

22-6486

Docket No.:

SUPREME COURT OF THE UNITED STATES

MR. ATIQ AKEEM WESTON,

PETITIONER

v.
MICHAEL CAPRA,

RESPONDENT

ORIGINAL

Supreme Court, U.S.
FILED

JAN 03 2020

OFFICE OF THE CLERK

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE 2ND CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

RESPECTFULLY,

x

Atiq Akeem Weston

MR. ATIQ AKEEM WESTON #14A2762

- QUESTIONS PRESENTED -

- 1) WHETHER A POST-CONVICTION WITNESS RECANTATION AFFIDAVIT EXPOSING FALSE GRAND JURY TESTIMONY, FOR THE FIRST TIME, AFTER A PLEA OF GUILTY WAS ENTERED EFFECTIVELY INVALIDATES THE GUILTY PLEA AND GRAND JURY PROCEEDINGS?
- 2) WHETHER PRE-PEA CONDITIONS OF CONFINEMENT IMPOSED UPON A PRE-TRIAL DETAINEE MAY RENDER A PLEA OF GUILTY INVOLUNTARY DUE TO THE SURROUNDING CIRCUMSTANCES?
- 3) WHETHER A STATUTE OF LIMITATIONS BAR MAY BE WAIVED AS A CONSEQUENCE OF A PLEA DEAL, EVEN WHERE THE PETITIONER WAS NOT PROPERLY INFORMED OF THE AFFIRMATIVE DEFENSE BY TRIAL COUNSEL?
- 4) WHETHER TRIAL COUNSEL'S PERFORMANCE WAS INEFFECTIVE FOR FAILING TO REGISTER ANY FORMAL OBJECTIONS, BY MOTION, TO THE UNSUBSTANTIATED & BURDENSOME LOCKDOWN ORDERS AND PROTECTIVE ORDERS WHICH INTERFERED WITH CLIENT-ATTORNEY CONSULTATION & TRIAL PREPARATIONS AND PETITIONER'S ABILITY TO UNDERSTAND THE PROCEEDINGS AND ASSIST IN HIS DEFENSE?
- 5) WHETHER TRIAL COUNSEL'S WRITTEN ADMISSIONS, TO THE TRIAL COURT, OF LYING TO THE PETITIONER AND BEING UNABLE TO EFFECTIVELY PREPARE FOR TRIAL AND DEFEND HIS CLIENT AMOUNTED TO A 6TH AMENDMENT VIOLATION WHERE THE COURT COMPLETELY FAILED TO MEANINGFULLY REMEDY THE EXISTING BURDENS THAT WERE ENFORCED BY THE COURT ITSELF?

- LIST OF PARTIES -

PETITIONER (Pro-Se)

Mr. Atiq Akeem Weston #14A2762
Upstate Correctional Facility
309 Bare Hill Road, P.O. Box 2000
Malone, New York 12053.

RESPONDENT;

Michael Capra
(Superintendent of Sing Sing Correctional Facility)

RESPONDENT'S ATTORNEY;

UNITED STATES SOLICITOR GENERAL
DEPARTMENT OF JUSTICE, Room 5616
950 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20530-0001

(* As required by U.S. Supreme Court Rule 29(4)(c).)

- TABLE OF CONTENTS -

- Opinions Below ----- PAGE #1
- JURISDICTION ----- PAGE #1
- CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ----- PAGE #2
- STATEMENT OF THE CASE ----- PAGE #3-4
- REASONS FOR GRANTING THE WRIT ----- PAGE #5-13
 - INVOLUNTARY GUILTY PLEA (pg #5-7)
 - INEFFECTIVE ASSISTANCE OF COUNSEL (pg #7-10)
 - PROSECUTORIAL MISCONDUCT (pg #10-13)
- CONCLUSION ----- PAGE #14

- INDEX TO APPENDIXES -

APPENDIX A (TOTAL OF 16 PAGES)

- U.S. COURT OF APPEALS: 2ND CIRCUIT 12/15/22 APPEAL DECISION (1 PAGE)
(SEE, WESTON V. CAPRA, #22-16588 [2ND CIR 12/15/22])
- PETITIONERS APPEAL TO U.S. COURT OF APPEALS: 2ND CIRCUIT
"NOTICE OF APPEAL REQUESTING CERTIFICATE OF APPEALABILITY" (15 PAGE)

APPENDIX B (TOTAL OF 81 PAGES)

- WESTON V. CAPRA, 2022 WL 1811161 (SDNY 04/13/22) (49 PAGES)
- WESTON V. CAPRA, 2022 WL 2914506 (SDNY 07/25/22) (4 PAGES)
- "OBJECTIONS TO THE MAGISTRATE JUDGES REPORT AND RECOMMENDATION" (26 PAGES)

APPENDIX C (TOTAL OF 410 PAGES)

- HABEAS PETITION W/ EXHIBITS (STATE COURT APPEALS & TWO (2) CR#440.10 PROCEEDINGS) (393 PAGES)
 - HABEAS PETITION, STATEDirect APPEALS (237 PGS)
 - 07/02/15 CR#440.10 PROCEEDINGS (60 PGS)
 - 08/02/19 CR#440.10 PROCEEDINGS (93 PGS)
- Reply to Respondent's Answer Petition (17 PGS)

- TABLE OF AUTHORITIES CITED -

(CASES)

PAGE#

BELL V. WOLFISH, 441 U.S. 520 (1979)	6,7
DOBBERT V. WAHNRIGHT, 468 U.S. 1231 (1984)	12,13
HARRIS V. REED, 489 U.S. 225 (1989)	6
HILL V. LOCKHART, 474 U.S. 52 (1985)	8,9,14
JENKINS V. ARTUZ, 294 F.3D. 284 (2 ND CIR. 2002)	11
LEWIS V. CONN. COMM'R OF CORR., 790 F.3D 109 (2 ND CIR. 2015)	5,8
McMANN V. RICHARDSON, 397 U.S. 759 (1970)	9
PEOPLE V. WESTON, 145 AD3D 746 (2 ND DEPT. 2016)	3,4
PEOPLE V. WESTON, 29 NY3D 1088 (N.Y. COURT OF APPEALS 2017)	3,4
QUEZADA V. SMITH, 624 F.3D. 514 (2 ND CIR. 2010)	13
SANDERS V. SILLMAN, 803 F.2D. 218 (2 ND CIR. 1988)	13
SLACK V. Mc DANIEL, 529 U.S. 473 (2000)	4
STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)	8,9
TURNER V. SAFFLEY, 482 U.S. 78 (1987)	7,
UNITED STATES V. AGURS, 427 U.S. 97 (1976)	11
UNITED STATES V. BASCIANO, 369 F.Supp.2d. 344 (SDNY 2005)	6,7
U.S. V. BOUT, 860 F.Supp.2d. 303 (2012)	7,14
U.S. V. GOTTI, 755 F.Supp. 1159 (1991)	7,
U.S. V. HANSEL, 70 F.3D.6 (2 ND CIR. 1995)	9,10
U.S. V. HELMSLEY, 985 F.2D. 1202 (2 ND CIR. 1993)	11,
WESTON V. CAPRA, 2022 WL 1811161 (SDNY 04/13/22)	1,4
WESTON V. CAPRA, 2022 WL 2914506 (SDNY 07/25/22)	1,4,12
WESTON V. CAPRA, *22-1688 (2 ND CIR. 12/15/22)	1,4
WILLIAMS V. TAYLOR, 529 U.S. 362 (2000)	5,6,7

(STATUTES & CONSTITUTIONAL PROVISIONS)

U.S. CONST. 6 TH AMEND.	2
U.S. CONST. 8 TH AMEND.	2
U.S. CONST. 14 TH AMEND.	2
28 USCA §1254(i)	1
28 USCA §2254	
U.S. SUPREME COURT RULE 10 (a), (c)	[28 USCA] 1,2,14
U.S. SUPREME COURT RULE 14	[28 USCA] 2

- OPINIONS BELOW -

THE PETITIONER RESPECTFULLY REQUESTS THAT A WRIT OF CERTIORARI BE GRANTED IN ORDER TO PROVIDE A THOROUGH AND IMPARTIAL REVIEW OF THE FOLLOWING FEDERAL JUDGMENTS:

1) THE JUDGMENT AND OPINION OF THE UNITED STATES COURT OF APPEALS: SECOND CIRCUIT. SEE, WESTON V. CAPRA, #22-1688 (2ND CIR. 12/15/22). APPELLANT, PRO-SE, REQUESTS FOR INFORMA PAUPERIS ("IFP") STATUS AND A CERTIFICATE OF APPEALABILITY ("COA"). UPON ONE CONSIDERATION, IT IS HEREBY ORDERED THAT THE IFP MOTION IS DENIED AS UNNECESSARY. FED. R. APP. P. 24(a). IT IS FURTHER ORDERED THAT A COA IS DENIED AND THE APPEAL IS DISMISSED BECAUSE APPELLANT HAS NOT "MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT." 28 USC § 2253 (c); SEE, MILLER EL. V. COCKRELL, 537 U.S. 322, 329 (2003). ~~FED.~~

[SEE, APPENDIX A]

2) THE JUDGMENTS AND OPINIONS OF THE UNITED STATES DISTRICT COURT: SOUTHERN DISTRICT OF NEW YORK AS REPORTED IN WESTON V. CAPRA, 2022 WL 2914506 (SDNY 07/25/22), AND WESTON V. CAPRA, 2022 WL 1811161 (SDNY 04/13/22).

[SEE, APPENDIX B]

- JURISDICTION -

THE UNITED STATES COURT OF APPEALS: SECOND CIRCUIT ENTERED A FINAL JUDGMENT AND OPINION ON THESE PROCEEDINGS ON 12/15/22. SEE, WESTON V. CAPRA, #22-1688 (2ND CIR. 12/15/22). THEREFORE, THE FULL JURISDICTION OF THE UNITED STATES SUPREME COURT IS NOW BEING INVOKED UNDER 28 USC § 1254(1), U.S. SUP. CT. RULE 10 [28 USC]

- CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED -

UNITED STATES CONSTITUTION 6TH AMENDMENT

UNITED STATES CONSTITUTION 8TH AMENDMENT.

UNITED STATES CONSTITUTION 14TH AMENDMENT.

UNITED STATES SUPREME COURT RULE 10(a), (c) [28 USCA]

UNITED STATES SUPREME COURT RULE 14 [28 USCA]

(SEE, TABLE OF AUTHORITIES CITED)

- STATEMENT OF THE CASE -
(PROCEDURAL HISTORY)

IN THESE PROCEEDINGS, THE PETITIONER APPEALS HIS UNCONSTITUTIONAL CONVICTIONS THAT OCCURRED IN THE ORANGE COUNTY SUPREME COURT (GOSHEN, NJ) ON 05/01/14 (PLEA) AND 06/16/14 (SENTENCE). THE PETITIONER WAS SENTENCED TO 15 YEARS IMPRISONMENT RAN CONCURRENT TO AN INDETERMINITE TERM OF 3 1/3 - 10 YEARS IMPRISONMENT.

IN THE STATE COURT DIRECT APPEAL PROCEEDINGS, THE PETITIONER ARGUED THAT THE PLEAS WERE INADVERTENT AND THAT TRIAL COUNSEL'S PERFORMANCE WAS INEFFECTIVE DUE TO VARIOUS OMISSIONS AND FAILURES TO FORMERLY CHALLENGE, BY MOTION, BURDENSOME AND UNSUBSTANTIATED COURT ORDERS IN THE FORM OF PROTECTIVE ORDERS AND LOCKDOWN ORDERS; COUNSEL'S DISLOYALTY AND CONTINUOUS BREACH OF THE CLIENT-ATTORNEY PRIVILEGE; COUNSEL'S DEFECTIVE ADVICE TO WAIVE AN AFFIRMATIVE STATUTE OF LIMITATIONS DEFENSE TO EXPIRED MANSLAUGHTER CHARGES; AND CONSTITUTIONAL VIOLATIONS DUE TO THE COERCIVE CIRCUMSTANCES CREATED THROUGH BURDENSOME COURT ORDERED LOCKDOWNS AND PROTECTIVE ORDERS. THESE STATE APPEALS WERE ULTIMATELY DENIED. SEE, PEOPLE V. WESTON, 145 AD3D 746, 43 NJ3D 413 (12/07/16). LEAVE TO APPEAL WAS DENIED IN PEOPLE V. WESTON, 29 NJ3D 1086, 80 NE3D 265 (06/08/17).

THE PETITIONER ALSO FILED TWO (2) SEPARATE POST-CONVICTION COLLATERAL APPLICATIONS. 1) THE 07/02/15 CR3440.10 APPLICATION WAS DENIED BY THE ORANGE COUNTY SUPREME COURT ON 12/10/15. LEAVE TO APPEAL WAS THEN DENIED BY THE APPELLATE DIVISION, SECOND DEPARTMENT. 2) THE 08/02/17 CR3440.10 APPLICATION WAS DENIED BY THE ORANGE COUNTY SUPREME COURT ON 10/12/17. LEAVE TO APPEAL WAS DENIED BY THE APPELLATE DIVISION, SECOND DEPARTMENT.

IN BOTH OF THESE PROCEEDINGS, FOR PROPER PRESERVATION PURPOSES, THE PETITIONER RAISED ALL OF THE ABOVE MENTIONED DUE PROCESS VIOLATIONS AND INEFFECTIVENESS OF COUNSEL CLAIMS IN ADDITION TO PROSECUTORIAL MISCONDUCT ARGUMENTS, WHICH WAS SUPPORTED BY A 01/31/15 SWORN FIVE (5) PAGE RECANTATION AFFIDAVIT BY THE PROSECUTION'S PRIMARY WITNESS (M.S. DEANNA M. JUNA), WHEREIN M.S. JUNA EXPOSED THAT HER GRAND JURY TESTIMONIES WERE COERCED AND COACHED BY PROSECUTOR A.D.A. KAREN EDELMAN-REYES. IN SUM, THE DISTRICT ATTORNEY'S OFFICE KNOWINGLY PRESENTED FALSE AND PERJURED TESTIMONY TO THE GRAND JURY IN ORDER TO PROCURE AN INDICTMENT AND CONVICTION AGAINST THE PETITIONER. THESE FACTS AND CIRCUMSTANCES RENDERED THE PETITIONER'S INDICTMENT AND CONVICTIONS UNCONSTITUTIONAL. [SEE, APPENDIX C] (07/02/15 CR3440.10 & 08/02/17 CR3440.10).

THE PETITIONER THEN COLLECTIVELY PRESENTED THE ARGUMENTS OF AN INADVERTENT PLEA, DUE PROCESS VIOLATIONS, THE EFFECTIVE ASSISTANCE OF COUNSEL AND PROSECUTORIAL MISCONDUCT BEFORE THE UNITED STATES DISTRICT COURT (SOUTHERN DISTRICT OF NEW YORK) IN A HABEAS CORPUS petition (#2251) DATED 05/25/18. THE RESPONDENT CONTESTED AND PETITIONER COUNTERED IN A REPLY. THE MAGISTRATE JUDGE THEN RECOMMENDED THAT THE HABEAS petition BE DENIED IN FULL IN A REPORT & RECOMMENDATION DATED 04/13/22. THE PETITIONER THEN FILED FULL OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION DATED 04/20/22, ON EACH AND EVERY GROUND. ULTIMATELY, THE DISTRICT COURT DENIED THE HABEAS PROCEEDINGS IN A JUDGMENT DATED 07/25/22.

THE PETITIONER THEN FILED A NOTICE OF APPEAL WITH THE U.S. COURT OF APPEALS: SECOND CIRCUIT, DATED 07/28/22, THEREBY REQUESTING A CERTIFICATE OF APPEALABILITY ("COA") FOR AN APPEAL BEFORE THE 2ND CIRCUIT COURT ON THE GROUNDS THAT THE DISTRICT COURT'S JUDGMENTS WERE NOT ONLY "CONTRARY TO" CLEARLY ESTABLISHED FEDERAL LAWS BUT ALSO AN "UNREASONABLE APPLICATION" OF FEDERAL LAWS; AND THAT THE APPEAL SUFFICIENTLY SETS FORTH A "VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT TORSORS OF REASON WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING." (SEE, SLACK V. MCDANIEL, 529 U.S. 473 (2000)); THEN ON 12/15/22, THE U.S. COURT OF APPEALS DENIED THE PETITIONER'S APPEAL APPLICATION FOR A CERTIFICATE OF APPEALABILITY ("COA"). SEE, WESTON V. CAPRA, DOCKET # 22-1688 (2ND CIR. 12/15/22)

THE PETITIONER NOW MAKES THE INSTANT APPEAL TO THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW AND SETTLE THE CONSTITUTIONAL ARGUMENTS RAISED WITHIN THE APPEAL RECORDS AND HABEAS petition proceedings.

(PUBLISHED OPINIONS)

PEOPLE V. WESTON, 145 AD3D 746, 43 NYS3D 413 (12/07/16) (2ND DEPARTMENT)

PEOPLE V. WESTON, 29 NY3D 1088, 86 NE3D 265 (06/08/17) (COURT OF APPEALS, NY)

WESTON V. CAPRA, 2022 WL 1811161 (SDNY 04/13/22) (MAGISTRATE R & R)

WESTON V. CAPRA, 2022 WL 2914506 (SDNY 07/25/22) (HABEAS DENIAL)

- REASONS FOR GRANTING THE PETITION -

THE PETITIONER HUMBLY ASKS THE U.S. SUPREME COURT TO INVOKES ITS FULLY DISCRETIONARY JUDICIAL AUTHORITY TO REVIEW THE INSTANT HABEAS CORPUS APPEALS FOR A WRIT OF CERTIORARI, AS THE PETITION PRESENTS MERITORIOUS ARGUMENTS AND SUFFICIENTLY ESTABLISHES THAT THE LOWER COURTS MADE CONSTITUTIONAL ERRORS WHEN IT EITHER DECLINED TO HEAR OR DECLINED THE INSTANT HABEAS CORPUS APPEALS.

THESE DEPRIVATIONS OF A CONSTITUTIONAL RIGHT ARE IN DIRECT RELATION TO THE LOWER COURTS DECISIONS BEING "CONTRARY TO" CLEARLY ESTABLISHED FEDERAL LAWS AS THE LOWER COURTS CONFRONTED A SET OF FACTS THAT WERE MATERIALLY INDISTINGUISHABLE FROM A DECISION OF THE SUPREME COURT BUT NEVERTHELESS APPLIED AT A RESULT DIFFERENT FROM ITS PRECEDENT. SEE, LEWIS V. CONN. COMM. OF CORR., 790 F.3D 109, 121 (2ND CIR. 2015); AND FURTHER THAT THE LOWER COURTS DECISIONS INVOLVED AN "UNREASONABLE APPLICATION" OF FEDERAL COURT PRECEDENT AS NOT ONLY DID THE LOWER COURT IDENTIFY THE CORRECT GOVERNING LEGAL RULE FROM FEDERAL CASES BUT UNREASONABLY REFUSED TO EXTEND THAT PRINCIPLE TO A NEW CONTEXT WHERE IT SHOULD APPLY." (SEE, WILLIAMS V. TAYLOR, 529 U.S. 362, 365 (2000)).

FURTHER, UNDER THE FACTS AND CIRCUMSTANCES PRESENTED, THE LOWER COURTS ABUSED ITS DISCRETION IN REFUSING TO ISSUE A CERTIFICATE OF APPEALABILITY ("COA") IN THESE HABEAS CORPUS APPEALS.

AS OUTLINED BELOW, THE PETITIONER WILL BRIEFLY ELABORATE ON EACH AND EVERY ARGUMENT RAISED WITHIN WELL ARTICULATED AND ORGANIZED SECTIONS BASED ON 1) "INVOLUNTARY GUILTY PLEA", 2) "INEFFECTIVE ASSISTANCE OF COUNSEL" AND 3) "PROSECUTORIAL MISCONDUCT", AS FOLLOWS:

INVOLUNTARY GUILTY PLEA;

THE DISTRICT COURT IN ITS FINAL DECISION, DATED 07/25/22, ERRONEOUSLY CONCLUDED THAT THE PETITIONER'S CLAIMS THAT "HIS GUILTY PLEA WAS NOT KNOWING AND UNVOLUNTARY IS PROCEDURALLY BARRIED BECAUSE PETITIONER FAILED TO PRESERVE SUCH CLAIM BY MAKING APPROPRIATE MOTIONS IN THE ORANGE COUNTY COURT." ID. THE DISTRICT COURT JUDGE REASONED THAT THE "PETITIONER HAD TO OBJECT TO THE GUILTY PLEA, THROUGH A MOTION TO WITHDRAW THE PLEA BEFORE SENTENCING, A POST JUDGMENT NEW YORK CRIMINAL PROCEDURE LAW CPL § 40.10 MOTION IN THE TRIAL COURT, OR ON DIRECT APPEAL IF THE RECORD PERMITS." AND THAT THE "PETITIONER MADE NO SUCH MOTION. BECAUSE PETITIONER FAILED TO MAKE THE APPROPRIATE MOTIONS IN THE TRIAL COURT, HE HAS NOT DEMONSTRATED CAUSE FOR FAILING TO RAISE THE CLAIM AT THE APPROPRIATE TIME, AND BECAUSE THIS CLAIM IS NOT ONE OF "ACTUAL INNOCENCE", IT IS PROCEDURALLY BARRIED." ID.

HOWEVER, IN THE LOWER COURT PROCEEDINGS, THE DISTRICT COURT IGNORED SIGNIFICANT FACTS PRESENTED BY THE PETITIONER WITH RESPECTS TO THE "CAUSE" AND "PREJUDICE" FOR THE ALLEGED PROCEDURAL BARS IN RELATION TO COUNSEL'S COMPLETE FAILURES TO FORMALLY AND PROPERLY PROTEST AND OBJECT TO THE COURT'S ORDERS ON THE TRIAL COURT RECORD. (SEE, HARRIS V. REED, 489 U.S. 225, 262 (1989) ("CAUSE" AND "PREJUDICE" FOR PROCEDURAL DEFAULT.))

IN ITS DECISION MAKING, THE DISTRICT COURT ERRONEOUSLY SIDESTEPED THE PETITIONER'S SUBSTANTIATED REASONS FOR "CAUSE" AND "PREJUDICE" IN ORDER TO JUSTIFY AN ALLEGED PROCEDURAL DEFAULTS ON THE BASIS OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR TRIAL COUNSEL'S OMISSIONS OF HIS SOLE OBLIGATIONS TO OBJECT AND SUBJECT THE PROSECUTION'S CASE TO A SUFFICIENT LEVEL OF ADVERSARIAL TESTING. THROUGHOUT THE LOWER COURT PROCEEDINGS, THE PETITIONER WAS PLACED IN A SEVERELY DISADVANTAGED POSITION TO WHERE HE COULD NOT EFFECTUALLY DEFEND HIMSELF DUE TO THE DRASTIC RESTRICTIONS IMPOSED BY THE LOWER COURTS (LOCKDOWN ORDERS AND PROTECTIVE ORDERS). THE PETITIONER WAS SOLELY DEPENDANT UPON COUNSEL TO FIGHT ON HIS BEHALF. HOWEVER, COUNSEL COMPLETELY FAILED TO EVEN REGISTER ANY FORMAL OBJECTIONS FOR THE RECORD. UNDER THESE CIRCUMSTANCES, PETITIONER SHOULD NOT BE PENALIZED FOR THE SHORTCOMINGS OF COUNSEL.

THE DISTRICT COURT THEN COMMITTED CONSTITUTIONAL ERROR WHEN IT FULLY ADOPTED THE MAGISTRATE JUDGE'S POSITION THAT THE "PETITIONER'S CONTENTION THAT THE ORDERS HERE VIOLATED DUE PROCESS RIGHTS UNDER BELL V. WOLFISH, 441 U.S. 520 (1979) AND UNITED STATES V. BASKLAND, 369 F.Supp.2d 344 (SDNY 2005), IS MISPLACED BECAUSE THOSE CASES DID NOT ADDRESS THE VOLUNTARINESS OF GUILTY PLEAS IN CONNECTION WITH CONDITIONS OF CONFINEMENT." ID. [SEE, MAGISTRATE'S R&R, PAGES #33-34]. AS IN DOING SO, THE DISTRICT COURT'S DECISIONS INVOLVED AN "UNREASONABLE APPLICATION" OF FEDERAL COURT PRECEDENT AS THE COURT IDENTIFIED THE CORRECT GOVERNING LEGAL PRINCIPLES FROM FEDERAL CASES BUT UNREASONABLY APPLIED IT TO THE FACTS OF THE PARTICULARLY SIMILAR CASE BEFORE IT; AND FURTHER UNREASONABLY REFUSED TO EXTEND THAT PRINCIPLE TO A NEW CONTEXT WHERE IT SHOULD APPLY. (SEE, WILLIAMS V. TAYLOR, 529 U.S. 362, 365 (2000)).

THE PETITIONER SPECIFICALLY OPPOSED THIS ERRONEOUS RULING ON THE GROUND THAT EVEN THOUGH THE CASELAW'S CITED BY THE PETITIONER (BELL V. WOLFISH, 441 U.S. 520 (1979); UNITED STATES V. BASCIANO, 369 F.Supp.2D 344 (SDNY 2005)) DID NOT INVOLVE THE "VOLUNTARINESS OF GUILTY PLEAS IN CONNECTION WITH CONDITIONS OF CONFINEMENT", THAT THOSE CASELAW'S STILL PROPERLY ADDRESS THE CIRCUMSTANCES FOR WHEN AND HOW THE IN-QUESTION RESTRICTIONS MAY BE CONSTITUTIONALLY IMPOSED. AND THAT IN MOST CASES, SIMILARLY IMPOSED RESTRICTIONS ON PRE-TRIAL DETAINEES CONDITIONS OF CONFINEMENT HAVE FAILED TO SURVIVE CONSTITUTIONAL SCRUTINY, AND THUS MUST BE PROPERLY CONSIDERED. SEE, U.S. V. BASCIANO, 369 F.Supp.2D 344 (SDNY 2005); SEE U.S. V. GORTI, 755 F.Supp.1159 (1991); SEE ALSO, U.S. V. BOUT, 860 F.Supp.2D 303 (2012) (APPLIED TURNER FACTORS IN TURNER V. SAHLEY, 482 U.S. 78, AT 89-91 (1987) TO CLAIM OF UNDULY HARSH CONDITIONS OF CONFINEMENT.). ID.

THE LOWER COURT'S ERRONEOUS DECISION MAKING RESULTED IN THE "UNREASONABLE APPLICATION" OF THE CORRECT GOVERNING LEGAL RULES FROM FEDERAL COURT PRECEDENT THAT THE COURT UNREASONABLY REFUSED TO EXTEND TO A NEW CONTEXT WHERE IT SHOULD HAVE APPLIED. SEE WILLIAMS V. TAYLOR, 529 U.S. 362, 365 (2000). IN THIS CASE, THE "NEW CONTEXT WHERE IT SHOULD APPLY", BEING THE VOLUNTARINESS OF A GUILTY PLEA IN RELATION TO THE CONDITIONS OF CONFINEMENT OF THE ACCUSED - A PRETRIAL DETAINEE.

THESE CIRCUMSTANCES RENDER THE LOWER COURT'S FINDINGS UNCONSTITUTIONAL AND CLEARLY ERRONEOUS. FURTHER, THE 2ND CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO ISSUE A CERTIFICATE OF APPEALABILITY ("COA").

INEFFECTIVE ASSISTANCE OF COUNSEL;

THE DISTRICT COURT JUDGE REASONED THAT "THERE IS LIKEWISE NO CLEAR ERROR IN JUDGE MCCARTHY'S FINDINGS THAT, ALTHOUGH PETITIONER SUCCESSFULLY EXHAUSTED HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS, ALL BUT ONE ARE PROCEDURALLY BARRIED" AS "THE ONLY CLAIM THAT RELATES TO PETITIONER'S CLAIM THAT HIS COUNSEL IMPROPERLY ADVISED HIM TO WAIVE THE STATUTE OF LIMITATIONS DEFENSE WITH REGARD TO HIS MANSLAUGHTER CONVICTION AS PART OF HIS PLEA DEAL." AND TO THAT CLAIM THAT "THERE IS NO ERROR IN JUDGE MCCARTHY'S FINDINGS THAT THE APPELLATE DIVISION'S DECISION WITH REGARD TO THIS CLAIM WAS NOT CONTRARY TO, OR AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW." ID.

THE LOWER COURT'S RULING WAS CLEARLY ERRONEOUS, AN OUTRIGHT ABUSE OF DISCRETION AND AN UNREASONABLE APPLICATION OF WELL ESTABLISHED FEDERAL LAWS.

HERE, IN THESE HABEAS PROCEEDINGS, EACH INDIVIDUAL CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL ULTIMATELY LED TO THE PETITIONER INVOLUNTARILY ENTERING A PLEA THAT WAS THE DIRECT RESULT OF THE INEFFECTIVENESS OF COUNSEL FROM

1) THE COURT ORDERED RESTRICTIONS THAT WERE UNLAWFULLY PLACED UPON CLIENT-ATTORNEY CONSULTATIONS DURING THE CRITICALLY IMPORTANT TIMING OF PRE-TRIAL PROCEEDINGS, 2) PETITIONER'S TWO (2) SUBSTITUTION OF COUNSEL APPLICATIONS TO REMOVE COUNSEL AS A RESULT OF VIOLATING THE CLIENT-ATTORNEY PRIVILEGE BY DISCLOSING CONFIDENTIAL COMMUNICATIONS WITHOUT PERMISSION, TO THIRD PARTIES INCLUDING THE DISTRICT ATTORNEY AND 3) COUNSEL'S DEFECTIVE ADVICE IN IMPROPERLY ADVISING THE PETITIONER TO PLEAD TO ALL CHARGES INCLUDING A MANSLAUGHTER CHARGE FOR WHICH THE STATUTE OF LIMITATIONS HAD ALREADY EXPIRED, IN ORDER TO BE RELEASED OF THE BURDENS OF THE LOCKDOWN ORDERS, SOLITARY CONFINEMENT AS WELL AS TO AVOID AN ULTIMATELY UNFAIR TRIAL DUE TO THE REST OF THE RESTRICTIONS IMPOSED THROUGH THE OTHER COURT ORDERS.

*THE CUMULATIVE IMPACT OF THESE CIRCUMSTANCES AND ERRORS RENDERED THE PETITIONER'S PLEA INVOLUNTARY AND UNCONSTITUTIONAL. SEE, HILL V. LOCKHART, 474 U.S. 52 (1985); STRICKLAND V. WASHINGTON, 476 U.S. 668 (1986).

NOW, EVEN IF THE PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WERE INDEED IMPROPERLY EXCLUDED AS PROCEDURALLY BARRED EXCEPT FOR THE PETITIONER'S INEFFECTIVE ASSISTANCE CLAIM REGARDING THE DEFECTIVE ADVICE OF COUNSEL TO WAIVE THE STATUTE OF LIMITATIONS DEFENSE TO THE MANSLAUGHTER CHARGES; THE LOWER COURT'S DETERMINATION IS STILL CLEARLY ERRONEOUS AS IT IS NOT ONLY CONTRARY TO WELL ESTABLISHED CASE LAWS BUT FURTHER AN UNREASONABLE APPLICATION OF FEDERAL LAWS, IN LIGHT OF THE EVIDENCE BEFORE THE COURT.

THE LOWER COURT'S DECISION WAS "CONTRARY TO" CLEARLY ESTABLISHED FEDERAL LAWS AS THE LOWER COURT CONFRONTED A SET OF FACTS THAT WERE MATERIALLY INDISTINGUISHABLE FROM A DECISION OF THE U.S. SUPREME COURT BUT NEVERTHELESS ARRIVED AT A RESULT DIFFERENT FROM ITS PRECEDENT. SEE, LEWIS V. CONN. COMM'R OF CORR., 790 F.3D. 109, 121 (2ND CIR. 2015).

THE UNITED STATES SUPREME COURT HAS SPECIFICALLY STATED THAT WHERE A DEFENDANT IS REPRESENTED BY COUNSEL DURING THE PLEA PROCESS AND ENTERS HIS PLEA UPON THE ADVICE OF COUNSEL, THE VOLUNTARINESS OF THE PLEA DEPENDS ON WHETHER COUNSEL'S ADVICE "WAS WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES." SEE, HILL V. LOCKHART, 474 U.S. 52, AT 56 (1985); SEE ALSO, McMANN V. RICHARDSON, 397 U.S. 759, AT 771 (1970); AND "WHERE THE ALLEGED ERROR OF COUNSEL IS A FAILURE TO ADVISE THE DEFENDANT OF A POTENTIAL AFFIRMATIVE DEFENSE TO THE CRIME CHARGED, THE RESOLUTION OF THE PREJUDICE INQUIRY WILL DEPEND LARGELY ON WHETHER THE AFFIRMATIVE DEFENSE LIKELY WOULD HAVE SUCCEEDED AT TRIAL." SEE, HILL V. LOCKHART, 474 U.S. 52, AT 59 (1985).

IN THESE PROCEEDINGS, THE DISTRICT COURT MADE ERROR BY OVERLOOKING AND FAILING TO ACCOUNT FOR THE FACTS THAT TRIAL COUNSEL COMPLETELY FAILED TO FIRST, INFORM THE PETITIONER OF THE MERITORIOUS AND DISPOSITIVE STATUTE OF LIMITATIONS DEFENSE TO THE EXPIRED MANSLAUGHTER CHARGES AND FURTHER FAILED TO SUBJECT THE DISTRICT ATTORNEY'S PLEA OFFER TO SUFFICIENT ADVERSARIAL TESTING BY OBJECTING TO THE INCLUSION OF THE MANSLAUGHTER CHARGES - THAT TOLLED ITS STATUTE OF LIMITATIONS LIFE SPAN - INTO THE PLEA DEAL. THESE FACTS RENDER THE ENTIRE PLEA DEAL UNCONSTITUTIONALLY INVALID. SEE, U.S. V. HANSEL, 70 F.3D 6, AT 8 (2ND CIR. 1995).

IN U.S. V. HANSEL, 70 F.3D 6, AT *8 (2ND CIR. 1995), THE COURT HELD THAT:

"THE CONDUCT OF HANSEL'S ATTORNEY 'FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS.' ID. STRICKLAND V. WASHINGTON, 460 U.S. 688, AT 688. WHILE COUNSEL'S TACTICAL DECISIONS COMMAND A HIGH DEGREE OF DEFERENCE, SEE, ID. AT 689, 104 S.Ct. AT 2005. HANSEL'S COUNSEL'S FAILURE TO OBJECT TO THE TIME-BARRED COUNTS IS UNACCOUNTABLE IN THE CIRCUMSTANCES, AND CANNOT BE CONSIDERED SOUND TRIAL STRATEGY. IN PARTICULAR, COUNSEL'S DECISION CANNOT BE JUSTIFIED BY CONSIDERATIONS RELATED TO THE NEGOTIATION OF A PLEA AGREEMENT, BECAUSE HANSEL PLEADED WITHOUT THE BENEFIT OF ONE. HANSEL'S PREJUDICE IS THAT HE PLEADED GUILTY TO TWO TIME-BARRED COUNTS THAT WOULD HAVE BEEN DISMISSED, IF HIS ATTORNEY HAD ACTED COMPETENTLY. HANSEL'S COUNSEL WAS THEREFORE INEFFECTIVE UNDER STRICKLAND, AND HANSEL'S SIXTH AMENDMENT RIGHT TO COUNSEL WAS THEREBY IMPAIRED. HANSEL'S WAIVER OF THE TIME-BAR DEFENSE CANNOT BE DEEMED KNOWING AND INTELLIGENT. WE MAY ASSUME THAT HE WOULD NOT HAVE PLEADED GUILTY TO COUNTS THAT HE KNEW TO BE TIME-BARRED." ID.

IN THESE PROCEEDINGS, THERE IS ABSOLUTELY NO DOUBT THAT THE PETITIONER WOULD HAVE REJECTED THE INSTANT PLEAS OF GUILTY THAT CONTAINED CHARGES AS SERIOUS AS MANSLAUGHTER IN THE FIRST DEGREE, HAD TRIAL COUNSEL PROPERLY INFORMED HIM THAT THE STATUTE OF LIMITATIONS DEFENSE WOULD HAVE BARRED ITS PROSECUTION. FURTHER, IN THE INTERESTS OF JUSTICE AND FUNDAMENTAL FAIRNESS, THE ENTIRE DECADE MUST BE INVALIDATED AS A DIRECT CONSEQUENCE OF THE INCLUSION OF MANSLAUGHTER CHARGES THAT THE TRIAL COURT, TRIAL COUNSEL AND THE PROSECUTION KNEW TO HAVE BEEN TIME-BARRIED FROM PROSECUTION DUE TO THE TOLDED STATUTE OF LIMITATIONS.

UNDER THE CIRCUMSTANCES PRESENT IN THE PETITIONER'S CASE, THE CONTROLLING DOCTRINES OF "STARE DECISIS" ("THE DOCTRINE OF PRECEDENT, UNDER WHICH A COURT MUST FOLLOW EARLIER JUDICIAL DECISIONS WHEN THE SAME POINTS ARISE AGAIN IN LITIGATION") AND "VERTICAL STARE DECISIS" ("THE DOCTRINE THAT A COURT MUST STRICTLY FOLLOW THE DECISIONS HANDED DOWN BY HIGHER COURTS WITHIN THE SAME JURISDICTION") SHOULD HAVE BEEN PROPERLY ENFORCED. *THE LOWER COURTS ABUSE OF DISCRETION AND CLEARLY ERRONEOUS DECISION TO NOT FOLLOW THESE DOCTRINES, MANIFESTED A DECISION THAT WAS NOT ONLY CONTRARY TO WELL ESTABLISHED FEDERAL LAWS BUT ALSO AN UNREASONABLE DETERMINATION OF THE FACTS PRESENTED, IN LIGHT OF THE SECOND CIRCUIT'S DECISION IN U.S. V. HANSEL, 70 F.3D.6 (2ND CIR. 1995).

THE PETITIONER NOW RESPECTFULLY ASKS THE U.S. SUPREME COURT TO THOROUGHLY REVIEW THESE INEFFECTIVE ASSISTANCE OF COUNSEL ARGUMENTS, IN WHOLE, BY GRANTING THE INSTANT PETITION FOR A WRIT OF CERTIORARI.

PROSECUTORIAL MISCONDUCT;

THE DISTRICT COURT JUDGE REASONED THAT THE "PETITIONER'S CLAIM CONCERNING PROSECUTORIAL MISCONDUCT AND THE MOLINA DISCOVERY RELATES ONLY TO THE GRAND JURY PROCEEDINGS IN HIS CASE AND NOT THE VALIDITY OF HIS GUILTY PLEA" AND THAT "PETITIONER ENTERED A GUILTY PLEA KNOWINGLY AND VOLUNTARILY. CONSEQUENTLY, PETITIONER IS ALSO BARRED FROM OBTAINING HABEAS RELIEF BASED ON ALLEGED PROSECUTORIAL MISCONDUCT." ID. THE DISTRICT COURT FURTHER RULED THAT "THERE IS ALSO NO CLEAR ERROR IN THE REPORT'S FINDING THAT, IN THE ALTERNATIVE, PETITIONER'S PROSECUTORIAL MISCONDUCT CLAIM FAILS ON THE MERITS." AS "MOLINA DOES NOT ADMIT IN HER AFFIDAVIT TO PROVIDING FALSE GRAND JURY TESTIMONY AND EVEN IF SHE DID, PETITIONER CANNOT DEMONSTRATE HOW IT IS MATERIAL TO HIS GUILTY PLEA." ID.

THE LOWER COURT'S ERRONEOUS DECISION MAKING IS NOT ONLY THE DIRECT PRODUCT OF AN EGREGIOUS ABUSE OF DISCRETION BUT IS FURTHER CONTRARY TO AND AN UNREASONABLE APPLICATION OF WELL ESTABLISHED FEDERAL LAWS IN ACCORDANCE TO THE FACTS PRESENTED BEFORE THE COURT.

THE LOWER COURT FAILED TO RECOGNIZE THAT WHEN IT COMES TO FALSE TESTIMONY, AT ANY TIME, "THE EXCEPTION ARISES WHERE THE PROSECUTOR IS CLAIMED NOT MERELY TO HAVE BEEN AWARE OF CIRCUMSTANCES INDICATING THE FALSITY OF A WITNESS'S TESTIMONY BUT TO HAVE BEEN DIRECTLY INVOLVED AS A PARTICIPANT IN THE TRANSACTION ABOUT WHICH THE WITNESS HAS ALLEGEDLY LIED." SEE, U.S. v. HELMELEY, 985 F.2D 1202, AT 1209 (2ND CIR. 1993); SEE ALSO, UNITED STATES v. AGURS, 429 U.S. 97, AT 103 (1976). AND FURTHER THAT, "THE PRINCIPLE THAT A STATE MAY NOT KNOWINGLY USE FALSE EVIDENCE, INCLUDING FALSE TESTIMONY, TO OBTAIN A TAINTED CONVICTION, IMPLICIT IN ANY CONCEPT OF ORDERED LIBERTY, DOES NOT CEASE TO APPLY MERELY BECAUSE THE FALSE TESTIMONY GOES ONLY TO THE CREDIBILITY OF THE WITNESS. THE JURY'S ESTIMATE OF TRUTHFULNESS AND RELIABILITY OF A GIVEN WITNESS MAY WELL BE DETERMINATIVE OF GUILT OR INNOCENCE, AND IT IS UPON SUCH SUBTLE FACTORS AS THE POSSIBLE INTEREST OF THE WITNESS IN TESTIFYING FALSLY THAT A DEFENDANT'S LIFE OR LIBERTY MAY DEPEND." SEE, JENKINS v. ARTUZ, 294 F.2D 284, AT 293 (2ND CIR. 2002).

WITH REGARDS TO MRS. MDOLINA 01/31/15 FIVE(5) PAGED RECANTATION AFFIDAVIT IN THIS CASE, MRS. MDOLINA EXPOSED THAT HER ENTIRE GRAND JURY TESTIMONY - A FALSE EYE WITNESS ACCOUNT - WAS COMPLETELY FALSE, COERCED AND COACHED BY THE DISTRICT ATTORNEY. IN RETURN FOR HER FALSE TESTIMONY, WHICH LED TO THE PETITIONER'S INDICTMENT, MRS. MDOLINA WAS GIVEN HER FREEDOM.

THIS FALSE EVIDENCE WAS NOT AVAILABLE PRIOR TO THE PETITIONER'S PLEA (05/01/14) AND SENTENCING (06/16/14). THIS EVIDENCE WAS NOT ENTERED INTO ANY COURT RECORD UNTIL MRS. MDOLINA EXECUTED THE RECANTATION AFFIDAVIT ON 01/31/15 AND THE PETITIONER SUBSEQUENTLY FILED MULTIPLE POST-CONVICTION APPLICATIONS (I.E., CR 3440.10) IN ORDER TO PROPERLY PRESENT AND PRESERVE THE RECANTATION OF THE USE OF THIS FALSE EVIDENCE IN THE TRIAL COURT RECORD.

THERE IS NO QUESTION THAT THE PETITIONER WOULD NOT HAVE PLED GUILTY HAD HE BEEN MADE AWARE OF THIS FALSE EVIDENCE PRIOR TO HIS PLEAS OF GUILTY ON 05/01/14 AS THIS EVIDENCE WOULD HAVE LED TO THE COMPLETE DISMISSAL OF THE INDICTMENT DUE TO THE PROSECUTOR'S AND WITNESS' KNOWING INTRODUCTION OF PERJURED TESTIMONY BEFORE THE GRAND JURY. *THESE SET OF CIRCUMSTANCES (NOT ONLY) SHOULD INVALIDATE THE PLEAS OF GUILTY BUT SHOULD ALSO INVALIDATE THE INDICTMENT ITSELF AS THE KNOWING USE OF THIS FALSE EVIDENCE UNQUESTIONABLY DISTURBED THE INTEGRITY OF THE GRAND JURY PROCEEDINGS.

IN THE FACE OF THESE FACTS, A HEARING SHOULD HAVE BEEN HELD TO PROVIDE MRS. MOLINA WITH THE OPPORTUNITY TO TESTIFY TO HER SUBMISSIONS AND TO BE CROSS-EXAMINED BY THE RESPONDENT AS WELL AS THE COURT IN ORDER TO FULLY DEVELOP THE FACTUAL COURT RECORD WITH RESPECTS TO THESE CLAIMS SO THAT A FULLY INFORMED DECISION COULD BE RENDERED, ESPECIALLY CONSIDERING EVERY OTHER REVIEWING COURT COMPLETELY FAILED TO DEVELOP THE FACTUAL RECORD THROUGH AN EXTENSIVE HEARING.

THE UNITED STATES SUPREME COURT IN DOBBERT V. WAINWRIGHT, 408 U.S. 1231 (1984) SPECIFICALLY STATED THAT "IN THE FACE OF A SPECIFIC RECANTATION OF ORIGINAL TESTIMONY, A COURT MUST EVALUATE THE RECANTATION ITSELF AND EXPLAIN WHAT IT IS ABOUT THAT RECANTATION THAT WARRANTS A CONCLUSION THAT IT IS NOT CREDIBLE EVIDENCE." ID., AT 1235-1236.

IN THE PETITIONER'S CASE, AS IN DOBBERT V. WAINWRIGHT, THE DISTRICT COURT JUDGES "REJECTION OF THE RECANTATION WAS NOT BASED ON ANY EVALUATION OF THE RECANTATION (ITSELF)." SEE, 408 U.S. 1231, AT 1236 (1984). AS THE DISTRICT COURT JUDGE IN HIS 07/25/22 RULING SIMPLY STATED THAT "MOLINA DOES NOT ADMIT IN HER AFFIDAVIT TO PROVIDING FALSE GRAND JURY TESTIMONY AND, EVEN IF SHE DID, PETITIONER CANNOT DEMONSTRATE HOW IT IS MATERIAL TO HIS GUILTY PLEA." ID. SEE, ATTO WESTON V. MICHAEL CAPRA, 2022 WL 2914506, AT *4 (07/25/22).

AT NO POINT, HAS ANY REVIEWING COURT CONDUCTED A HEARING CONCERNING MRS. MOLINA'S SWORN CLAIMS OF PROVIDING FALSE TESTIMONY TO THE GRAND JURY IN ORDER TO GAIN HER FREEDOM THROUGH AN AGREEMENT WITH THE DISTRICT ATTORNEY. THIS SWORN RECANTATION OF POSSIBLY THE ONLY EYE-WITNESS WAS NEVER PROPERLY QUESTIONED OR EVALUATED, BY ANY COURT, THROUGH THE COURSE OF AN EVIDENTIARY HEARING. THIS IS ERRONEOUS.

THE LOWER COURTS FINDINGS MAY NOT REST UPON THE SOLE DISTRICT COURT OPINION THAT "EVEN IF SHE DID" PROVIDE FALSE TESTIMONY TO THE GRAND JURY THAT THE "PETITIONER CANNOT DEMONSTRATE HOW IT IS MATERIAL TO HIS GUILTY PLEA." ID. ESPECIALLY "WHEN THAT CLEARLY ERRONEOUS FINDING IS COUPLED WITH A COMPLETE FAILURE TO ANALYZE THE RECATING EVIDENCE ITSELF." SEE, DORRERT V. LAMINWRIGHT, 468 U.S. 1231, AT 1236 (1984).

THE LOWER COURTS FAILED TO HOLD ANY HEARINGS AND FURTHER FAILED TO ANALYZE THE RECATATION OF FALSE TESTIMONY EVIDENCE FROM THE ONLY PERSON WHO WAS ALLEGED TO HAVE BEEN ABLE TO IDENTIFY THE PETITIONER AS A PERPETRATOR OF THE CRIMES CHARGED, ON THE SOLE BASIS THAT THE PETITIONER STILL CANNOT "DEMONSTRATE HOW IT IS MATERIAL TO HIS GUILTY PLEA." ID. THIS IS ERRONEOUS. THIS CARELESS REASONING LED TO THE DENIAL OF JUSTICE TO THE PETITIONER IN THESE APPEAL PROCEEDINGS, AS THE DISTRICT COURT'S ERRONEOUS FINDINGS WERE NOT ONLY "CONTRARY TO" CLEARLY ESTABLISHED FEDERAL LAW BUT ALSO AN "UNREASONABLE APPLICATION" OF THE GOVERNING FEDERAL COURT PRECEDENT.

THE SECOND CIRCUIT HAS RECOGNIZED "THAT DUE PROCESS IS VIOLATED IF A STATE LEAVES IN PLACE A CRIMINAL CONVICTION AFTER A CREDIBLE RECATATION OF MATERIAL TESTIMONY AND THE RECATATION WOULD 'MOST LIKELY' HAVE CHANGED THE OUTCOME." SEE, QUEZADA V. SMITH, 624 F.3D. 514, 521 (2ND CIR. 2010); SEE ALSO, SANDERS V. SULLIVAN, 803 F.2D. 218, AT 222 (2ND CIR. 1986).

IN THESE PROCEEDINGS, THE PETITIONER HAS SUFFICIENTLY DEMONSTRATED A SHOWING THAT BUT FOR CONSTITUTIONAL ERROR, THAT NOT ONLY WOULD THE GRAND JURY NOT HAVE RETURNED AN INDICTMENT, HAD IT NOT RECEIVED PERJURED TESTIMONY, BUT ALSO THAT THE PETITIONER WOULD NOT HAVE PLEADED GUILTY HAD THIS FALSE TESTIMONY EVIDENCE BEEN MADE AVAILABLE PRIOR TO THE PETITIONER'S USP/14 PLEAS OF GUILTY. UNDER THE FACTS AND CIRCUMSTANCES PRESENTED IN PETITIONER'S CASE, THE LOWER COURTS ERRED IN FAILING TO ORDER A HEARING TO INVESTIGATE AND DEVELOP THE FACTUAL RECORD. ID. THESE ERRORS AND OMISSIONS, BY THE LOWER COURT, DEPRIVED THE PETITIONER OF HIS DUE PROCESS RIGHTS.

- CONCLUSION -

THE PETITIONER NOW HUMBLY ASKS THE U.S. SUPREME COURT TO ISSUE A WRIT OF CERTIORARI TO REVIEW ALL OF THE ARGUMENTS PRESENTED IN THESE HABEAS CORPUS APPEALS, AS IT IS THE PETITIONER'S SUBSTANTIATED DISPOSITION THAT THE LOWER COURTS COMMITTED CONSTITUTIONAL ERRORS IN ITS DECISION MAKING.

MOST IMPORTANTLY, THE PETITIONER IS RESPECTFULLY ASKING THIS COURT TO GRANT THE SUBMITTED WRIT OF CERTIORARI ON THE BASIS OF THE NOVELTY OF CIRCUMSTANCES PRESENTED AS, COLLECTIVELY, THE FACTS AND CIRCUMSTANCES PRESENT IN THESE PROCEEDINGS HAVE NEVER BEEN ANSWERED OR DECIDED BY THE U.S. SUPREME COURT IN THE CONTEXT NOW PRESENTED TO THE COURT IN THESE APPEALS.

SPECIFICALLY, THERE HAS NEVER BEEN A FULLY DEVELOPED CASE DECIDED BEFORE THE U.S. SUPREME COURT THAT HAS RULED ON THE CIRCUMSTANCES FOR WHETHER OR WHEN A PRE-TRIAL DETAINEES CONDITIONS OF CONFINEMENT (SEE, U.S. V. BOUT, 860 F.Supp.2d, 303 (2012)) NOW UNDOLY AFFECT THEIR VOLUNTARINESS TO PLEAD GUILTY. (SEE, HILL V. LOCKHART, 474 U.S. 52 (1985)).

I AM NOW REQUESTING THE U.S. SUPREME COURT TO FULFILL ITS DUTY AND PROUDLY EXERCISE ITS JUDICIAL DISCRETION TO NOW DECIDE THESE MATTERS IN A MANNER THAT WOULD ESTABLISH AND DEVELOP NEW COURT PRECEDENT FOR THE ISSUES RAISED. (U.S. SUPREME COURT RULE 10 (28 USC))

* FOR ALL OF THE REASONS PRESENTED, THE INSTANT APPLICATION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED BY THIS COURT.

DATED: 12/25/2022

RESPECTFULLY,

AND ALKEEM WESTON

M.R. AND ALKEEM WESTON #14A27602
UPSTATE CORRECTIONAL FACILITY
309 BARE HILL ROAD, P.O. BOX 2000
MALONE, NEW YORK 12953.

* I DECLARE UNDER THE PENALTY OF PERJURY, A CLASS "A" MISDEMEANOR, THAT ALL OF THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT. (AW) *