cir. 1980) stating: "we have never allowed [such] litigants to oppose summary judgments by use of unsworn material". Also "unsworn statements may not be considered in evaluating a summary judgment motion" (Carr v. Tangelo, 338 F. 3d 1259,1273 n.6 (11th Cir. 2003)".* (**Doc. 444 at 4-5**). This was followed by quoting a precedent from this very Court where Govt. was ordered to do so. (**Doc.480**). This court filing was never docketed when it was submitted and then was hastily placed out of sequence when Dr. Azmat discovered it, probably close to almost a year or so later. When viewed through the proper prism, it becomes crystal clear that this certainly was not a benign neglect and far from a harmless error that the Court used as an excuse to dismissed it as. (More on this in the 60(d)(3) section). Dr. Azmat, a third time, brought to the Court's attention that Govt. had never provided a sworn statement by filing Motion for Default Judgment (**Doc.453**). Govt.'s hubris is evident from what was stated in its response: *"Contrary to Azmat's assertions in his latest motion, no affidavit or sworn statement of fact was or is required".* (**Doc. 454**). Such a bold and arrogant declaration was made without citing any rule, authority or precedent to support it. Imagine a scenario where Dr. Azmat or any pro se were to tell the Court that a sworn statement in response to a Rule 56 motion is not required, what would the

Court say or do? The Court would certainly not look the other way, as it did in this case. What is known is that the Court would never support a pro se and go out of its way to *de novo* make up an argument in favor of the pro se to dismiss a legitimate Rule 56 Motion, as the Court did to bail out the Govt.. It is worth noticing that the AUSA that submitted such an argument to the Court was none other than Karl Knoche, the epicenter, architect and facilitator of the criminal conduct before the grand jury! The Court never held Govt. to the required standard in this case and the evidence speaks for itself. Unfortunately, the Court failed to be a neutral arbitrator, and became a party to the case by advocating for Govt., as is clear and gets even more troublesome when the next section is reviewed.

e) The Magistrate Judge dismissed the Motion for Summary Judgment by construing it as a *"second amended complaint"* and *"dead on arrival"* (**Doc.455**). The Dist. Judge simply affirmed the Mag. Judge's ruling. In making this argument the Court actually advocated for Govt.. Such an argument was never presented to the Court by Govt. The reason Govt. never made this argument is because Govt. knew that the Motion for Summary Judgment was based upon and related back only to prove the allegations of fraudulent indictment, prosecutorial misconduct, malicious prosecution etc. that Dr. Azmat had made in the amended complaint. Since Govt. was in a no win situation, Govt. resorted to deceiving the court by pretending not to recognize it as a summary judgment motion, as presented above. The Motion for Summary Judgment was simply a continuation to prove those allegations. (**Doc. 411,**

ISSUE III and page 40-42; Doc. 413; Doc. 420). In addition, it was timely, based upon 'newly discovered evidence', and confirmed the claim of actual innocence that was alluded to in the amended complaint, which , apart from other reasons already presented, the amended complaint could not be ruled as time barred for this reason as well. The claim of actual innocence could not be evaluated without also considering the evidence presented in the amended complaint and in order to do so, it had to be admitted as the operative pleading of the case. So, the amended complaint could not be dismissed as time barred. As such, it certainly was not a "*second amended complaint*" and far from "*dead on arrival*". What is unacceptable is that not only did the Court make the argument on behalf of Govt. but went out of the way to create an erroneous one, and as if this was not enough, Court then used it as an excuse to dismiss the motion, notwithstanding the fact that the Court dismissed the document containing Dr. Azmat's actual innocence claim, without considering the evidence in it. Court cannot and should not be making arguments on behalf of litigating parties because it puts its neutral referee status in jeopardy, as the Supreme Court ruled:

United States v. Sineneng-Smith, No. 19-67, United States Supreme Court (2020)

The Nation's adversarial adjudication system follows the principle of party presentation. **Greenlaw v. United States, 554 U. S. 237, 243.** *"In both civil and criminal cases, . . . we rely on the parties to frame the issues for decision and assign to courts the*

role of neutral arbiter of matters the parties present." **Id., at 243.**

In criminal cases, departures from the party presentation principle have usually occurred "to protect a pro se litigant's rights." **Id., at 244;see, e.g., Castro v. United States, 540 U. S. 375, 381–383 (2003)** *(affirming courts' authority to recast pro se litigants' motions to "avoid an unnecessary dismissal" or "inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis" (citation omitted)).*

"[C]ourts are essentially passive instruments of government." **United States v. Samuels, 808 F.2d 1298, 1301 (CA8 1987) (Arnold, J., concurring in denial of reh'g en banc)).** *They "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties."* **Ibid.**

Whereas the Supreme Court directs Courts ***to recast pro se litigants' motions to "avoid an unnecessary dismissal",*** unfortunately the Court did just the opposite in Dr. Azmat's case. It was unacceptable for the Court to make an argument on behalf of a party, according to Supreme Court, especially when it prevented review of evidence pertaining to the actual innocence claim that was made in the document that the Court erroneously dismissed. Instead of helping ***"to protect a pro se litigant's rights."*** **Id.**, the Court, in this case, on its own, created an excuse to dismiss it.

2017 Dist. LEXIS 148435, Ray Capital Inc. v. M/V Newland Castellano (S.D. Ga.) *"A court need not make a lawyer's case." (internal quotations and citations omitted)."* In Dr. Azmat's case, the Court made the lawyer's (Govt.'s) case, once again, against its own precedent.

Given the overall evidence of other issues presented here, this dismissal by the Court cannot be brushed aside as a benign error or an excusable neglect, especially when there are close to a dozen court filings by Dr. Azmat that relate to the issue of summary judgment motion, and in several the issue of actual innocence was made and in others it was clearly stated that it related back to the amended complaint, so it could not be a second amended complaint. (**Doc. 441,444,445,447,449,452,453, 479,457,482**).

e) When the Court dismissed the Motion for Summary Judgment by declaring it a *"second amended complaint"*, the Court obviously reviewed the document, otherwise there would have been no way for the court to know that it was a *"second amended complaint"*. Upon reviewing the document, the Court, obviously became aware of the criminal activity of prosecutors and federal agents and other egregious misconduct that was used to obtain Dr. Azmat's indictment. By dismissing such a document, the Court violated Dr. Azmat's Constitutional due process rights by shutting the door upon finding that Dr. Azmat was not only fraudulently indicted but also taken to trial based upon a fraud upon the court that was known and perpetrated by the involved prosecutors. (**IV, V & XIV Amendments**). The Court was required to find out if such an indictment

had to be dismissed, especially when Govt. never denied or addressed any of the allegations and never presented a sworn statement in its response, as required by Rule 56. Govt. is not exempt from a response with a sworn statement pursuant to Rule 56. In fact, Govt. boldly stated that no sworn statement was required, without citing any authority or provision in Rule 56. **(Doc.454).** Apparently, this was acceptable to the Dist. Court. Dismissal of a fraudulently obtained indictment, as Dr. Azmat was claiming was the central holding in the **Bank of Nova Scotia Id**. as quoted and explained in the **Sigma Id**. that Dr. Azmat had presented. Such information was not "*dead on arrival*", as the Court described it. On the contrary, it was just born pursuant to §2255(f)(4). What happened here, in effect was a free pass to those that engaged in fearlessly plundering the sanctity of solemn judicial proceedings with impunity, where Govt. was required to act honorably in the absence of any oversight. Court's "*dead on arrival*" declaration effectively covered up Govt.'s criminal and other egregious misconduct (e.g. NINE Grand Jury Rule 6(e)(1) violations, which in themselves were grounds for dismissal of the indictment). What cannot be ignored here is that the Court was required to use its supervisory power over the grand jury and intervene after not just being informed of, but was also provided with incontrovertible proof that Dr. Azmat's Constitutional rights were flagrantly plundered by Govt.'s fraud upon the court that was used to obtain the indictment. **(Doc.444 at 19).** There certainly are provisions in the laws that allow Courts to make accommodations to any shortcomings on the part of pro se petitioners in

order to deliver justice. Instead of intervening to serve justice, the Court *de novo* made the argument to inflict injustice. This was huge for the Govt. in terms of relief, while no consideration was given to the victim that actually blew the whistle to expose the crimes and other egregious misconduct and was languishing in custody for over sixty six months, at the time and almost 80 months later, officially remains in BOP custody, awaiting his day in court so that his claims of innocence are adjudicated on merit and the real criminals (AUSA Karl Knoche, AUSA Greg Gilluly, DEA Agent Douglas Kahn and DEA Investigator Charles Sikes) along with US Attorney Bobby Christine and others that were informed and remained silent to protect the criminals, are held to account for their conduct, just like any other citizen engaged in similar conduct, in order for justice to be served. The Court certainly had the authority to order a criminal investigation, since the DOJ had failed in its oversight, which is a shame, as this Court will also conclude upon review of **Doc. 479 and its EXHIBITS**.

U.S. v. Sigma International, 244 F.3d 841, 853-54 (11th Cir. 2001) *("The court's reliance on* Mechanik *was an erroneous application of the law, and, as such, constituted an abuse of discretion.* **Bank of Nova Scotia** *eviscerated* **Mechanik's** *central holding, and clearly stated that a guilty verdict is no longer sufficient to validate the underlying indictment.*

U.S. v. Sigma International, 244 F.3d 841, 874 (11th Cir. 2001) *,"After an exhaustive review of the complete grand jury transcripts on rehearing, we are*

convinced that the record requires one result: dismissal of the indictment. We find that the improperly introduced evidence "substantially influenced the grand jury's decision to indict," **Bank of Nova Scotia, 487 U.S. at 256, 108 S.Ct. at 2374** (internal quotation omitted), *and therefore hold that the appellants were deprived of "an investigative body acting independently of either prosecuting attorney or judge,"* **Williams, 504 U.S. at 49, 112 S.Ct. at 1743** (internal quotation and emphasis omitted).....*For the foregoing reasons, we REVERSE the appellants' convictions and direct the district court to DISMISS the indictment.*

5) *DISMISSAL OF NEWLY DISCOVERED EVIDENCE*

The Motion for Summary Judgment was based upon the evidence found in the GJT. Dr. Azmat has explained supra the relentless diligence with which Dr. Azmat pursued the acquisition of the GJT and will refrain from repetition. Suffice it to say, that the information related to Govt. prosecutors and federal agents' criminal conduct and other egregious misconduct, e.g., at least NINE episodes of GJ R. 6(e)(1) violations were 'newly discovered evidence' satisfactory to §2255(f)(4). This discovery was not subject to time-bar, at the time of its presentation because it related back and confirmed the allegations of fraudulent indictment that Dr. Azmat had made in the amended complaint (**Doc.411, ISSUE III and pages 40-42**), and contained the claim of actual innocence.(**Doc.444, page 19**). Moreover, since the 'newly discovered evidence' served to confirm the actual claim of innocence that

was clearly alluded to in the amended complaint, and as a consequence, the amended complaint could not be time barred. The Mag. Judge not only dismissed it but, in fact ridiculed it. Dr. Azmat brought the issue of §2255(f)(4) to the Dist. Judge's attention in three filings but the Court never addressed any, much less even mention it. (**Doc. 462.469.482**). The implications of due process violation related to this Court action are similar to what has been described supra.

It is interesting and very relevant to re-state the fact that since Dr. Azmat clearly alluded to his innocence in the amended complaint and then presented proof of his claim of actual innocence in the Motion for Summary Judgment (as explained and presented above), the amended complaint could not be dismissed as time barred, because there is no time bar on a claim of actual innocence. Dr. Azmat's claim of actual innocence could not be dismissed without taking into account the evidence presented in the amended complaint along with the rest of the evidence that only served to provide confirmatory proof of the allegations. As such the amended complaint could not be dismissed as time barred, in addition to other reasons presented supra.

6) *COURT DISSMISSED ALL CLAIMS WITHOUT AN EVIDENTIARY HEARING*

A review of this filing makes it very apparent that allegations of very serious nature with potentially very severe consequences, including claims of criminal and other egregious misconduct simply went unanswered by, both, Govt. and Court. These claims were central to the claims of injustice

that Dr. Azmat has been repeatedly presenting to the Court. This Court may have also observed that while Dr.Azmat had made all these allegations, nowhere in any response did Govt. dispute or challenge or present a rebuttal, specific to any. The only thing that Govt. once stated was that Dr. Azmat's claims were "meritless and/or time-barred". **(Doc.448)**. Such a feeble and unsupported statement was hardly an acceptable legal challenge to any allegation. The Court only heard the details from Dr. Azmat and dismissed them without determining the validity of even a single issue or allegation. Given the serious nature of the allegations, where criminal conduct of one party bore directly against the actual innocence claim of the other, it was absolutely essential for the Court to determine the factual situation in order to preserve the Constitutional rights of both parties. This could only have been done by conducting an evidentiary hearing to determine the facts to ensure proper disposition of the issues for justice to be truly served in a fair manner.

Issues that required an evidentiary hearing included at least the following:

i. Actual innocence.
ii. Time-bar issue related to 15(a)(1).
iii. Dismissal of the actual operative pleading (amended complaint).
iv. Newly discovered evidence pursuant to §2255(f)(4).
v. Brady violations.
vi. Grand jury transcript.
vii. Dismissal of fraudulently obtained indictment.

viii. Prosecutors' criminal and other egregious misconduct.

ix. DEA agents' alteration and fabrication of DEA-6 reports.

x. Manipulation of docket by the court clerk's office.

Aron v. U.S., 291 F.3d 708, 714-15 (11th Cir. 2002) "*As we have previously stated, if the petitioner "alleges facts that, if true, would entitle him to relief, then the district court should order an evidentiary hearing and rule on the merits of his claim.*" **Holmes v. United States, 876 F.2d 1545, 1552 (11th Cir. 1989) (quoting Slicker v. Wainwright, 809 F.2d 768, 770 (11th Cir. 1987)); see also United States v. Yizar, 956 F.2d 230, 234 (11th Cir. 1992)** *(district court must hold an evidentiary hearing where court cannot state conclusively that the facts alleged by petitioner, taken as true, would present no ground for relief). Moreover, the court should construe a habeas petition filed by a pro se litigant more liberally than one filed by an attorney.* **See Gunn v. Newsome, 881 F.2d 949, 961 (11th Cir. 1989).**

7. *COURT DID NOT ADDRESS THE ACTUAL EQUITABLE TOLLING ARGUMENT*

The Mag. Judge did not address the issue of Equitable Tolling at all and Dr. Azmat appealed it to the Dist. Judge. The Court's response was interesting in that the Court only alluded to the attorney's conduct as an excuse to deny it, while

totally ignoring the overwhelming evidence that Dr. Azmat had provided of Constitutional violations and miscarriage of justice that equitable tolling was specifically meant to rectify. The Court never provided any reasoning why Equitable Tolling was not applicable to all the miscarriage of justice that Dr. Azmat had suffered resulting from a fraudulent indictment and conviction, repetition of details of which is being abstained from.

Long v. U.S., 626 F.3d 1167, 1169-70 (11th Cir. 2010) *Finally, we have long required the district courts and administrative boards to facilitate meaningful appellate review by developing adequate factual records and making sufficiently clear findings as to the key issues. See, e.g.,* **Thompson v. RelationServe Media, Inc., 610 F.3d 628, 637-38 (11th Cir. 2010) (securities fraud case); Shkambi v. U.S. Attorney Gen., 584 F.3d 1041, 1048-49 (11th Cir. 2009) (immigration case); United States v. Gupta, 572 F.3d 878, 889 (11th Cir. 2009), cert. denied, U.S. , 130 S.Ct. 1302, L.Ed.2d (2010) (criminal case)**.....*If the post-conviction motion or petition is dismissed as untimely, the district court must create a record that will facilitate meaningful appellate review of the correctness of the procedural ruling, the merit of the underlying substantive claims, or both, as required by* **Slack v.McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 1604, 146 L.Ed.2d 542 (2000)**.*This will require the district court to resolve all claims the petitioner raises for tolling of the limitations period, regardless of whether those claims are granted or denied. See* ***Clisby, 960 F.2d at 936.*** The Court, in this case never so much as

addressed the constitutional violations suffered by Dr. Azmat, much less, even mentioned them.

In summary, based on the extensive evidence that has been presented, it is abundantly clear and can easily be concluded that Dr. Azmat suffered from a *"grave miscarriage of justice"* and the Court, pursuant to Rule 60 should have no hesitation in using its *"power to set aside a judgment whose integrity is lacking"*, **Solomon v. DeKalb County, Georgia, 154 F.Appx. 92 (11th Cir. 2005)**. Also see **United States v. Beggerly, 524 U.S. 38, 118 S.Ct. 1862, 141 L.Ed.2d 32 (1998).** *" an independent action should be available only to prevent a grave miscarriage of justice."*

IV. 60(b)(4), JUDGMENT IS VOID

Nelson v. United States, cr 612-005 (S.D GA, July 12, 2018), *Under Rule60(b)(4) "[a]judgment can be set aside for voidness...where the movant was denied due process"* **Stansell v. Revolutionary Armed Forces of Columbia, 771 F.3d 713,716 (11th Cir. 2014).**

The judgment to deny Dr. Azmat's amended complaint and Motion for Summary Judgment should be voided because it not only denied but also deprived Dr. Azmat of Constitutional due process under the V amendment as well as due process violation and equal protection of the laws under the XIV amendment, for any or all the reasons that are presented here. Dr. Azmat will refrain from repetition of details that can be avoided, since most of them have been presented supra.

1) *COURT TREATED ABANDONED COMPLAINT AS OPERATIVE PLEADING*

The plain language of Rule 15(a)(1) is quite clear and not subject to any varied interpretation. Countless 11th circuit cases and precedent from the Southern District of Georgia have been consistent in clearly interpreting 15(a)(1), that:

i. A Motion to Dismiss is a non responsive pleading.
ii. A "matter of course" amendment is one that is filed within 21 days of a non responsive pleading or before a judge's ruling.
iii. Amendments filed "as a matter of course" do not require court's leave.
iv. Once an amendment is filed, it becomes the operative pleading of the case.
v. The non responsive pleading as well as the original complaint are rendered moot by the amended complaint.

The amended complaint was timely filed, as the time line (supra) shows, and was consistent with what this very Court ruled in **Lee v. United States, CIVIL ACTION No. 2:16-cv-93, (S.D. Ga. Jan. 6, 2017).** The time line of Dr. Azmat's case parallels that of the Lee case, except that whereas Lee moved the court for leave, (*"Lee filed his leave to amend within the twenty-one day window for filing as a matter of right"*), Dr. Azmat appropriately filed the amended complaint *"as a matter of right"* **Id.** that did not require leave of Court, *"within the twenty-one day window"*. **Id.**

There are two issues regarding the Court's ruling. Firstly, the court construed the amended complaint as a "Motion to Amend". While this seemingly harmless ruling appeared benign, this was a huge error with deep implications. It opened the door for the Court to review and rule on the amended complaint, over which it had no jurisdiction until after it was admitted as the operative pleading. The amended complaint, that was filed as a "matter of course", in fact became the true operative pleading of the case and, as such, the Court only had jurisdiction to review the complaint AFTER it was already admitted. Of course, the Court could then dismiss it if it determined that it was time-barred or for any other reason. **(Toenniges, 502 Fed. Appx. 888, (11th Cir. 2012),** *"Because Toenniges had the right to amend as a matter of course, however, the merits of his amendment, at this stage, were irrelevant.* ***See Williams, 477 F.3d at 1292"***). In any event, the R&R should have been issued on the amended complaint. Secondly, the Court resurrected the original complaint from the dead by treating it as the operative pleading, only to kill it again by dismissing it and to give new life to Govt.'s Motion to Dismiss, which was a non responsive pleading to start with and had died when the amended complaint was filed "as a matter of course". This was not a benign neglect on the part of the Court because it deprived Dr. Azmat of due process afforded by the V amendment as well as the due process and equal protection of the law pursuant to XIV amendment to present his case, which alluded to a claim of innocence, apart from other constitutional violations that that Dr. Azmat had suffered from. The irony here is that the issue of

15(a)(1) was brought to the Court's attention by Dr. Azmat. (**Doc.440 page 3**) by specifically stating that the Court was in error for construing Dr. Azmat's amended complaint as a Motion to Dismiss. The Court ignored Dr. Azmat's clarification, which gives the impression that it was a deliberate action taken by the court.

The gross misinterpretation of a straightforward Rule 15(a)(1) was repeatedly brought to the Court's attention (**Doc.439,440,444,449,452,479,457,469, 482**), but the Court never addressed it in light of Dr. Azmat's presentation and applied the inapplicable 15(c), the details of which have been presented elsewhere in this motion. This was *"inconsistent with due process of law"* and at the cost of violating Dr. Azmat's due process rights, as explained above. **Hunt v. Nationstar Mortgage LLC, (11th Cir. 2019)** "**Fed.R.Civ.P. 60(b)(4)**. A judgment is void under this rule *"if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law."* **Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001) (quotation marks omitted).**

2) *COURT'S FAILURE TO RECOGNIZE NEWLY DISCOVERED EVIDENCE*

Bennettv.United States, 2:16-cv-33 (S.D. Ga.Aug.28,2017) Section 2255(f)(4) *specifically calls for discovery of the facts supporting the claim and not the legal issue.* **28 U.S.C. § 2255(f)(4)".**

As previously detailed, Dr. Azmat's Motion for Summary Judgment was based upon 'newly discovered evidence' (§2255(f)(4)) of criminal and other egregious misconduct that the GJT revealed.

It was clearly stated that whereas Dr. Azmat was expecting to find ordinary misconduct, Dr. Azmat was shocked to discover criminal conduct and 9 (NINE) separate examples of grand Jury Rule 6(e)(1) violations, where the prosecutors met with the grand jury, off the record after asking the witnesses to step out to enable them to "address" the grand jury, as stated by AUSA Greg Gilluly. This was a pattern of modus operandi and not an isolated transgression that possibly could be ignored, excused or forgiven. The Mag. Judge dismissed the summary judgment motion containing all this evidence by construing it as a *"second amended complaint"* and called it *"dead on arrival"*, an argument that the Court made *de novo* on behalf of Govt. and to enable the Court use it as an excuse to dismiss it. Dr. Azmat brought to the attention of the Dist. Court that the summary judgment was based upon "newly discovered evidence" (§2255(f)(4)), and related back to the allegations of fraudulent indictment made in the amended complaint, in four court filings (**Doc.457,462,469,482**). The Dist. Court never addressed this issue. It was totally ignored. **(Clisby, 960 F.2d at 936; see also Rhode v. United States, 583 F.3d 1289, 1291 (11th Cir. 2009).**

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.

United States v. DiBernardo, 552 F.Supp. 1315, 1328 (S.D. Fla. 1982) *The right to indictment by an unbiased grand jury is guaranteed by the* **Fifth Amendment**. **Costello v. United States, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed. 397 (1956).** *Proceedings before the grand jury are secret, ex-parte and for the most part under the exclusive control of the federal prosecutor. Because of concern for abuse inherent in grand jury proceedings, more and more courts are exercising their supervisory power over the administration of justice to regulate the manner in which grand jury investigations are conducted. E.g.* **United States v. Gonsalves, 691 F.2d 1310 (9th Cir.1982).**

In short, Dr. Azmat's Constitutional rights were violated when:

i. The Court failed to intervene after being provided conclusive proof of the grand jury clause of V amendment to fraudulently indict Dr. Azmat.

ii. The Court took no notice of the fact that the above information was 'newly discovered', pursuant to §2255(f)(4), which the Court was informed not once, but four times (**Doc.457,462,469,482**). The Court never addressed this issue in any ruling. This was a violation of due process, not only of the V Amendment, but also of the due process and equal protection clause of the XIV Amendment, because, as clearly evident, it prevented Dr. Azmat from presenting his case.

iii. It was a gross error and abuse of discretion by the Court to dismiss the Motion for Summary Judgment as a *"second amended complaint"* and *"dead on arrival"* when it related back and proved the allegations of fraudulent indictment, prosecutorial misconduct and malicious prosecution that were clearly and boldly stated in the amended complaint. (**Doc.411, 413,420,457 as quoted supra**).

iv. By virtue of confirming the allegations that were made in the amended complaint, the Motion for Summary Judgment not only related back to the amended complaint, but also rendered the amended complaint as timely because it also confirmed the claim of actual innocence that was alluded to in the amended complaint, to begin with.

3) *COURT FAILED TO ADDRESS THE ACTUAL INNOCENCE CLAIM*

Dr. Azmat's indictment was fraudulently obtained. The evidence was provided in the Motion for Summary Judgment and after Govt. filed its response, Dr Azmat specifically asked for dismissal of indictment and for a Certificate of Innocence. (**Doc.444, page 19**). Dr. Azmat would not have been asking for this certificate if Dr. Azmat was not pleading actual innocence.

A second reference to the actual innocence claim was made in the Motion for Default Judgment (**Doc. 453, page 5**), that was filed because Govt. failed to answer the Motion for Summary Judgment with a sworn statement. The Mag. Judge never addressed this claim. Dr. Azmat appealed the issue and, once again referenced the Motion for Summary Judgment and dismissal of indictment in the context of actual innocence.(**Doc. 457**). The Dist. Judge dismissed it by stating that Dr. Azmat never made a claim of actual innocence in the original or the amended complaint. (**Doc.401, 411**). This is only true because the Court simply ignored **Doc. 441,444,447, 453,457,469**, the documents in which the claim was made, based upon 'newly discovered evidence' of Constitutional violations. The unanswered question here is: why would the Court first dismiss the documents in which the claim of actual innocence was made and then turn around and dismiss the claim of actual innocence by referencing the documents in which the claim was not directly made? Also, it was not a "*second amended complaint*" as the Court ruled, since it related back to the claim of fraudulent indictment, malicious

prosecution and prosecutorial misconduct that Dr. Azmat made in the amended complaint, which the Court actually referenced to state that no claims of actual innocence was made. (**Doc. 411, ISSUE III and pages 40-42,Doc.413,420,457,482**). Moreover, it could not be dismissed since it was based upon 'newly discovered evidence' pursuant to §2255(f)(4), which was certainly not a "second amended complaint" when it related back and confirmed the claims made in the amended complaint, and notwithstanding the fact that it contained the claim of actual innocence, which trumps any procedural impediment.

Williams v. Darden, CV 411-213, at *2-3 (S.D. Ga. June 30, 2015) *"[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final..... **Rule 60(b)(4)** applies.....where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard."* **United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271 (2010).")**

Dismissal of Dr. Azmat's presented evidence was a due process violation and deprived Dr. Azmat the "*opportunity to be heard.*" This would not have happened had the Court followed the facts of the case, the applicable law or its own precedent. Any judgment that did not take into account the evidence presented here, in light of the facts, law and Constitutional violation of Dr. Azmat's substantive rights and equal protection rights, should be voided pursuant to 60(b)(4).

4) *COURT'S ERRONEOUS DISMISSAL OF AMENDED COMPLAINT*

In order to justify its application of 15(c), the Court applied a wrong precedent by using **Pruitt v. U.S., 274 F. 3d 1315 (11th Cir. 2001).** This case has absolutely no parallel to Dr. Azmat's case and was totally inapplicable. Pruitt was convicted in 1990; filed a habeas in March, 1996 (pre AEDPA); sought the court's leave to amend two years later in 1998 (post AEDPA); oral arguments were held to discuss the matter; supplemental briefs were ordered by the court. It was after all this litigation that the court correctly applied 15(c) and dismissed it. The Court ruled the 15(a) was not applicable to that particular situation because of enactment of AEDPA, so the amendment had to relate back to the original complaint. The key is that filing of the amended complaint 'as a matter of course' or a 'non responsive pleading' were not even as issue in **Pruitt, Id.**, because there was a hearing and supplemental briefs were submitted. In the Pruitt case, if Govt. had filed a Motion to Dismiss, then 15(c) would not have been applicable. The issue in Pruitt was that the original complaint and the amended complaint straddled the enactment of AEDPA, where 15(a) was applicable to any amendment before AEDPA regardless, but not after, and more importantly, it was not related to an amendment made 'as a matter of course' resulting from a non responsive pleading.

The application of Rule 15 hinges on whether the amended was made in response to a non responsive pleading or a responsive pleading.

1) If the amendment if filed within the 21 day window following an unresponsive pleading, it is admitted without the court's leave, 'as a matter of course', and new issues may be added, (15(a)(1).
2) If the amendment is made following a non responsive pleading, but outside the 21 day window, it requires the court's leave, (15(a)(2), and new issues may be added.
3) Any amendments following a responsive pleading require the court's leave and issues have to relate back to the original complaint, (15(c)).
4) Once a timely filed complaint is pending, the AEDPA clock stops and Rule 15 is applicable, as explained supra.
5) The Court itself stated that §2255 provides no guidance to amendments and Rule 15 is applied by the courts (**Doc.455**).

There is absolutely no confusion in what Rule 15 states and how it applies to different scenarios. This very Court and courts across the nation routinely apply Rule 15 according to the plain language of what Rule 15 states. This changed all of a sudden when Dr. Azmat filed the amended complaint, and not only exposed Govt.'s misconduct, but also the Court's very prejudicial and hurtful opening instruction to the jury (detailed below). All of a sudden, first Govt. changed the interpretation of Rule 15 and in a self-serving manner asked the Court to dismiss it using 15(c) as an excuse. The Court obliged, because both, Govt. and Court had a vested interest in the dismissal of the amended complaint. In order to accomplish this, **Pruitt, Id.** and **Davenport, Id.** were presented as precedent, both of which are applicable to 15(c), which was not

even a scenario in this case! Obviously, neither Govt. nor Court could find a precedent that would have dismissed Dr. Azmat's amended complaint that was timely filed 'as a matter of course' following Govt.'s Motion to Dismiss, a non responsive pleading. Dr. Azmat's amended complaint was every bit compliant with 15(a)(1), which was deliberately and knowingly misinterpreted to serve as an excuse to dismiss the complaint in order to protect personal interests over and above the moral and professional obligation to provide justice. The irony here is that Dr. Azmat repeatedly brought to the Court's attention that the amended complaint was timely filed and in full compliance with Rule 15(a)(1). The Court's ruling should be voided in consideration for the following:

i. The amended complaint was filed 'as a matter of course' that did not require leave of court and stood admitted upon submission. The Court had the authority to dismiss it as untimely or for any other reason, only after it was admitted.
ii. The Court misconstrued the amended complaint as a Motion to Amend (**Doc. 423**) in order to insert its jurisdiction, which enabled the Court to deny the amended complaint without admitting it, which was an error and abuse of discretion.
iii. The abandoned original complaint, which was actually superseded by the properly filed amended complaint, in accordance with 15(a)(1), was resurrected by the Court to serve as the operative pleading, which was an error and abuse of discretion.
iv. Govt.'s Motion to Dismiss, which was automatically rendered moot upon filing of the

amended complaint, was revived by the Court to serve as a response to the superseded and inapplicable original complaint, even though it was a non responsive pleading. Another error by the Court and abuse of discretion.

v. The amended complaint was then dismissed pursuant to Rule 15(c), ahead of the R&R to give life to the original complaint that had 'died' upon filing the amended complaint. Another error by the Court and abuse of discretion.

vi. Govt.'s Motion to Dismiss, a non responsive pleading, was then granted to dismiss the original complaint that had rendered it moot, in the first place. Another error by the Court and abuse of discretion.

This cascade effect of an erroneous misconstruing of the amended complaint as a Motion to Amend, as explained above, was not a harmless error, especially when the Court was informed of the error by Dr. Azmat in Doc. 440, page 3. This was neither acknowledged nor addressed by the Court.

On the other hand, hypothetically if we presume Dr. Azmat's amended complaint as a Motion to Amend, dismissal by the Court was still contrary to the spirit and command of Rule 15(a)(2), as clearly ruled by 11th Circuit in numerous cases that this Court needs no reminding. However, what needs to be stated here is that the Dist. Court did not follow its own precedent:

Holmes v. Williams, CIVIL ACTION NO.: 6:15-cv-12, at *6-7 (S.D. Ga. July 20, 2015) ("Federal Rule of Civil Procedure 15 (a) ("Rule 15(a)") *provides that a party "may amend*

its pleading once as a matter of course" either within twenty-one days after serving it or within twenty-one days after service of a required responsive pleading or motion. **Fed. R. Civ. P. 15(a)(1).** *Once this time has passed, a party "may amend its pleading only with the opposing party's written consent or the court's leave," which the court "should freely give . . . when justice so requires."* **Fed. R. Civ. P. 15(a)(2).** *"The thrust of* **Rule 15(a)** *is to allow parties to have their claims heard on the merits, and accordingly, district courts should liberally grant leave to amend when 'the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief."* **In re Engle Cases, 767 F.3d 1082, 1108 (11th Cir. 2014) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)).** *Notably, nothing in the Prison Litigation Reform Act repeals Rule* 15(a). Brown v. Johnson, 387 F.3d 1344, 1349 (11th Cir. 2004). *Indeed, the Court of Appeals for the Eleventh Circuit has held that a prisoner plaintiff has a right to amend his complaint as a matter of course under* **Rule 15(a)** *when "he ha[s] filed his motion to amend before the district court ha[s] dismissed his complaint and before any responsive pleadings ha[ve] been filed."* **Stringer v. Jackson, 392 F. App'x 759, 760-61 (11th Cir. 2010) (citing Brown, 387 F.3d at 1349).** *Because the Prison Litigation Reform Act also "does not preclude a district court from granting a motion to amend" under Rule 15(a), the Court has ruled that it is an abuse of discretion to deny a motion filed under those circumstances.* **Brown, 387 F.3d at 1349** *(reversing district court's denial of prisoner plaintiff's motion to amend [] complaint, because it was filed before complaint was dismissed and before responsive pleadings were*

*filed); see **also*** Stringer, 392 F. App'x at 761 (same).")

In fact, Judge Moore, himself made a similar ruling in **Boyce v. Augusta-Richmond County, 111 F. Supp. 2d 1363, 1374 (S.D. Ga. 2000).**

Ward v. Glynn Cnty. Bd. of Comm'rs, CV 215-077, at *22-23 (S.D. Ga. Aug. 11, 2016) *("Nevertheless, the Court finds that it would serve the purposes of Rule 15(a) to allow Plaintiff's amendment to stand despite its procedural deficiency when filed. Rule 15(a) instructs courts to "freely give leave [to amend] when justice so requires."* **Fed. R. Civ. P. 15(a)(2).**

Of note here is that the Court ruled: *"amendment to stand despite its procedural deficiency"*

It is obvious from what has been presented that the Dist. Court did not follow its own precedent and also gave no consideration to *"freely give leave when justice so requires."* However, even if it was construed as a Motion to Amend, in error, it still should have been admitted, based upon the interpretation of Rule 15(a)(2), as per the Dist. Court's own precedent that followed the direction and command of the 11th. Circuit, *"when justice so requires"*. Dr. Azmat never asked for the court's leave, and so there was no reason to construe it as a Motion to Amend.

The judgment needs to be voided, based upon the errors that the Dist. Court committed and have been presented above. These included jurisdictional as well as due process pursuant to the V Amendment

along with the due process and equal protection under the law pursuant to XIV Amendment, as ordered by the Supreme Court:

United Student Aid Funds v. Espinosa, 559 U.S. 260, 270-71 (2010) ("Rule 60(b)(4) *....authorizes the court to relieve a party from a final judgment if "the judgment is void." ..... a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. .....Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.* **See United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (C.A.1 1990); ; cf. Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 376, 60 S.Ct. 317, 84 L.Ed. 329 (1940); Stoll v. Gottlieb, 305 U.S. 165, 171–172, 59 S.Ct. 134, 83 L.Ed. 104 (1938). ")**

In summary, any judgment that did not take into account the evidence presented here, in light of the facts, law and Constitutional violation of Dr. Azmat's substantive rights and equal protection rights, should be voided pursuant to 60(b)(4). In consideration of the mountain of evidence of deliberate misconduct, where Dr. Azmat had to stand trial on a fraudulent indictment and the also was convicted fraudulently (IV amendment), Dr. Azmat had every right to be heard and the Court's erroneous rulings deprived Dr. Azmat of his Constitutional right to be heard.

V. 60(d)(3)

1) COURT IGNORED THE SUBMITTED EVIDENCE AND VIOLATED DR.AZMAT'S CONSTITUTIONAL RIGHTS

Mag. Judge ridiculed Dr. Azmat's request for GJT by quoting a precedent from **D. Ak. Mar. 10, 2010**: *"unsealing without a relevancy....such production would be a fishing expedition for the sake of turning up new potential 2255 claims."*, to which the Court added: *"Azmat has not made a need-based showing for these documents beyond his vague, conclusory belief that they may be of some use to him....Nor has he made any showing demonstrating the need to disclose the grand jury transcripts".* **(Doc.455 at 7).**

There are several issues related to the Court's ruling:

i. Dr. Azmat had repeatedly informed the Court that the GJT was not a secret and Dr. Azmat had a right to its access and use, as Dr. Azmat considered appropriate. Neither the Govt. not the Court should have interfered with this Constitutional right of due process by opposing/denying the use of a document that was part of discovery and was going to be used by Dr. Azmat to present his case. (Details supra)

ii. Dr. Azmat had clearly made the claim of actual innocence in the amended complaint and needed the GJT to provide the Court with proof of the allegations. The GJT was no longer a secret, yet it was denied by the Court in

violation of Dr. Azmat's due process rights to prove his innocence. Details of this have been presented supra.

iii. The Court used the "denying document unsealing" and "fishing expedition" precedent as an excuse in **Doc. 455** on 6/7/2019, while Dr. Azmat had already obtained the GJT and provided the proof of claim of actual innocence in the Motion for Summary Judgment, **(Doc.441)** that was filed on 7/30/2018, which was 13 months and 3 weeks earlier!!

iv. The irony is that the Mag. Judge denied the GJT in the same very ORDER that the Court denied the Motion for Summary Judgment which was based on the GJT. This was certainly not a benign neglect or inadvertent oversight, considering the fact that the Court, at the same time denied Dr. Azmat's Motion for Default Judgment, which was also centered on the revelations from the grand jury transcript. How could the Court not notice that there were several documents in record (**Doc.441, 444, 445, 447, 449, 450, 452, 453,479**) that showed that Dr. Azmat already had the grand jury transcript and these court filings were related to what was contained in the grand jury transcript (original, as well as superseding indictment). Yet, the Court ruled to deny Dr. Azmat the use of transcripts that were already unsealed and Dr. Azmat had informed the Court before the Motion for Summary Judgment was filed that the grand jury transcripts were not a secret and that Dr. Azmat did not have access to them in prison. (**Doc. 413, 420,422 ,429, 431, 432, 434, 437,**

439).

v. Lost in all this was the transcript of the superseding indictment, which had also been unsealed and released by Govt. pre trial, but Dr. Azmat did not have it in prison. The superseding indictment was also fraudulently obtained; the evidence of which was presented by Dr. Azmat in the Motion for Summary Judgment (**Doc.441, page 42-45**). It was Dr. Azmat's right to have access to this document and denial was a Constitutional violation of due process because it prevented Dr. Azmat to fully present his argument for actual innocence. As of this day, Dr. Azmat still is being illegally deprived access to the GJT of superseding indictment, in a gross violation of Dr. Azmat's due process rights.

vi. The Dist. Judge simply endorsed the Mag. Judge's ruling by stating *"Court carefully considered ....but, ultimately, found that Petitioner's appeal was meritless"*. (**Doc.466**). The Court made it sound like the Court had evaluated all the issues and evidence presented by Dr. Azmat and then concluded that the appeal was meritless. This is farthest from the truth: (1)The Court never considered the merits of what was presented in the amended complaint; (2) The Court never considered the merits of what was presented in the Motion for Summary Judgment; (3) The Court never considered the merits of Govt.'s fraud upon the Court in order to obtain the indictment (original as well as superseding); (4) The Court never addressed the merits of Dr. Azmat's actual innocence claim; (5) The Court never considered

the merits of the claim of Brady violations that were made by Dr. Azmat; (6) The Court never recognized that the GJT of superseding indictment was unsealed released while Dr. Azmat was being denied access to it in violation of due process rights which was and still is preventing Dr. Azmat from fully presenting his case.

These six issues broadly covered the basis for Dr. Azmat's appeal, not to mention the horrific details of misconduct that was detailed in each section; the merits of not a single one was addressed by the Court, yet, the Court disingenuously and fraudulently stated to give the impression as if each and every presentation that Dr. Azmat made to court had been evaluated and then found meritless. In fact, had the Court considered the merits of Dr. Azmat's issues, we would have been here wasting this Court's valuable time and resources.

The Court's ruling was erroneous for the following reasons:

a) The Court never addressed the 'newly discovered evidence' that was repeatedly presented in **Doc. 441, 444, 445, 447, 449, 450, 452, 453, 479,457, 463,482**. This was pursuant to **§2255(f)(4)**, was timely when presented, and related back to confirm the allegations made in the amended complaint, as detailed supra. Hence, it could not and definitely should not have been construed as a "second amended" complaint.

b) The Dist. Judge stated that Dr. Azmat had not made a claim of actual innocence in the

original as well as the amended complaint (**Doc.401,411**), because the Court was looking at the wrong places, at the same time ignoring the documents where this claim was actually made. (**Doc.441,444,453,479**), and simply dismissing them as "meritless" without any elaboration or explanation.

c) Presented in **Doc.441,444,453,479,457** were (1) Constitutional violations, (2) 'newly discovered evidence, (3) claims of actual innocence. All three had no time bar considerations or any other impediment to their consideration on the merits of the issues, especially when the claims related back and confirmed the allegations that were made in the amended complaint, which was also timely filed pursuant to 15(a)(1), and in addition, could not be dismissed as time barred since the claim of actual innocence was alluded to in amended complaint. This was a due process violation upon a due process violation of Dr. Azmat's Constitutional rights as well as violation of equal protection under the law. Dr. Azmat is certainly not accusing the court of passing a judgment without reviewing all the records submitted to the court. However, even with such a generous consideration, the question then becomes: why did the Court after reviewing all the submitted documents choose to reference only the ones in which the claim of actual innocence was not directly made and use it as an excuse to dismiss the claim of actual innocence? No matter how one looks at this issue, it still does not ease the years of pain and suffering that Dr. Azmat continues to endure

because the Court never addressed the issue; all because the Court *de novo* made an argument ("*second amended complaint*") to enable the Court to use it as an excuse to dismiss a claim that the Court was required to address.

d) There was nothing new about Dr. Azmat's claim of innocence. Dr. Azmat rejected the plea deal and went to trial for this reason. Even after the trial Dr. Azmat maintained that he was robbed of justice and said so at his sentencing. In fact, Dr. Azmat was presenting his case of innocence at the sentencing when the Dist. Judge did not want to hear it and cut him off. This was in violation of Dr. Azmat's Constitutional right (as Dr. Azmat's trial lawyer explained to Dr. Azmat, but, the lawyer could not muster the courage to stand up in court to protect the rights of his client!)(VI amendment). This was not a complicated matter. Dr. Azmat clearly raised the issue of innocence (because of fraudulent indictment) in the amended complaint, **Doc. 411, ISSUE III and pages 40-42, Doc. 413, Doc 420** (as explained supra), and upon acquiring the grand jury transcript provided proof of fraud upon the court, the details of which have been provided supra and need not be repeated. Dr. Azmat even provided documents to show where the prosecutors were in the role of investigators and had lost their total as well as qualified immunity when the prosecutors, as investigators, knowingly presented to the grand jury what they had fabricated and altered in order to obtain the indictment. Dr. Azmat wrote to the US Attorney, Bobby Christine to remind

him that it was an obligation to his Oath of Office to hold his subordinates accountable for their criminal and other egregious misconduct, and also to protect the rights of the accused. The silence of the US Attorney prompted Dr. Azmat to make a report to OPR. Dr. Azmat not only filed the complaint but submitted copies of **Doc.441 and 447,** for ease of verification of claims, and attached them to the OPR Report. Dr. Azmat then sent a similar report with the copies from the record to the IG-DOJ. Next Dr. Azmat reported the matter to the Attorney General pursuant to **28 USC § 535(b)**. Dr. Azmat has never heard back from either the US Attorney or the Attorney General. The IG-DOJ passed the matter on to some office that oversees conduct of US attorneys in the DOJ that has never communicated back to Dr. Azmat. The response from the OPR was especially disturbing. The OPR barked up the wrong tree by stating that that since no issue of misconduct was raised at trial or appeal, they were closing the case. Does the Office of Professional Responsibility of the Department of Justice of the United States of America not know that §2255 is a post conviction remedy related to issues that counsel failed to raise at trial and appeal (ineffective counsel)? It is unimaginable that such a response, when provided to the Dist. Court failed to attract any attention. (Dr. Azmat stated in **Doc. 479** that whereas a robbery at Neiman Marcus was reported, the cops looked at the video footage from Macy's and closed the case stating that they did not see any robbery). It was a classical

case of bureaucratic cover-up and proved that oversight at the DOJ was a "*sham*"; "*a window dressing*"; "*lipstick on a pig*", as Dr Azmat stated in **Doc. 479**. It is no wonder that prosecutorial misconduct is fearlessly running rampant in the DOJ. All this is being presented here because these communications/reports were brought to the attention of the Dist. Court as exhibits in **Doc. 479** (a must read), with a plea to the Court to intervene for the sake of justice since the DOJ had failed to hold their own, accountable. This document should have been assigned Doc. # 455 but for unexplained reasons (perhaps quite obvious!) it was kept off the criminal docket (which at the time was forwarded to the Circuit Court) and assigned Doc. #479 four or more months later when Dr. Azmat discovered and reported the criminal manipulation of the docket. (Detailed below). All this is in the Court records and easy to decipher, since this pro se has taken great pains to reference each and every allegation and also provided plenty of copies from the record to substantiate the claims.

e) Govt. has been dishonorable in not taking responsibility for its conduct that has been exposed and proven beyond any doubt. Especially disturbing is also the consideration that in the face of all this validated exposure, Govt. continued to mislead the Court with its inapplicable and bogus "time barred" argument. The experienced prosecutors were fully aware that their "time barred" argument did not apply to the amended complaint, or to 'newly discovered evidence' or claim of actual

innocence that related back to the amended claim or Constitutional violations that Govt. had itself committed. As if all this was not enough, Govt., all the way to the top of the DOJ committed fraud upon the court by maintaining their silence, knowing (after having been fully provided the evidence) that the prosecutors and agents had obtained Dr. Azmat's indictment by willfully defrauding the court. In turn, the Dist. Court, through **Doc.479** and other court submissions referenced throughout this submission, was fully informed and provided with all the evidence of Govt.'s conduct and role, yet the Court failed to take notice of such a mountain of evidence, at the cost of gross injustice to Dr. Azmat. In fact, a similar earlier plea was also made by Dr. Azmat in **Doc. 437 at 14** by stating: *"Order the U.S. Attorney to report the misconduct to the DOJ Inspector General as well as to report the misconduct to the Office of Professional Responsibility (OPR) to investigate the criminal misconduct of above named [Karl Knoche and Greg Gilluly] attorneys"*. It is abundantly clear that the Court was fully and clearly informed of the criminal and other misconduct by Dr. Azmat. Not only was the evidence but also the confirmatory proof was also provided to the Court, yet the Court never commented on them, much less, so much as even acknowledged their presence in the record, as if nothing happened; as if it was business as usual.

When reviewing the overall court rulings in this case, it becomes overtly apparent that the Court

ensured it stayed within the confines of dismissing each and every argument and Court submission by Dr. Azmat on procedural grounds in order to avoid their adjudication on the merits of the issues. The Court did so at the expense of making erroneous rulings, which were contrary to the law and precedent of not only the 11th. Circuit, but also precedent from its own court, and even made argument on behalf of Govt., as has been presented throughout this filing. This appeared to be deliberate and in total disregard of Dr. Azmat's Constitutional rights of due process, substantive and equal protection of the law rights (V & XIV amendments), that the Court was required to uphold, in the face of repeated pleadings and reminders by Dr. Azmat, which the Court totally ignored. This was not a simple error or an abuse of discretion, because it was deliberate, since the Court had a vested interest in protecting its interest and reputation following the exposure of an extremely prejudicial and binding instruction that the Court gave to the jury and Dr. Azmat used it as ISSUE I in the amended complaint.

2) *COURT IGNORED MANIPULATION OF THE DOCKET*

This issue is being presented not to litigate the manipulation of the docket, but specifically to expose the Govt.'s and Court's role as it applies with respect to 60(d)(3).

There is no access to PACER in prison; hence it is very difficult to keep track of court submitted

documents. If the submission is by Certified Mail, its delivery can be confirmed. However, there is no resource in prison to figure out if a delivered document is actually placed in the docket. Dr. Azmat was a victim of just such a criminal act, not once but twice. While trying to reconcile his documents, Dr. Azmat again and again could not get the Doc. numbers right. Fortunately, Dr. Azmat's family was able to print the docket off PACER and send it to Dr. Azmat. It was then that Dr. Azmat discovered that two court submissions, sent by Certified Mail, never made it to the docket. (It was common knowledge and Dr. Azmat was strongly advised in prison to send all court submissions by Certified Mail otherwise the submissions do not make it to the docket. Had Dr. Azmat not heeded to such advice, there was no way to show that the documents were received by the Court!). One was discovered over four months later and the other was over eight months later. Delivery of both was confirmed through the United States Postal Service. Upon filing separate Motions (**Doc.478, 481**) to report this manipulation of the docket, both documents were immediately added to the docket, one in sequence and one out of sequence. For example, in one case, the 'missing' document was placed in the docket as **Doc. 480** while the motion reporting the clerical error was placed as **Doc. 481**, perhaps to give the impression that the 'missing' document was already in the docket before the motion was filed. The EXHIBITS were also divided between the two. **This was a manipulation of an already manipulated document.** This 'missing' document was important because it contained a precedent from this very court where the court ordered Govt. to provide a sworn

statement in response to a summary judgment motion. The other document was **Doc. 479** (referenced repeatedly above and contained the Exhibits showing that everyone of relevance in the DOJ being informed of Govt.'s violation of grand jury clause of V amendment). There are two interesting issues related to **Doc. 479**. Firstly, this document was placed in the civil docket and kept off the criminal docket, which leads to the obvious conclusion that this was a deliberate act. Secondly, the criminal docket at the time had already been forwarded to the Circuit Court with the notice of appeal, so, **Doc. 479** was attempted to be kept out of the Circuit Court's eyes.

Soon as this manipulation was reported by Dr. Azmat, the 'missing' documents were immediately placed in the docket. Interestingly, **Doc. 479** was placed between **Doc. 454** and **Doc.455**, while **Doc.480** was placed in the docket following **Doc.478**, instead of placing it between **Doc.447** and **Doc.448**, where it belonged when it was originally filed. Govt. turned around and said that there was no issues to resolve since the documents were in the docket and the Dist. Court, essentially followed suit (in exactly the same way with whatever explanation Govt. has been giving with regard to each and every issue, as revealed supra). There, in fact, were two issues with this explanation. Firstly, since the docket had been transferred to the circuit Court at the time, it required the Circuit Court's leave to make any corrections to the clerical errors (Rule 60(a)). Secondly, in certain cases where there are no substantive issues involved (not the case here!), the Dist. Court may correct such errors, but this did not happen either. No leave of even the Dist. court was

sought. What happened here was that the documents were immediately placed in the docket, essentially putting the cart before the horse, i.e., no leave of court was obtained before placing the documents in the docket. The matter was dismissed as if there were no issues to resolve, since the missing documents were already in the docket. The 'missing' documents were placed in the docket which only served to cosmetically restore the docket and the Govt. was satisfied and so was the Dist. Court, case closed. But, left unresolved were, once again, two issues. Firstly, where was the Court's authorization (Dist. or Circuit), to place the 'missing' documents in the docket, because none was sought or obtained as required by 60(a)? This was a violation of Rule 60(a). The court clerk's office, without authority, took it upon itself to place the documents in the docket, much like it kept them off the docket, in the first place. Secondly, and more importantly, why did the Court show no interest in enquiring why this happened in the first place? Of consideration here is that return of a stolen object only serves to recover the stolen property but does not exonerate the crime, which, both, Govt. and Court are quite familiar with. After all, manipulation of court submitted documents is a major criminal offence (tampering with evidence, obstruction of justice), because it undermines the integrity of the judicial process and erodes the confidence and trust in the judiciary that citizens rightfully expect and deserve. Such conduct is seen in kangaroo courts of the Third World. We are better than that, and only rightfully so, only if Govt. and courts distinguish themselves. Here the Court treated this as if it was business as usual and

nothing had happened. Left unanswered were some big questions: (i) who in the court clerk's office was responsible for this crime that amounted to tampering with evidence and obstruction of justice? (ii) On whose behest did the court clerk's office manipulate the docket, since the court clerk's office had no interest in the case? This would add the charge of conspiracy and aiding and abetting to the crime; (iii) How many other incarcerated pro se petitioners suffered similarly, but went undetected? The Court essentially gave the criminals a free pass so they would be emboldened to continue without fear of any retribution upon getting caught, not at all dissimilar to the free pass that the Court gave the prosecutors and Govt. Agents after Dr. Azmat reported the crimes they had committed, starting from the grand jury to post conviction proceedings, as Dr. Azmat has elaborately presented supra.

Once the docket has been transferred to the Circuit Court, the Dist. Court can only make corrections of clerical error that are minor and not of substantive value. (See, **U.S. Atkins, 762 Appx. 664 (11th Cir. 2019))**. In this case, **Doc. 479** contained serious allegations and substantive issues that went unaddressed because the document was not in the criminal docket. The issue for the Court is twofold. If the Court had not seen the **Doc.479** at the time of its ruling, why did the Court not acknowledge it after it was added to the docket? Secondly, why was the Court not interested in finding out why the document had been kept off the criminal docket, in the first place? The Mag. Judge used and referenced the criminal docket throughout the Court's rulings, so it can be safely concluded that the Mag. Judge never saw **Doc.479**. The Dist. Judge simply

endorsed the Mag. Judge's conclusions without comment, and as such, it can be concluded that **Doc.479** was never seen by the Dist. Judge either, because Court was not there to reconcile the criminal and civil docket. The Court, in fact has a bigger issue/problem:

BOTH, GOVT. AND COURT WERE AWARE OF MANIPULATION OF THE DOCKET MONTHS BEFORE DR. AZMAT DISCOVERED IT AND BROUGHT IT TO THE COURT'S ATTENTION.

Throughout this litigation, Dr. Azmat has made numerous allegations. It would certainly not escape the notice of any objective reviewer that Dr. Azmat has provided evidence to substantiate each allegation. This issue is no different. Here is the proof:

a) **Doc. 480:** THREE references to this 'missing' document were made in **Doc. 453**:

i. On **page 2 of Doc. 453**, it is stated, *"[Dr. Azmat] followed with a Supplement on December 13, 2018."* Neither Govt. nor Court looked for this supplement.

ii. **Page 3 of Doc. 453**, Dr. Azmat wrote, *"...on December 13, 2018 (Doc.447), Dr. Azmat submitted a precedent from this very court stating..."* How did it escape Govt.'s or Court's attention that there was no Document dated December 13, 2018 in the docket and that Doc. 447 was not submitted on that date? There was no such document in the docket. In other words it was 'missing'.

iii. A Third reference to this document was made on **page 3 of Doc. 453** by stating, *"In fact, the*

Govt. was afforded a second opportunity to make good when Dr. Azmat filed a Supplement to his earlier Motion dated Dec.,13, 2018 (Doc.447)."

b) **Doc.446:** on the same page as above, **Doc.453**, Dr. Azmat references Govt.'s filing as **Doc. 446**. Neither Govt. nor the Court obviously noticed that there is no such document as **Doc.446**. It is simply missing from the docket even to this day!

c) **Doc.479:** In **Doc. 457**, Dr. Azmat made FIVE separate references to the 'missing' document by labeling it as Doc. 454 (which should have been its sequential number had it not been kept off the record):

i. On **page 5 of Doc.457** it is stated, *"..briefly summarized is Dr. Azmat's actual practice in Dr. Azmat's letter/complaint to the Attorney General that was submitted to this Court as EXHIBIT "2" attached to Doc. 454".....*and how is it possible that neither Govt. nor Court's curiosity evoked an interest to look for the exhibit or complaint to none other than the Attorney General?

ii. On **page 9 of Doc. 457** is stated, *"Again in Doc.454, Dr. Azmat asked the Court for 'equitable tolling'...."*. This, once again should have alerted Govt. and Court that there was a 'missing' document.

iii. A third reference to the 'missing' document was made on **page 11 of Doc. 457**, *"Dr. Azmat had raised the issue of Fundamental Miscarriage of Justice in Doc.454, which was not addressed in the ORDER"*. Why did it not register with Govt. or the Court that Dr.

Azmat was repeatedly referring to a document that was not in the docket?

iv. A fourth reference was made, again on **page 11 of Doc. 457**, *"The All Writs Act argument was made by Dr. Azmat in Doc.454. The ORDER did not address it"*. This, too, failed to catch Govt.'s or Court's attention that a document was nowhere to be found.

v. Incredibly, a fifth reference was made under the SUMMARY of same **Doc.457**, by stating, *"Dr. Azmat had raised the issues of Equitable Tolling, Fundamental Miscarriage of Justice/ Actual Innocence and All Writs Act (Doc.454)..."*

How is it possible that there were THREE references to a Supplement dated December 13, 2018 and FIVE references to Doc. 454 in court records, and it failed to attract the Court's attention to look for them, because had the Court looked, the Court would have found that there was no Supplement dated December 13, 2018. Also, Doc.454 in the docket was Govt. response to Doc.453 and the document that Dr. Azmat kept repeatedly referring to was nowhere to be found in the criminal docket that the Mag. Judge was following and referring to in all its rulings. While Dr. Azmat made EIGHT references to documents that were 'missing', neither Govt. nor Court so much as made any effort to see what the hue and cry was all about? It is obvious that the Court either did not read the submitted documents or if the Court read them, the Court deliberately ignored what was being presented by Dr. Azmat. Only one conclusion can be drawn: this was a fraud upon the court and also revealed that

the court was predetermined to dismiss Dr. Azmat's Court filings, because no matter what was presented, the Court found an excuse to turn it down, even if it required to misconstrue the filing, misinterpret the law, giving Govt. a free pass for their criminal and other misconduct, ignoring the criminal acts of manipulation of the docket and other courts filings, all at the cost of blatant violation of Dr. Azmat's Constitutional rights of due process and equal protection of the law (V & XIV amendments), as has been exposed in other issues throughout this Motion. Govt.'s role in this is extremely suspicious. After all, it was Govt. that first read Dr. Azmat's court filings and responded. Why was Govt. quiet, especially when the 'missing' documents were directed at Govt's conduct? This silence is just as meaningful and fraudulent as was Govt.'s silence upon getting caught with its criminal conduct related to the grand jury matter, as detailed supra. Govt.'s role in these 'missing' documents cannot be written off, because, as stated earlier, the court clerk's office had absolutely no interest in this case, and herein lays the Achilles' heel of this matter!

Related to this matter, there is an even bigger issue that ties into what has been presented above: In support of Dr. Azmat's claim of fraud by Govt. and Court, it is quite interesting to note that the Court dismissed it by stating that **Doc.480** was placed in the docket when it was received. This gives the impression that the Court was implying that Dr. Azmat had never submitted the document that the USPS confirmed as delivered on December 18, 2018. Of course, Dr. Azmat had submitted the document because it was sent by Certified Mail and confirmation of delivery was submitted to the court.

(**Doc.481**). By implying that the actual document was not included in what Dr. Azmat submitted, is the Court claiming that Dr. Azmat sent an empty envelope by Certified Mail to the Court? In which case, whatever was submitted should have been placed in the docket, because the Court received something, as confirmed by the US Postal Service. The 'missing' document was only a couple of pages. On the other hand, how did the Court conclude that the document had never been submitted, and that too, as much as close to a year after it happened? What and where was the evidence that was used by the Court to draw such a conclusion while the three earlier references to the missing document in **Doc. 453** failed to attract the court's attention that it was not in the court record? Govt., on the other hand stated that regarding the allegations of 'missing documents': *"the court clerk's office has no knowledge to either confirm or deny them"*. (**Doc.484**). This is a very interesting response and leads to the question: how did Govt. find out if the court clerk's office had *"no knowledge to either confirm or deny..."*? Govt. either plainly lied to the Court or had an *ex parte* meeting with the court clerk's office and decided to represent the court clerk by formulating a response to cover up a crime committed by the court clerk's office. Govt. seems to have forgotten the 'Separation of Powers' that the Constitution states. This is an example of the executive advocating for the Judiciary in violation of the Constitutional doctrine of 'Separation of Powers'. Govt. was not hired by the Judiciary to be their spokesperson or to make the case for the Judiciary. The Court made the *de novo* argument on the court clerk's behalf that had absolutely no basis in the record, and then proceeded

to dismissed it as a harmless error. (**Doc.487**). **It is extremely troubling to note that both, Govt. and Court made contradictory excuses on behalf of the court clerk. Both could not be truthful at the same time and it appears that neither was, as reasoned above. Sadly, it needs to be stated that both, Govt. and Court were covering up a crime by committing a crime (fraud upon the court)**. The lesson from the famous Watergate case seems to have been forgotten. There, in fact is a plausible explanation for both, Govt. and Court to sweep this matter under the rug, because both already knew that the document was 'missing' from the docket, as exposed above. Ignored was the fact that Govt. routinely prosecutes criminals and Courts sentence them on the basic premise that a criminal act is a criminal act, regardless of whether it benefits or harms somebody. It is the act that is punished regardless of whether it harmed the victim or not. Govt. and Court should look at their records and see how many folks they put in prisons where the only charge was conspiracy. In fact, a significant number of plea deals that the Courts accept are based upon conspiracy alone, regardless of whether the criminal act was carried out or not and without even looking into whether the victim was harmed. There is no disagreement that evidence presented proves that the there was a manipulation of court submitted documents. In fact, it may surprise the Court that after having placed both 'missing' records, the docket still remains manipulated. The civil and criminal dockets started congruently where Civ. Doc. 1 was Doc 401 in the criminal docket. The Court should now notice that even after placing the 'missing'

documents, the two dockets are still apart by two documents. Also, Doc. 433 and Doc. 446 are missing from the criminal docket. This goes to the heart of the integrity of court submitted documents, and simply unacceptable. This is not a new allegation. Dr. Azmat has been bringing it to the court's attention without success to draw the Court's indulgence. How can justice be served when the integrity of court records cannot be assured or trusted and when such acts are exposed, the Court brushes it away as a harmless error, as if nothing happened? The message the Court sent to the court clerk's office was to feel free to criminally manipulate court records without fear of any retribution. Actually it was far from a harmless error because Dr. Azmat had submitted a precedent from this very court where Govt. was ordered to file a sworn statement in response to allegations of prosecutorial misconduct, while in this case, even though Govt. was required to respond with a sworn statement pursuant to the Rule 56 motion filed by Dr. Azmat, the Court never held Govt. to abide by the requirement of Rule 56. If Govt. felt that the motion was meritless, Govt. was still required to say so with a sworn statement. Rule 56 does not have an exemption or exception for Govt.. In fact, as presented supra, Govt. deceptively never acknowledged that a Rule 56 Motion had been filed based upon Govt.'s response where Govt. arrogantly declares that no sworn statement was needed or required. No matter how one looks at it, the error was not harmless because the missing document was a precedent from this court that ordered Govt. to file a sworn statement. It quite clearly appears that the Court was unlawfully covering up for somebody who

had manipulated the docket, based upon the evidence presented. All this loud and clear screaming by Dr. Azmat, when considered with the other evidence where the Court paid no heed to the blatant and shameless violation of Dr. Azmat's Constitutional rights by Govt. that totally disregarded the grand jury clause of the V amendment and then Dr. Azmat had to stand trial on the fraudulently obtained indictment, was far from just an error by the Court. The Court's actions were deliberate; they were unlawful; fraudulent and *"defiled the court"*. **Id.**.

Both, Govt. and Court, deceived the Circuit Court by downplaying it as if there was no issue and succeeded in suppressing the issue. This was also fraudulent.

Actually this is reflective of a bigger issue and it goes to the heart of how the Court has made the rulings in this case. If, as it appears, the Court ruled without reviewing the submitted documents, all rulings by the court should be voided. However, if the Court reviewed the submitted documents, how and why did the court not notice that Dr. Azmat was repeatedly referring to documents that were 'missing' from the record? And, if the Court noted that documents were missing, why did the Court not enquire or look for the missing documents? All the scrambling to fix the docket only happened after Dr. Azmat blew the whistle and exposed the foul play. These same questions also apply to Govt.'s conduct. One such example is one too many in this respect to erode the confidence, when it comes to delivery of justice, that citizens expect when they go to court.

3) NEWLY UNCOVERED EVIDENCE OF MORE DOCKET MANIPULATION

It is extremely disturbing to report that Dr. Azmat has just noticed that docket manipulation still continues in this case. It has been observed that all documents related to this case, whether they were submitted by involved parties or Court Orders that were submitted/litigated before the Circuit Court have been placed in the Dist. Court docket and assigned a Doc. Number. Dr. Azmat has discovered that absent from the docket is Dr. Azmat's filing with the Circuit Court titled: "IFP APPLICATION FOR COA AND BRIEF IN SUPPORT OF ISSUES AND CLAIM OF ACTUAL INNOCENCE".

This 'absent' document contains pretty much all the issues that have been presented in this Motion and an elaborate case of actual innocence was also made along with a description of Govt.'s conduct. This raises questions like: (a) Why was this the only document submitted to the Circuit Court that was kept off the record? (b) Who made the decision to keep it off the public record? (c) Did the court clerk's office make the decision or was it asked or ordered to keep this particular document off the docket? (d) Was Govt. aware of this manipulation and was the Dist. Judge aware of this manipulation of the docket?

Obviously, the questions raised are pertinent, given the previous history of document manipulation by the clerk's office. Dr. Azmat said it then and needs to be repeated: the court clerk's office has absolutely no personal interest or stake in this litigation because nobody in that office has met or seen Dr. Azmat, as far as Dr. Azmat knows. As such,

the court clerk's office has no volition to manipulate the docket at its own whim and pleasure. This repeated manipulation of the docket, is very obviously being carried out at the behest of somebody else, and it is about time this is exposed. It is obvious that somebody is concealing something. Dr. Azmat made the demand for an investigation of the previously reported manipulations, but the court showed no interest. This demand is hereby renewed, and hopefully the Court may be persuaded by this latest revelation, unless the Court had an involvement in it.

This was not a harmless error because it is preventing Dr. Azmat from fully presenting his case, since Dr. Azmat is unable to reference the evidence presented in the 'absent' document. In fact, this is exactly how the absence of the document from the docket was discovered by Dr. Azmat. If the intent of this latest manipulation is to keep the document out of the public's eye, Dr. Azmat states that 'that horse left the barn' quite a while ago, and it is now time to reign in the perpetrators, who have so far been allowed to run wild and unchecked.

SUMMARY OF FRAUD THAT DEFILED THE COURT

Having come a full circle with what Dr. Azmat has presented, the picture is clear that the Court's actions had a purpose which was personal: The Court's very, very first words to the trial jury were the binding instruction that they ***"must consider the indictment as evidence of defendant's guilt".*** This instruction by the court is not being stated here to discuss the merits of such an

instruction or the impact on the trial jury, but specifically with respect to 60(d)(3) to reveal the Court's role after it was presented by Dr. Azmat as ISSUE I in the amended complaint (Doc. 411), and to show that the Court has denied whatever Dr. Azmat has filed, on procedural grounds, because adjudication on merits would open the door to the court's jury instructions to become ripe for evaluation. The Court, first construed the amended complaint as a Motion to Amend, when it was timely filed 'as a matter of course' and did not need the court's leave, moreover, Court had no jurisdiction over the amended complaint before it was admitted as the operative pleading; denied the amended complaint, which was the true operative pleading ahead of the original complaint, which had been rendered moot by the amended complaint; granted Govt.'s Motion to Dismiss, which was a nonresponsive pleading and rendered moot by the amended complaint; denied the grand jury transcript, which had already been unsealed (original and superseding indictment) and released pre trial but Dr. Azmat did not have it in prison; construed the Motion for Summary Judgment as a second amended complaint even though it related back to and proved the allegations of fraudulent indictment that were very clearly made in the amended complaint, in addition, it contained 'newly discovered evidence' pursuant to §2255(f)(4) and proved Dr. Azmat's actual innocence, the initial claim of which was alluded to in the amended complaint; using the same reasoning, denied the Motion for Default Judgment when Govt. failed to respond to Motion for Summary Judgment with a sworn statement; issued the R&R on the original

complaint that had been rendered inapplicable by the amended complaint. District Court did not find anything wrong with any of these rulings by the Mag. Judge and simply endorsed them by stating that there was nothing contrary to the law; addressed the actual innocence claim by only reviewing the original and amended complaint and stating that there was no claim made in these documents, while ignoring the Motion for Summary Judgment where the claim was actually made; did not hold accountable those that corrupted the grand jury proceedings; similarly ignored the crimes of tampering with evidence and obstruction of justice related to Brady violations and manipulation of court submitted documents. (Details and references provided supra).

The Court knowingly and deliberately made the wrong decision in order to justify its dismissal of the amended complaint. The Dist. Court used the holding in **Pruitt v. U.S., 274 F. 3d 1315 (11th Cir. 2001)** to apply 15(c) as an excuse to dismiss Dr. Azmat's amended complaint. It is extremely disturbing to note that neither the events nor the law had any parallel whatsoever to Dr. Azmat's case, because **(a)** the amended complaint was timely pursuant to 15(a)(1), Pruitt's was untimely according to 15(a)(1); **(b)** since the amended complaint was filed 'as a matter of course', it did not need court's leave to amend, Pruitt's untimely amendment required court's leave to amend, because it was not 'as a matter of course' because it was filed 2 years later than the original complaint; **(c)** being timely, Dr. Azmat was at liberty to add new issues, (15(a)(1), while Pruitt's untimely complaint precluded additional issues unless they related back to the

original complaint (15(c)); **(d)** Govt. had filed a non responsive pleading which was rendered moot by the amended complaint, while in Pruitt's case there were no unresponsive pleadings involved and, in fact there was a hearing and court asked for supplemental briefs to be filed.

The Court applied 15(c) to Dr. Azmat's case in error, for all the reasons stated here, while Pruitt's case was appropriately dismissed using 15(c), which was applicable to Pruitt's case. The bigger issue here is that the Court unfortunately went to such lengths to find and use a totally inapplicable case as an excuse to dismiss Dr. Azmat's claims. The Court's action was knowing and deliberate, based on the fact that a novice pro se has been able to figure out the inapplicability of Pruitt and 15(c). This was also a deliberate action to knowingly inflict injustice that was totally unjustified. This was not an issue of a simple error or benign neglect on the part of the Court because Dr. Azmat had repeatedly brought up the issue of 15(a)(1) and 'non responsive' pleading, as well as the inapplicability of 15(c) to this case, which the Court deliberately ignored in order to find an excuse to dismiss the amended complaint, the very first issue of which related to the Court's binding instruction to the jury that they *"must consider the indictment as evidence of defendant's guilt"*, to which no specific curative instruction was given to the jury. This falls in the category of 60(d)(3), because the Court had a vested personal interest to conceal the prejudicial instruction to the trial jury that was exposed by Dr. Azmat in the amended complaint, which would invalidate the entire trial and verdict.

Day v. Benton, 346 F. App'x 476, 478-79 (11th Cir. 2009) *"Fraud upon the court" under Rule 60(d) embraces only ". . . fraud which does or attempts to, defile the court itself . . . so that the [judiciary] cannot [properly decide the] cases that are presented for adjudication, and relief should be denied in the absence of such conduct.*

When all the evidence that Dr. Azmat has presented throughout this filing is put together, a very disturbing picture emerges that is compatible with *"fraud which does or attempts to, defile the court itself"*, **Id.** Evidence presented shows that it was not a case of an error by the Court in its ruling, but shows the unfortunate cover up reflecting the court's loss of its ability to act as a neutral adjudicator for which Dr. Azmat is rightfully deserving of relief. Evidence presented clearly shows that, unfortunately, the Court became a party in this case because its own conduct and reputation was at stake. This case is exactly the kind of rare cases that such relief is appropriately reserved for. It is this petitioner's hope that this Court would recognize that this is a straightforward case of actual innocence that the Court did everything to prevent its review on merits. This case is not based upon an odd example or two but what is revealed throughout this Motion is a spectacle of corruption that, Dr. Azmat dare say, this Court may have never seen in a single case. Spare the capital murder cases, the court would not find a more genuine and spectacular case of corruption and misconduct that prosecutors and agents could employ, and it not only speaks volumes but screams of Dr. Azmat's innocence, while the Court simply not only looked the other way to

protect the actual criminals, but also found an invalid precedent to cover up its own prejudice that was exposed. While a mountain of evidence of Govt. corruption, including criminal acts, of which the documents to verify were also provided to show and prove that an innocent person was indicted and convicted; unfortunately, it was not enough to shake the determination of the Court to ensure that none of such evidence is taken into consideration. In order to achieve this, the Court dismissed each and every issue by misconstruing the filings or misapplying the law or by not following its own precedent or the guidance of the 11th Circuit and even advocating for the Govt. by making de novo argument and using it as an excuse to dismiss the claim. Such gross injustice can only be explained and is obviously indicative of the Court working on a different motive. The Court found a partner in the Govt. that was trying to hide its own criminal and other egregious misconduct. Together, with the Court's own motive that need not be repeated, are equally responsible for the injustice that Dr. Azmat suffered. In a nut shell, the presented evidence clearly and undoubtedly shows that Govt.'s misconduct (including criminal activity) and Court's prejudicial remarks were protected at the cost of ignoring Dr. Azmat's genuine actual innocence claims, for which there is no excuse or forgiveness. These actions qualify and are deserving of a complaint to the Judicial Council of the Eleventh Circuit, because these actions by the Court appear to be retaliatory to the Dist. Judge's initial instruction to the jury, which in itself would be grounds to dismiss the jury's verdict. The Court retaliated by ensuring that the complaint was procedurally dismissed. All this

happened without giving any consideration to the fact that an innocent person continues to suffer from an illegitimate incarceration. This case is far far from a simple error that courts occasionally and quite inadvertently make. This was a deliberate act because it was carried out in the face of repeatedly ignoring and/or rejecting the presented evidence, to which the Court paid no heed. (60(d)(3)).

JUDGE MOORE SHOULD RECUSE HIMSELF FROM THIS CASE

Judge Moore's opening remarks to the jury where the Judge gave a specific and binding instruction to the jury that they ***"must"*** consider the indictment as evidence of defendant's guilt was made in a judicial context, and unquestionably was not only a binding instruction, but also extremely prejudicial, pervasive and persuasive, such that it sealed Dr. Azmat's fate and hope for a fair trial.

***Rigaud v. Broward Gen. Med. Ctr.*, 404 F. App'x 372, 374 (11th Cir. 2010)**, *"Bias can either be extrajudicial, or come from remarks in a judicial context that demonstrate a pervasive bias"*. **Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir. 2000); Phillips v. Joint Legis. Comm. on Performance and Expenditure Review of the State of Miss., 637 F.2d 1014, 1020 (5th Cir. 1981); Hamm v. Members of Bd. of Regents of State of Fla., 708 F.2d 647, 651 (11th Cir. 1983).**

Without restating all that has been presented supra, Dr. Azmat, simply requests that Judge Moore recuse himself from the case. Although, this request

was previously made by Dr. Azmat in **Doc. 469**, Judge Moore chose not to even address it, which has necessitated its renewal based upon all that has been presented in this court submission, especially in the context of 60(d)(3).

SUMMARY

In summary, the evidence provided by Dr. Azmat in support of each and every issue deserves no further explanation or elaboration. It is now time that it is recognized that dismissal of each and every claim made by Dr. Azmat on procedural basis was unjustified, based upon the evidence that Dr. Azmat has presented. Moreover, the issues were dismissed in violations of Constitutional rights that required accommodation to overcome any procedural default, even if one existed. In fact, if such consideration had been entertained in the earlier proceedings, there would have been no present need to waste this Court's valuable time and resources. One more time, Dr.Azmat wonders if this court has seen the amount and extent of flagrant violations of law and Constitutional rights in a single case before.

This case is just as much about justice that Dr. Azmat was willfully and deliberately denied, as it is about a demand to hold all the officials to account, who, under the color of law, abused their power. Each and every one should be held accountable for their crimes, the ones who committed them, as well as those that were fully informed and provided with confirmed evidence, yet supported the criminals with their silence, in exactly the same manner as these very officers of the court charge ordinary citizens for exactly the same conduct. Dr. Azmat will not rest

until justice is served on both accounts. This is important to ensure that corrupt US Attorneys like Bobby Christine and AUSAs like Karl Knoche, Greg Gilluly, and DEA Agent Douglas Kahn and DEA Investigator Charles Sikes are made such an example that others across the entire DOJ are never emboldened to destroy another life, as they destroyed Dr. Azmat's and his family's. It is noteworthy that while courts talk about the need for punishing prosecutorial misconduct, the Court, in this case had ample evidence and opportunity to do so, but regrettably never so much as lifted a finger, even though there are provisions in the law that not only allow, but encourage the Courts to do so. What if an ordinary citizen had committed half the criminal acts that these prosecutors engaged in, would the Court have sat silent or looked the other way? Thus, the Court became a party to the case. This is what Dr. Azmat's case is about. What baffles Dr. Azmat is that the Court, having been presented incontrovertible evidence of misconduct that included criminal acts as well, still allows Karl Knoche and Greg Gilluly to make court appearances, and who knows how many other lives have been ruined by these and other corrupt prosecutors. The blindfold on lady justice it appears is being abused to prevent it from seeing what the prosecutors are doing. Meanwhile it is business as usual, as if nothing happened. All involved should rest assured that there will be accountability, because Dr. Azmat will not rest even if he is rightfully provided the relief that Dr. Azmat deserves.

Looking back, it is observed that all the important issues related to society, like civil rights, sexual misconduct, police brutality etc., were and

continue to be solved by people in the streets and media/social media, because the courts, for whatever reasons failed to do so. It is very likely that prosecutorial misconduct might be next, and a case like this just might fit the bill. Of course, the public support that this issue would garner is expected to be unprecedented in the present climate of standing up for a just cause and also in support of our Govt's commitment to reform the criminal justice system. There have been several books written to expose prosecutorial misconduct. Prominent amongst them are "License to Lie", "Three Felonies a Day" and "Conviction Machine", which this Petitioner has read and is sadden to learn that Federal Courts freely allow prosecutorial corruption to thrive in their court rooms even when it is brought to their attention. This case, not only fits right into that category, but is even worse because the court itself was involved. While the odds are stacked against him, this petitioner has not lost the hope that this case may just be 'the straw that broke the camel's back', because quite assuredly, this Petitioner's resolve is unrelenting, and fueled by the mountain of evidence to unequivocally prove that he was indicted and convicted on fraudulently obtained evidence. Dr. Azmat had earlier waved an olive branch but the US Attorney's hubris driven by underestimating Dr. Azmat's resolve prevented a response.

Finally, pursuant to the Local Rule 7.6, Dr. Azmat would like to preserve his right to file a reply to Govt.'s response, should Govt. be foolhardy to insult the Court with another lame response instead of finally taking responsibility for its, once again exposed misconduct, in order to spare the Court's unnecessary indulgence. Dr. Azmat is taking this

rather unusual step up-front because the Dist. Judge has been ruling on the motions without allowing time for Dr. Azmat to file a reply within the time usually allotted for it, much less even allow time to file a notice with the Court, in its previous rulings to enable Govt.'s ill-conceived defenses be the last word on the matter. Dr. Azmat would like to preserve this right and extend it to any and all future court filings by Govt..

CONCLUSION

In conclusion, upon consideration of all the reasons and evidence presented, Dr. Azmat requests the Court to GRANT the relief by voiding the judgments that were obtained pursuant to 60(b) and 60(d) and issue a Certificate of Innocence, which Dr. Azmat is very much deserving of. In addition, it is Dr. Azmat's demand that the prosecutors and Govt. Agents involved in criminal activity along with those that have covered up their subordinates' crimes, regardless of their status or title or rank, and also the court clerk's office be held accountable for their conduct, in accordance with the law that equally applies to ordinary citizens involved in similar conduct. Also, Dr. Azmat demands that the Court finally recognize that fraud upon the court was real, and follow its own precedent, as in **Ippolito, Id.** to ORDER the US Attorney to withdraw the fraudulently obtained indictment and make a declaration of the corruption of the AUSA's Karl Knoche, Greg Gilluly and DEA Agent Douglas Kahn and DEA Investigator Charles Sikes in open court before the full bench of the Southern District, to serve justice in a true and transparent manner.

Finally, GRANT Dr. Azmat any additional relief that Dr. Azmat is deserving of.

Respectfully submitted,

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William Barr,
Attorney General
U.S. Dept. Of Justice
Washington DC

BY CERTIFIED MAIL

March 14, 2019

Mr. Barr,

28 USC § 535 (b) relates to investigation of crimes involving Government officers/employees and, in part reads: "Any information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency ..... relating to violations of Federal criminal law involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, or the witness, discoverer, or recipient..."

The purpose of this communication is to formally bring to your attention the numerous crimes committed by AUSA Karl Knoche, AUSA Greg Gilluly, DEA Agent Douglas Kahn and DEA Agent/Investigator Charles Sikes at the U.S. Attorney's Office of the Southern District of Georgia in Savannah Georgia.

I have made formal complaints to USA Bobby Christine, OPR as well as to the OIG, Dept. of Justice, regarding this matter. Nobody has cared to investigate, much less even take the time to respond to me. I venture to speculate with reasonable fortitude that the Attorney General's office has

received no such report from either the U.S. Attorney or the OPR or the OIG.

My allegations are of a very serious nature and supported by evidence from the actual documents from judicial proceedings and other records. In other words, each allegation has a factual basis. I went so far as to provide the U.S. Attorney, the OPR and the OIG with actual copies from the record, lest they feel burdened to sift through the records to verify them. The silence on the part of each appears to be willful, deliberate and only serves to implicitly lend support to those that committed the crimes.

While I have detailed the numerous criminal acts by the involved individuals in the referenced documents, stated below are some examples, in brief, to invite your attention and interest to intervene for the sake of providing justice. These examples pertain to violations of the Grand Jury Clause of the Fifth Amendment and each is verifiable.

1) Is the presentation of a totally fabricated witness to the GJ a crime?

Brian Loomis was one such example, where his DEA-6 was first falsified to state that he saw me as a patient in Savannah. It was then falsified to state that he saw me as a patient in the Atlanta area, to which he testified before the GJ and even identified me from a photograph shown to him. None of this is true because he was not seen by me in either Savannah or Atlanta. His prescriptions would verify this. His DEA-6 states that AUSA Knoche

interviewed Loomis and, therefore, as an investigator, was fully aware that my name was absent from his records. Moreover, Knoche lost his absolute immunity in his role as an investigator and his qualified immunity for presenting a fabricated witness and evidence to the GJ.

Does US Attorney Bobby Christine, along with OIG and OPR believe that presenting a fabricated witness to the GJ not a. crime? If not, then why have they not investigated the matter, having been made aware of it for months?

2) Joseph Bradley's testimony to the GJ is one such example. AUSA Greg Gilluly was complicit in enthusiastically eliciting it by having Joseph Bradley describe Dan Wise, the clinic manager as 11Mr. Burns" from the TV show "The Simpsons". While the entertainment value was great and must have amused and impressed the GJ since it was mentioned again and again and again, it had no relation to reality or the truth. It was totally fabricated. Dan Wise has head full of dense hair while being described to the GJ as "bald on the top" with "little hair around sides". AUSA Greg Gilluly knew what Dan Wise looked like because Dan was used as a witness before the GJ on a different date in this very case. Moreover, the entire testimony was fabricated, since Dan Wise had not even started working at the clinic when Joseph Bradley visited the clinic. As expected, Dan Wise had no recollection of this fake encounter when asked during his trial testimony.

Does US Attorney Bobby Christine along with OIG and OPR believe that presenting fabricated evidence to the GJ is not a crime? If not, then why have they not investigated it having been made aware of it for months?

3) Is presenting evidence from falsified records to the GJ a crime?

Numerous records were falsified and evidence from these falsified records was knowingly presented to the GJ by AUSAs Knoche and Gilluly. These included:

i) Patricia Rhorer's DEA-6 report states patients in the waiting room "were falling out of the chairs to the floor" to dramatically create a false and fabricated impression that patients presented to the clinic while being "high" on drugs, were being prescribed narcotics. When Gilluly asked Ms. Rhorer about it during her GJ testimony, she flat out denied it by emphatically stating that she never said that. Gilluly knew then that the DEA report had been falsified and fabricated.

Another example where Ms. Rhorer, in her DEA-6 report, first describes how she had been examined for 10-15 minutes and then the report states that she retracted it and stated she had not been examined at all. When asked in front of the GJ, she described exactly how she had been examined, consistent with her non retracted narration her DEA-6 report. AUSA Gilluly knew then that the report had been falsified and he was, in fact, sponsoring falsified information

to the GJ. This did not deter him from making two more attempts, in a desperate effort to get Ms. Rhorer to retract or change her testimony, which did not happen. Gilluly was knowingly complicit in sponsoring falsified evidence to the GJ and then covering up DEA agent Kahn's falsified report.

ii) Brian Loomis' (fabricated witness described above) DEA-6 report was falsified to state that he travelled with another patient, Brian Smith, in a "sponsorship" arrangement on May 12, 2011. Brian Smith could not have travelled with Brian Loomis since Brian Smith visited the clinic on May 23, 2011. Of interest is also the fact that Loomis came from Kentucky while Smith travelled from Brunswick Georgia! AUSA Knoche was complicit with Agent Kahn in fabricating this evidence because the report states that Knoche "interviewed" Loomis, assuming the role of an investigator and prepared this witness for his testimony as a prosecutor. He knew exactly what he was presenting to the GJ.

iii) Another example of falsified records was presented to the GJ when patient, Nancy Binion's DEA-6 report states that she made one clinic visit with Henderson and two with Alvin James. The GJ was informed that all three visits took place with Henderson. Knoche knew the conflict because he "interviewed" Binion (as an investigator!) and also prepared her for her testimony. There are probably close to a dozen examples of untruthful testimony that Binion gave to the GJ, which were contradicted by the record and who would believe that Knoche had absolutely no knowledge of sponsoring perjured

testimony.. These are revealed in my Motion for Summary Judgment (Civ. Doc. 40).

iv) Agents Kahn and Sikes must have felt invincible and above the law which emboldened them to shamelessly falsify the DEA-6 report of my interview with them. They now stand fully exposed of another act of felony. For example, the report states me telling them that I spent less than 30 minutes on follow up visits with my patients, when I only worked 19 days and never saw any patient in follow up; that I treated all patients with narcotics when I have shown that 29% of patients that signed in left without a narcotic prescription; that almost all my patients received benzodiazepines (Xanax/Valium etc.) when the record shows that only 3 out of 25 patients included in the indictment and only 1 out of 23 patients in Govt. Exhibit 26 received a benzodiazepine and that, too, to wean them off of it; that I referred to my patients as "customers", when Agent Sikes' trial testimony trial testimony not only failed to corroborate it but also contradicted it.

It is clearly evident from the above examples that that multiple records were falsified by Kahn and Sikes, while Knoche and Gilluly knowingly presented them to the GJ to fraudulently obtain an indictment. There are more examples of such in the record (Doc: 40).

Does US Attorney Bobby Christine along with 0IG and 0PR believe that falsifying records and presenting them to the GJ not a crime? If not, then

why have they failed to investigate or report it when it has been brought to their attention for months?

4) Is it a crime to sponsor known perjured testimony to the GJ?

(i) This is exactly what was done to obtain the superseding indictment. Agent Kahn picked up Gerald Smith from a county jail to testify to the GJ that I postdated his prescriptions. This was not true and Smith confessed to lying about it at trial. The fact that Smith was sent away on 3/7/11 with a clear notification on the chart stating: "can come back on 3/10", which is when he was seen and prescribed. Moreover, the clinic sign-in sheets reveal that that he signed in on both days in his own hand writing. When AUA Karl Knoche questioned Smith about the dates, Knoche knew he was sponsoring perjured testimony because he could have only come up with the dates upon reviewing Smith's medical records. Not to forget, Agent Kahn could not be out looking for Smith without reviewing Smith's records and checking the dates. Smith's reward for this outrageously untruthful testimony was that his felony was dismissed and instead of facing dozens of years of incarceration for meth. trafficking etc., he received probation and halfway house transfer from the county jail!

(ii) Brian Smith testified that on Feb. 24th he failed the urine drug screen and after a "short break" (for lunch or something, he said) the test was repeated and it was reported negative, so he was prescribed. Fact is that that he was sent away on

that day and returned on Feb. 28th when his screen was negative and he was then prescribed. This procedure was instituted to ensure that patients were started with 'clean urine' and if they fail at any time after that, they would be discharged from the clinic. This was known to AUSA Gilluly, who himself showed and announced to the GJ that the prescriptions were written on 2/28. Gilluly, clearly suborned the perjured testimony. Other examples of suborned perjury are detailed in my Motion for Summary Judgment.

Does US Attorney Bobby Christine along with the OIG and OPR believe that the above evidence fails to show that a crime was committed? If not, then why have they failed to investigate or report it when it has been brought to their attention for many months?

5) Is it a crime to knowingly testify untruthfully to the GJ?

Here are some examples of DEA agents Kahn and Sikes knowingly providing untruthful testimony to the GJ, while AUSA Knoche not only suborned this untruthful testimony, but, himself was guilty of providing false and misleading information to the GJ:

(i) Agent Kahn was given the permission by AUSA Knoche when he said "go ahead" to Agent Kahn to declare to the GJ that "many" of Dr. Azmat's patients died during procedures "involving the heart" that I was performing. Truth is that I am

not a heart surgeon, so, "many" patients could not have died when I did not perform procedures "involving the heart". Such a malicious act of untruthfully vilifying me as a killer or murderer is an extremely serious violation of not only the Grand Jury Clause, but, also my Constitutional rights. What makes it an even more egregious crime is that this was only stated to the GJ, where Knoche and Kahn knew they had no oversight. It is no wonder that it was withheld from the trial jury.

(ii) Agents Kahn and Sikes, both, testified before the GJ with statements pertaining to MRIs that some of the MRIs had "nothing wrong" or "showed no abnormalities" and authenticated them by declaring that "medical experts" (more than one!) had told them so. Truth is that there were no medical experts that made such statements. These were plain and simple lies fed to the GJ and the perjury was suborned by Knoche. It is not surprising that such blatant lies were withheld from the trial jury.

(iii) AUSA Knoche shamelessly and without any inhibition declared to the GJ that patients would walk in and get a prescription for "30 milligram and 50 milligram' of oxycodone in "large quantities". Agent Kahn, of course, agreed with Knoche. Such statements are, firstly, not true, because a 50 milligram pill could never be prescribed, since a 50 milligram pill is not even manufactured. Secondly, it is very disturbing to note that a prosecutor, who is not a sworn witness, is feeding untruthful information to poison the GJ and also had Agent Kahn, a sworn witness, agree with him. This

qualifies as suborned perjury. Kahn, being a DEA agent only knows too well that that there is no such thing as a 50 milligram oxycodone pill. It is not surprising that such a blatant lie was withheld from the trial jury.

Does US Attorney Bobby Christine along with OIG and OPR believe that the above evidence fails to show that crimes were committed? If not, then why have they failed to investigate or report it, when it has been brought to their attention for many months?

6) Is it appropriate to repeatedly violate Grand Jury Rule 6(e)(l)?

AUSAs Knoche, Gilluly and Buersette, together, violated the GJ Rule 6(e)(1) on NINE separate occasions. These prosecutors held private, off the record meetings with the GJ, in the words of AUSA Gilluly to "address" the GJ. It is interesting that some of these meetings were held after the last witness of the day was excused, but, some witnesses were asked to "step out" in the middle of their testimony so as to allow Gilluly to "address" the GJ. There is no record of how long these private meetings between the GJ and the prosecutors lasted or what was discussed. What it does reveal is a pattern of misconduct expressly meant to encroach upon the independence of the GJ to issue a verdict without interference. Such acts poisoned the solemn proceedings of the GJ and are grounds for voluntarily withdrawing the indictment, having been caught defenseless to fraudulently obtaining an

indictment. US Attorney is displaying no such honor to accept responsibility on the behalf of his subordinates or to hold them accountable for their criminal misconduct.

As you can see, I have presented a dozen examples of criminal misconduct by the named individuals. The details are provided in my attached copy of the Complaint to the OPR/OIG, which , in turn is based upon my Motion For Summary Judgment (Civ. Doc. 40) as well as my §2255 (Civ. Doc. 11). These documents contain several more examples, similar to ones listed above. It is absolutely essential for you to review the Civ. Documents that I have referenced here in order to get a clear picture of what transpired in this case. What is beyond excuse is that I have been knocking on every door to bring this crime to the attention of those that are in a position to intervene, but, every one of them has kept its door shut. On the other hand, had I made a fraction of similar complaints against an ordinary citizen, the U.S. Attorney's Office and the rest of the DOJ would be salivating all the way, in a great hurry to get an indictment. It is apparent that when it comes to their own, the DOJ operates on a different set of rules of engagement and the bluster of upholding the 'rule of law' comes to a grinding halt with the wheels of justice buried in a frozen tundra. Whatever the reason or excuse, everybody that has been made aware of the criminal misconduct is in violation of 28 USC§ 535(b).

Everyone that I made aware of the criminal conduct of the named individuals, may have a bigger

problem. By failing to report the crimes, that they have been aware of for months, they are in violation of 18 USC§ 4. While the crimes have been clearly documented, the Govt. has neither disputed nor contested any in the various court filings. In fact, the only response, after being aware of the crimes, by US Attorney Bobby Christine and AUSAs James Stuchell and Karl Knoche, has been to ask the court to dismiss the case, and that, too, based upon an inapplicable and bogus "time barred" argument. I have already addressed the issue that my filing was not "time barred" based upon Rule 15(a) and court precedent. While this has not deterred the above prosecutors from making the same argument again and again, the court would certainly construe it as an affirmative effort to conceal a crime. What they are forgetting is that the criminal acts will survive the highly unlikely event of dismissal of my case. Govt.'s "time barred" argument is, in fact, a disillusion that is providing a false sense of security while driving it in a deeper hole by furthering the prejudice that I continue to suffer as a consequence.

Attached to this letter/complaint is a copy of the Complaint that I submitted to the OPR and OIG, the cover letters and the follow up letter to the OIG. I trust that you would find my Motion for Summary Judgment (Doc. 40) and subsequent filings, very informative to verify every element of my complaint, which, in turn, can easily be verified from the Exhibits that I submitted as a separate Motion. I did actually copy all these court documents and submitted them to the OIG as well as to the OPR. Since they are available on your desk top by

accessing court records on-line, I am saving you the burden of sifting through stacks of paper.

Next, I would like to present to you a brief (as I can) summary of my 19 days of work at the East Health Clinic (EHC) in Savannah Georgia. IU, is absolutely imperative that you should be made aware of this, so you are able to see what my practice actually was and how it was falsely distorted by AUSAs Knoche and Gilluly in cahoots with DEA agents Kahn and Sikes. The details of each assertion (below) are presented in my "Amended Complaint" (Civ. Doc. 11), which is a must read, not only for verification but also to get a full picture of the criminal activities of the above named individuals. Moreover, you would easily recognize that the pattern of perjury that was knowingly presented to the grand jury followed the very same pattern presented to the trial jury. Here are some examples:

A) I was charged with "conspiracy". The clinic Manager/ co-owner, LeFrancois, with whom I had a couple of email exchanges, testified that he did not ask me to prescribe narcotics, and that it was not his place to tell me what to prescribe. When, on the very first day, he noticed that I was drastically cutting back on the narcotics and patients were complaining, he concluded that "it was the beginning of the end" with Cle, and contacted a recruiter to find my replacement. Patient, Kimberly Letner and her son's narcotics were reduced by 2/3rd (66%) on the very first day the clinic opened, and she testified to this at trial; almost one in three patients that signed in did not walk out with a narcotic prescription; one in four

patients were not seen on the first day they came to the clinic to enable verification of records etc. (e.g. on 3/11/2011, 30 patients signed in and only 2 were seen; 3/3/11, 21 signed in and 14 were seen; 3/10/11, 16 signed in and 8 were seen); those that failed the urine drug screen (UDS) were sent away to return with a clean UDS, and warned that if they fail the UDS, they would be discharged. Employees were switching urine samples to deceive me since I refused to see those with failed UDS, as testified by employee Afthinos Konstantino. Nobody in their right mind would consider this as evidence of conspiracy that I was a participant of.

B. In the first week of starting to work at the clinic, I called Chatham County Counter Task-force Agent, Ron Tyran, to provide me guidance, because, in my recorded conversation, I said: "I want to do the right thing". It clearly shows that I had no intent to engage in any criminal activity. Instead of guidance I received an indictment!

C. An oft repeated accusation was that I wrote prescriptions without examining patients. However, when a patient testifies that he was diagnosed with a heart murmur and asked to see a cardiologist; or another was told that his one leg was shorter than the other, which he had not known till then; or as another stated that her ears and throat were examined; or yet another testified that his heart, chest and reflexes were checked etc. etc., it clearly reveals a pattern of thorough exam, which was performed far beyond their presenting complaints of back ache. Added to this was the employee testimony

that the clinic manager was upset that I was taking too long with patients (20-30 minutes) and not writing enough narcotics.

D. The accusation that I was prescribing narcotics based upon patients' word alone flies in the face of evidence contained in multiple patient records and testimony by several patients that had pharmacy records, which were verified. As explained in (A) above, one in four patients were not seen of the first day that they presented to the clinic, keeping in mind that on 3/11/2011, out of 30 patients that signed in, only 2 (two) were seen and prescribed! along with this is the evidence in, none other than, Govt.'s own EXHIBIT 26, where a pharmacy was called AFTER the patient had left the clinic and asked to destroy the prescriptions and the conformation that the prescriptions were actually destroyed by the pharmacy is also documented (Exhibit 26-5). As another example, Govt. Exhibit 26-9 reveals that the bogus information provided by the patient was verified by calling CVS, which had no record, and the patient was not prescribed. As if this were not enough, there are examples of TAMPERING WITH EVIDENCE which I have conclusively demonstrated relating to missing pharmacy record from the patient's medical record (Civ. Doc. 11). Such conduct should not be brushed aside as coincidental. These should be construed as deliberate undertakings when coupled with the other outrageous and false accusation made by the named prosecutors.

E) Govt. expert witness provided untruthful testimony. Dr. Zdanowicz, a pharmacologist,

fabricated his affiliation with Harvard University, which was dispelled by a sworn affidavit that the Harvard lawyers provided to us. My lawyer, instead of confronting him on the witness stand, provided this information to the prosecutors, thus ensuring that Dr. Zdanowicz would not be testifying, right before he was to get on the stand. Dr. Zdanowicz had testified in two previous cases in this very district (Dr. Ly and Dr. Enmon's case). Both these physicians should have been notified, along with the Court, which, to the best of my knowledge has not happened. I did specifically bring this to the prosecutor's attention in one of my previous filings. Dr. Zdanowicz has never been charged with a crime while the targets are languishing in prison. I mention this example to show you the pattern of cover-up at the U. S. attorney's Office in Savannah, when added to the other examples of criminal misconduct in my case.

Govt.'s other expert that did testify, Dr. Kennedy, fared no better in his perjured and made-up false testimony. Dr. Kennedy lied about being Board Certified in Pain Management, when he was not. AUSA James Stuchell stated to the 11th Circuit that Dr. Kennedy was Board Certified in Pain Management, shamelessly and without any fear of retribution. Dr. Kennedy lied about old medical records being a Standard of Care. He initially testified that it was not a standard of care; then stated it was; then said he never testified it was not a standard of care, while, a year ago, in that very court room, he testified that it was NOT a standard of care. It is apparent that Dr. Kennedy was speaking from both sides of his mouth to satisfy the

prosecutor's requirement. He made up his own "standard" by testifying that the MRI reports were not "credible" because they did not have a measurement of the disc bulge. This was, in fact, Dr. Kennedy's self-created and concocted standard to willfully deceive the jury and further the prosecutor's agenda because no such standard exists (Radiology included). Dr. Kennedy went so far as to confess that his opinions of my illegitimate care were not based upon the Georgia State standard or the National standard. In other words, Dr. Kennedy made up his own standard to satisfy the prosecutors' requirement. Dr. Kennedy deceived the jury by declaring that my care of a patient was illegitimate when he based his opinion upon the normal (unaffected) leg! He declared that my care was illegitimate in another case because the knee was not examined and that the only record in the chart was an MRI of the knee. Fact is that the patient presented with complaints related to his back, for which he received care based partly upon the MRI of the back that was present in the records. And, yes, the knee was actually examined and documented in none other than Dr. Kennedy's own written report! AUSA James Stuchell carried this fabricated lie by presenting it to the 11th. Circuit, in their brief and brought it back to the Dist. Court in Savannah by stating that the only record in the file was a MRI of the knee (Civ. Doc.6, page 18). This shameless presentation of false evidence before TWO Courts is simply inexcusable, intolerable and should not escape punishment that sets an example.

F) AUSAs Knoche and Gilluly made outrageous and plainly false statements to- the jury in their

closing argument with remarks like prescribing without any examination; prescribing based upon whatever patients wrote in their chart; prescribing on patient's word alone; not lowering anybody's narcotics and that every single person that the doctor saw, got a prescription of oxycodone, when l/3rd were not prescribed. Knoche and Gilluly knew fully well that they were lying to the jury in making these false claims. While I have addressed some above, the Civ. Doc. 11 covers this well. I have prepared two spread sheets, one dealing with the patients included in the indictment and the second related to Govt. Exhibit 26 that are extremely revealing and are attached to this letter.

G) It is extremely interesting that AUSA James Stuchell in his response to my original §2255 states that if I had testified I "could have been prosecuted for perjury" (Doc. 6. page 32). It is indeed sad and ironic that the prosecutors shamelessly threaten and declare that they would prosecute for perjury that has not even taken place, while themselves, knowingly using fabricated witness, fabricated evidence, knowingly using falsified records, suborning perjury and themselves lying to the grand and trial juries without any fear of consequences!!! Such acts are simply unacceptable, if the Rule of Law are applied, and more importantly, enforced, regardless of who commits the crimes.

(H) AUSAs Knoche and Gilluly obtained my conviction by holding the jury hostage with their emotional pitch, using false evidence, that I was running a so called "pill mill". Truth is that my

practice was anything but a "pill mill", based upon the following facts:

(i) Reducing narcotics in almost 100% of patients is not a "pill mill" activity.

(ii) Not prescribing narcotics for failed urine drug screens is not a pill mill" activity.

(iii) Never prescribing the so called "pill mill cocktail" (Oxycodone, Xanax and Soma combination.

(iv) Calling the pharmacy to destroy the prescriptions that were inadvertently written based upon false information provided by the patient, is not a "pill mill" practice. (Govt. Exhibit 26-5).

(v) Calling CVS for verification and then not prescribing narcotics to patient that provided false prescription history, is not a "pill mill" practice. (Govt. Exhibit 26-9).

When 27% (more than one in four!!) of the patients that signed in, were not seen or prescribed and had to come back because their information had to be verified etc., is not a "pill mill" practice. The example given supra, where on 3/11/2011, only 2 out of 30 patients that signed in were seen and prescribed, in itself demonstrates the legitimacy of my practice.

When the evidence presented above is reviewed as a whole, it is not difficult to figure out why

Knoche/Gilluly teamed up with the Kahn/Sikes team to fabricate evidence and use perjury etc. etc. to indict me. Dr. Gossett, the physician that replaced me at the Clinic when I was fired after working only 19 days at the clinic, did all things opposite to what I have described above. So, both could not be right and wrong at the same time. It is not surprising that Dr. Gossett pled guilty while I continue to fight for my innocence.

What I have presented above is only a sample and by no means a full revelation of all the egregious misconduct. There are several other examples of each category that you will find detailed in my MOTION FOR SUMMARY JUDGMENT (Civ. Doc. 40) and subsequent filings. Also, it is absolutely essential for you to review my Civ. Doc. 11, which deals with the same type of misconduct at trial and also to get a sense of what my actual practice was for the mere 19 days that I worked at the East Health Center. These two documents (Doc.11 & 40) are not only enlightening but fascinating revelations. They are a must read. 1he Govt.'s responses are disgracefully inapplicable and only a mischievous attempt to deceive the Court. While AUSAs Knoche and Gilluly are the architects of this elaborate criminal undertaking, the U.S. Attorney, Bobby Christine holds the responsibility to enforce accountability on those that break the law. He has miserably failed to uphold his Oath of Office. He is doing so at the peril of being criminally charged for protecting and shielding those that committed crimes. I also wonder if the Attorney General or those around him have ever seen the number and

amount of misconduct in a single case in their long and illustrious careers.

It would not be surprising at all if the question comes to mind as to why the prosecutors needed to bring in a fabricated witness, fabricate evidence, falsify records, commit as well as suborn perjury etc. in order to obtain an indictment? The presentation above, in fact, answers the question by conclusively demonstrating that the prosecutors did not have the evidence, and resorted to these other means. In other words, the prosecutors could never have been able to obtain an indictment had they been truthful to the grand jury. The irony is that having been exposed of their wrong doing, instead of taking responsibility for their crimes, that stand fully exposed, the prosecutors have resorted to use of a bogus• and inapplicable "time barred" argument to conceal their crimes. This in itself is a crime under 18 USC§ 4. Only the foolish and highly incompetent lawyers are expected to resort to such a glaring blunder and knowingly engage in such misconduct. I have addressed the "time barred" issue in more than one court filing by conclusively showing that I am not time barred to fight for my innocence.

While self-promotion for professional gains would be a plausible motive to resort to criminal acts, it is also noteworthy that the U.S. Attorney's Office was, perhaps also trying to settle the score with me. For over two years, the U.S. Attorney's Office tried through the OIG-HHS to exclude me from Govt. healthcare plans in order to win their case pursuant to a False Claims Act that they had

filed (CV 507-092). These nefarious plans were buried after I made a presentation before the IG-HHS and his senior staff in Washington, DC. The False Claims Act suit fared no better and met its well-deserved death right after a status conference in the Judge's Chambers. In fact, I signed a release which allowed the Govt. to walk away with nothing more than a bruised ego and a determination to avenge their defeat by criminally charging me, using any means. The evidence that I have presented is a testament to their ill-conceived motives.

Mr. Attorney General, as you can clearly see, the system is broken and needs an urgent and exemplary fix before another life is ruined. The prosecutors have become far too comfortable and fearless of any retributions such that abusing the system has become a part of their arsenal to achieve victory at all cost. Perhaps it is 'business as usual' at the Department of Justice that fails to evoke any interest by the U.S. Attorney Bobby Christine or the OPR or the OIG-DOJ to 'rock the boat' by investigating their own. Having spent over 65 months inside the fence, I have learned that abuse of power by the federal prosecutors is quite routine and running rampant at the state level. Horror stories, like mine, belong to a banana republic and should never be heard in a civilized society that believes in and does not deviate from the Rule of Law.

The irony is that in spite of the credible and verifiable allegations against the named individuals, each continues their involvement with other cases including making court appearances. Does US

Attorney not realize that each and every case that these corrupt individuals are or have been involved in going back years, will have to be investigated? There are no separate laws that apply to prosecutors and federal agents that commit crimes.

It is time to nip the evil in the bud before a #Me Too like public outcry shakes the foundation of departments of justice, federal as well as states. After all, the right to free speech does allow and protect the exposure of corruption in any open forum.

However, I very much hold the expectation that, as Attorney General, you would be extremely enraged by the plundering and abuse of trust in corrupting the solemn judicial proceedings of the grand jury by AUSA Karl Knoche, AUSA Greg Gilluly, DEA Agent Douglas Kahn and DEA Investigator Charles Sikes, where they had .10 oversight. US Attorney Bobby Christine has been specifically informed of all this for months and his silence demonstrates that he is incapable of or unwilling to deal with the corruption in his office.

Sir, I (also fully expect you to immediately withdraw the fraudulently obtained indictment against me; place the all the above named individuals on administrative leave and order a full investigation with a department wide announcement that prosecutorial misconduct will face dire consequences.

Please do not make me suffer any longer as a result of an indictment that I did not earn and certainly did not deserve.

I wish you well, and very much look forward to your response, at the earliest.

Respectfully,

NAJAM AZMAT
FPC @ Estill
P.O.Box 699, Unit E
Estill, SC 29918-0699

cc: U.S. Attorney Bobby Christine

NOTE: As a staffer, if you just read this please be advised that due to the sensitive and the broader implications of what you just read, it is absolutely imperative that you ensure that it is passed along to Attorney General William Barr. It will upset the AG to first hear about it from some other source.

18 U.S. Code § 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

28 U.S. Code § 535(b)

(b) Any information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency of the executive branch of

the Government relating to violations of Federal criminal law involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, or the witness, discoverer, or recipient, as appropriate, unless—
(1) the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law; or
(2) as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.

18 U.S. Code § 4

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.

18 U.S. Code § 3771

(a) Rights of Crime Victims.—A crime victim has the following rights:
(1) The right to be reasonably protected from the accused.
(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any

parole proceeding, involving the crime or of any release or escape of the accused.
(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
(5) The reasonable right to confer with the attorney for the Government in the case.
(6) The right to full and timely restitution as provided in law.
(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.
(9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
(10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) [1] and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.
(b) Rights Afforded.—
(1) In general.—
In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the

court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.
(2) Habeas corpus proceedings.—
(A) In general.—
In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).
(B) Enforcement.—
(i) In general.—
These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).
(ii) Multiple victims.—
a case involving multiple victims, subsection (d)(2) shall also apply.
(C) Limitation.—
This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.
(D) Definition.—
For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(c) Best Efforts To Accord Rights.—
(1) Government.—
Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).
(2) Advice of attorney.—
The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).
(3) Notice.—
Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.
(d) Enforcement and Limitations.—
(1) Rights.—
The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.
(2) Multiple crime victims.—
In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.
(3) Motion for relief and writ of mandamus.—

The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. 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 for a writ of mandamus. 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 for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error.—

assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;
(B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and
(C) in the case of a plea, the accused has not pled to the highest offense charged.
This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.
(6) No cause of action.—
Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.
(e) Definitions.—For the purposes of this chapter:
(1) Court of appeals.—The term "court of appeals" means—
(A) the United States court of appeals for the judicial district in which a defendant is being prosecuted; or
(B) for a prosecution in the Superior Court of the District of Columbia, the District of Columbia Court of Appeals.
(2) Crime victim.—
(A) In general.—
The term "crime victim" means a person directly and proximately harmed as a result of the

commission of a Federal offense or an offense in the District of Columbia.
(B) Minors and certain other victims.—
In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.
(3) District court; court.—
The terms "district court" and "court" include the Superior Court of the District of Columbia.
(f) Procedures To Promote Compliance.—
(1) Regulations.—
Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.
(2) Contents.—The regulations promulgated under paragraph (1) shall—
(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;
(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise

assist such employees and offices in responding more effectively to the needs of crime victims;
(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and
(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

Grand Jury Rule 6(e)(1)

(e) Recording and Disclosing the Proceedings.
(1) *Recording the Proceedings.* Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. But the validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

28 U.S. Code § 2255(f)(4)

(f) A 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.

FRCP 15(a); (c)

(a) Amendments Before Trial.
(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:
(A) 21 days after serving it, or
(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(c) Relation Back of Amendments.
(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:
(A) the law that provides the applicable statute of limitations allows relation back;
(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
(i) received such notice of the action that it will not be prejudiced in defending on the merits; and
(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.
(2) Notice to the United States. When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

FRCP 60(b)

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that

has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

FRCP 60(d)(1); (d)(3)

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:
(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
(3) set aside a judgment for fraud on the court.