No. 22-7333 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

David Jah Sr.
(Your Name) — PETITIONER

vs.

United States
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT
United States Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Jah Sr.
(Your Name)

P.O. Box 3725
(Address)

Adelanto, CA. 92301
(City, State, Zip Code)

FCI #1 Victorville Medium
(Phone Number)

QUESTIONS PRESENTED

1) Will the theory of the government, assisted by their witnesses, known to be fabricated, asserted to be harmful and outreagous conduct, be enough to reverse a conviction?

2) Based on the evidence, was the subject property in commerce to be applicable for Congress's Commerce Clause jurisdiction? See U.S. v. Mennuti, 487 F.Supp 544 (1980)

3) Is the property in connection to interstate commerce "too attenated to rationally qualify as 'substantial.'" to be applicable to the 844(i) statute?

4) Is it a material variation, by eliminating a element in the indictment, jury instruction, and statute in order to answer a jury's question?

5) Does a defendant's right to defend themself become a structural error, when the court allows the jury to determine a element of the statute in a way different than the element's definition? (in Re: interstate commerce)

6) Did the Court commit a plain error, by stating the government will use tricks, to deter the defendant from acting in pro se, then allow the government to prevail on the cliam during trial that the interstate commerce element did not need to be proven? (based upon a per se rule applicable to hotels, resturants, bars, and rental property.)

7) Did the Court violate defendant's Sixth Amendment Right to represent himself at first and second request before having him be subjected to a violation of his Speedy Trial Act and Right?

8) Did the Court Order for a competency evaluation preventing a Speedy Trial Act right violate defendant's Constitutional due process when no where in the record showed that dedendant was not competent and pro se filings were filed in an attempt to raise claims in his defense?

9) Did the final jury instruction alter the charging terms of the indictment that the possibility of the grand jury would not have indicted?

10) Is it a constitutional violation for a District Court to disallow evidence to show innocence of the alleged crime by their denial of subpoena's of buisness and personal records to rebut the claim the property was being used for a commercial purpose?

11) Before denying a rehearing request, that a counsel failed to advise of, did the appeal court violate due process, by ruling before the petitioner (allowed to proceed in pro se) whom was awaiting their case files and court records hindered from raising issues for the first time en banc?

12) Did the appellate court abuse it's discretion by not analyzing plain errors raised by appellate counsel in regards to Speedy Trial Act and Rights violation, jury pool and selcection process that did not produce any African-Americans?

13) Is it unconstitutional for merits sought to be raised by counsel filed in Pro Se ignored?

14) Can a property not open to the public, advertised, licensed, claimed or used for buisness tax write off purposes be deemed used for a commercial purpose by a rational jury? (As stated by defendant a "jury of my peer" would need that evidence)

15) Does a California licensed attorney 'per se' affect interstate commerce when they specialize in State matters?

16) Can the United States have jurisdiction over a property allegedly used for a commercial purpose that does not affect interstate commerce?

17) Did the appeallate Court depart from the accepted and usual course of judicial proceedings by not analyzing the jury being deliberately misled as to matters of which the prosecutors had personal knowledge?

18) Is it a denial of due process when the prosecution did not correct false testimony it was aware of it?

19) Was the failure to correct misrepresentation as to substance of plea bargin made with witness grounds to merit a reversal?

20) Was there a 5th Amendment Violation when the Federal Government gained a conviction by use of perjured testimony?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 30, 2022.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 09, 2023, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Jackson v. Virginia, 443 U.S. 307, 61 L. Ed. 2d 560, 99 S.ct. 2781 (1979)
Due Process Clause of the Fourteenth Amendment
Commerce Clause Powers
Interstate Commerce Act
Jones v. United States, 529 U.S. 848 (2000)
18 U.S.C. § 844(i)
87 L Ed 2d 802
Brady v. Maryland (1963) 373 US 83, 10 L Ed. 2d 215, 83 S. Ct. 1194

TABLE OF AUTHORITIES CITED

STATEMENT OF THE CASE

The subject property, a private residence with a bedroom used as a home office did not have a sufficient connection with interstate commerce to support commerce clause jurisdiction. The home office was not open to the public for buisness purposes, nor advertised for buisness. The room in question nor the home was used for buisness tax write off purposes. The home owner a California licensed attorney rented a seperate office space and utilized it to use as an location to provide proof of service under the penalities of perjury, and meet with clients. This place was also advertised as his buisness location.

An **interstate** nexus is required to find jurisdiction under 18 U.S.C. § 844(i) which this case is based upon. This case presents an issue of importance beyond the particular facts involved. During deliberations a jury asked the court "in order to prove the [**interstate commerce**] element, does the building need to be used in a **commercial** use and **interstate** commerce or does the building **only** need to be used for **commercial** purpose". The district court responded it would be sufficient to prove the [**interstate commerce**] element if the property was **only** used for a commercial purpose.

The issue is, the indictment and the jury instruction both stated the building was **used** in **interstate commerce**. The 18 U.S.C. § 844 (i) states that a building must be **used** in **interstate commerce** or activity affecting such. Is it constitutional for a material variation of an indictment, jury instruction and statute to occur during deliberations? Is it a violation of due process to eliminate a element of a statute one has been indicted under?

Congress has the authority to legislate within the confines of the Commerce Clause powers in three contexts: First, Congress may regulate the use of the channels of interstate commerce... Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities... Finally, Congress commerce authority includes the power to regulate those activities that substantially affect interstate commerce. See Lopez, 514 U.S. at 558-59, 115 S. Ct. at 1629-30 (citations omitted).

18 U.S.C. § 844(i) states Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real personal property used in **interstate** or foreign commerce or in any activity affecting **interstate commerce**... shall be in violation of the statute.

By enacting 18 U.S.C. § 844 Congress intended to protect buisness properties engaged in interstate commerce or in activities affecting interstate commerce. § 844(i) when enacted the legislation made clear the requirement of interstate and foreign commerce affect in order for the statute to be applicable to the subject property. Thus, § 844(i) applies only to the destruction to interstate property contrary to the appellate courts decision that it only needs to used for a commercial purpose.

Judges are supposed to review the text of statutes rigorously. Laws are not ambiguous in most cases, to allow the government to arrogate to themselves and court the legislative and judicial authority to re-write and interpret laws. Members of the Court abdicate their constitutional duty to interpret statutes when the arrogate to themselves.

The existence of a conflict between the decision by the Northern District and Circuit Court's are contrary to the text of the 844(i) statute and the United States Supreme Court whom have ruled the material variation of any of the aforementioned is unconstitutional. See United States v. Morse, 785 F.2d 771 775 (9th Cir. 1986)(citing United States v. Kenny, 645 F.2d 1323 (9th Cir. 1981) Variance between an indictment and the proof presented at trial is a violation of due process and is unconstitutional thus requires a new trial.

Prejudice is shown by the variance because the opportunity to prepare a defense was not allowed and that the right to be tried only by the charges presented in an indictment returned by a grand jury was violated. Also see United States Supreme Court decision in Stirone v. United States, 361 U.S. 212, 218-19, 80 S. Ct. 270, 4 L. Ed 2d 252 (1960)

It is for Congress, not the United States Supreme Court to re-write a federal statute nor a District Court. Blount, 91 S. Ct 423, 27 (1971). Chief Justice Marshall's description of commerce was adopted by Chief Justice Rehnquist in United States v. Lopez, U.S. 549, 115 S. Ct. 1624 (1995). "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse," id at 553 (quoting Gibbons, 22 U.S. at 189-90).

REASONS FOR GRANTING THE PETITION

The Supreme Court's unamious decision in Jones v. United States, 529 US 848 (2000) stated that 18 USCS § 844(i) is applicable to buildings used in interstate or foreign commerce it made it clear that **interstate** commerce was the jurisdictional hook for Federal prosecution. For purposes of determining whether a building affects commerce under 18 USCS § 844(i) the late Justice Ginsburg held that the proper inquiry if the statute was applicable first is into the function of the building **and** then whether that function affects **interstate commerce.** "And" means "and" and not or.

The charge that **interstate** commerce is involved is critical since the Federal Government's jurisdiction rests only on that inference. It is the important function of the Supreme Court to resolve disagreements among lower courts about specific legal questions. The legal questions are did the courts fail to apply the legal standard to its analysis properly in the underline case to determine if the 18 U.S.C. 844(i) is applicable? Was it a harmless error for the jury to be advised that despite the grand jury's findings, the statute, and the indictment charging the defendant with conspiracy to damage or destroy a building **used in - interstate commerece -** and then advise in a jury instruction that a building is used in an activity affecting **interstate commerce** if the building is used for a commercial purpose? Was the defendants due process rights denied by not having specific notice that the **844 §** could be altered at trial preventing the preperation of his defense?

The errors cannot be deemed to be merely an insignificant variance between the allegation thus be harmless, when the crime charged being a felony and the Fifth Amendment requiring that prosecution be begun by indictment which commenced at the grand jury stage. After an indictment has been returned its charges may not be broadend except by the grand jury. The court held in Bain "that after the indictment was changed it was no longer the indictment of the grand jury who presented it. see Ex parte Bain, 121 U.S. 1, 30 (1887)

An additional reason granting this petition is the deprivation of being able to subpoena buisness records by the district court of the law office to prove no interstate commerce affect excisted and infact if a commecial activity was taking place at the subject property. Albeit when one particular kind commerce is charged to have been burdened a conviction must rest on that charge and not another. The charge on its own judgment is a substantial right which cannot be taken away with or without court amendment.

By altering the meaning of interstate commerce a doubt was created in the integrity of the judicial process. The Ninth Circuit has held whether property is interstate commerce is a fact for the jury to determine under all circumstances. See Henderson, 721 F.2d 662, 666 n.3 (9th Cir. 1983) (revised 2019). The district court also ruled when denying defendants Motion To Dismiss, the issue on interstate commerce is for the jury to decide yet this was not the case based on the jury instruction and answer to the jury's question.

Black's Law Dictionary Sixth Edition

Interstate Commerce. Traffic, intercourse, commercial trading, or the transportation of persons or property between or among the several **States** of the Union, or from or between points in one State and points in another State; **commerce** between two States or between places lying in different States.

Interstate commerce Act. The Act of Congress of February 4th, 1887 (49 U.S.C.A. § 10101 et seq.) designed to regulate commerce between the States, and particularly the transportation of persons and property, by carriers, between interstate points.

The Supreme Court has said that "a jurisdictional element may establish that the enactment is in pursuance of Congress' regulation if interstate commerce. See Morrison, 529 U.S. at 612. (emphasis added). As stated in Patton, " The ultimate inquiry is whether the prohibited activity has a substantial effect on interstate commerce." 451 F. 3d at 632. The aforementioned is in line with the two part inquiry requirement mentioned in Jones, 529 U.S. at 848. The mere existence of jurisdictional language is not to be relied on solely puporting to tie criminal conduct to interstate commerce. See United States v. Holston, 343 F. 3d 83, 88 (2nd Cir 2003)

As stated in Morrison, 529 U.S. at 615 there should at the least be evidence, not just speculation, of a direct not " attenuated", effect on commercial activity. The subject property broken outter pane of a double pane window did not even effect the sleeping person in the bedroom to awake them. See Sentencing transcripts Cross Examination of Lauren Dodson.

By failing to assert actual innocence based on the theory of the government that co-defendant's Dennis Williams and Kristopher Alexis-Clark filled up a bottle with gasoline and threw it at the subject property as they testified created the presumtion that a molotov cocktail was utilized. Albeit no test results supported that claim any flammable fluid or compounds were detected on the bottle fragments nor the label that held the fragments together.

Because the 844(i) statute requires the prosecutor to establish a connection to interstate commerce and that infact the overt act equating to vandalism was not indeed what it was. Should the aforementioned had been raised they would have been grounds for reversal, thus not harmless. See Boag v. Raines, 769 F.2d 1341, 1344 (9th Cir. 1985)(failing to raise meritless argument on appeal does not constitute ineffective assistance of counsel). This is not the case at hand. The evidence and the record does not reflect that the government proved the **material elements of the charged offense.**

A jury instruction error does not amount to plain error unless it could have ment the difference between acquittal and conviction. Clearly if the interstate commerce element was not found to be proven then an acquittal was the outcome of the trial. Although the appellate attorney failed to argue issues that the appellant desired and attempted to file with the court upon review **that** ineffective assitance can be reviewed de novo. The court is also able to view the claim of what is ultimately a **constructive amendment** de novo, as well as a **variance claim.** The appellant substantial rights were affected and is clear because as stated the **jury** submitted a question and the court utilized a theory that demonstrated an affect on the outcome of the trial. It is obvious if the **used in interstate commerce** question was raised and the answer diverted from the text of the 18 U.S.C. § 844(i) statute, what was before the grand jury, and the indictment which the charge begun thus a harmful error occurred warranting a reversal of the conviction.

Although an objection was made of the jury answer the instruction itself was not because the appellant acting in pro se at trial did not see the error thus should not be deemed as waived argument. The court has the authority to and should exercise their authority and reverse the conviction since the record demonstrates a plain error affected a defendant's substantial right. See United States v. Espino, 892 F.3d 1051 (9th Cir. 2018)see also United Sates v. Hugs, 384 F.3d at 768(9th Cir. 2003). Herein **"the crime charged"** [in the indictment] was substantially altered during deliberations. The chance to prepare for such altering was not allowed, the record shows that a request to obtain buisness records and tax records was denied.

In Van Nguyen v. Curry, 736 F.3d 1287 (9th Cir. 2013), the Ninth Circuit found the holding of Martinez v. Ryan,_U.S._, 132 S.Ct. 1309, 1315 (2012), when Supreme Court announced that ineffective assistance of counsel claims deserves to heard and applies to all Sixth Amendment ineffective assistance claims, both trial and appellate, that have been procedurally defaulted by ineffective counsel in the initial-review proceedings." Id. at 1295-96.

The court is to apply a four-part test showing grounds to establish cause to overcome procedural default under Martinez, one that the ineffective assistance is "substantial" in essence a claim that demonstrates that if the court fails to consider the claim it would result in a "fundamental miscarriage of justice." McCleskey v. Zant, 499 U.S. 467, 494, 111 S.Ct. 1454 (1991). A miscarriage of justice means that a constitutional violation has probably resulted in the conviction of someone who is actually innocent. See Carrier, 477 U.S. at 496. To show a miscarrage of justice, it is required that a colorable showing of factual innocence be made. Henera v. Collins, 506 U.S. 390, 404, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993).

Nguyen v. Curry, 736 F.3d 1287 (9th Cir. 2013)is the Ninth Circuit precedent which concerned the ineffectivness of an appellate counsel. The evidence is clearly established by the United States government which supports the law on sufficiency see Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 560 the test is "whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson, 443 U.S. at 319; see also Lewis v. Jeffers, 497 U.S. 764, 781, 110 S. Ct. 3092 (1990). Thus, only if "no rational trier of fact" could have found proof of guilt beyond a reasonable doubt will a petitioner be entitled to relief. Jackson, 443 U.S. at 324, n. 16.

Herein the building must have been proven to be used in **interstate commerce** to sustain a conviction. The court must presume that congress adopted the **common-law definition of that term** and **not adopt** the common-law **meaning** of the term if they are not instructed to do so by congress. Thus, by the jury being allowed to make a determination granted by the court to find the element of the **interstate commerce** be proven if the building was used for a **commercial purpose** was a plain error. Should the adoption of such a theory been congress intent clearly the interstate commerce element would have been excluded and a commercial purpose inserted in its place.

The government possessed evidence that clearly showed that they were misleading the jury and allowed their witnesses to use perjured testimony without correcting them. Plain error is an error that is clear, plain or obvious. United States v. Olano, 507 U.S. 725, 734, 123 L.Ed. 2d 508, 113 S. Ct. 1170 (1993). By law, even if there was a failure to raise an objection at trial, in regards to the governments actions and false assertions a fire-bomb/ Molotov cocktail was used, in an attempt to commit arson at the subject property 126 Rassani Drive; Equal protection of the laws allows this plain error to be recognized. The Equal protection clause is a provision in the Fourteenth Amendment to United States Constitution which guarantees prevention of persons to enjoy the same protection of the laws which is enjoyed by others, and that no person should be liable to no other greater burden and charges than such as are laid upon others. Surely a greater burden was forced upon the petitioner as a pro se litigant by the governments misconduct, which affected his "substantial rights", that was an error that affected the outcome of the District Court proceedings. The showing of a jury being misled is clear, the error is a ground that supports a reversal of the judgement with prejudice.

In the present case, the governments theory and witnesses testimony cannot be seen as a mere inadvertent slip of the tounge. The concerted acts were not even necessary. As a matter of law the jury only needed to be convinced a conspiracy existed. The juors did not need to agree on the particular facts satisfying the overt act element of the conspiracy charged. See United States v. Gonzalez, 786 F.3d 714, 718-19 (9th Cir 2015). [BECAUSE THE OVERT ACT WAS IN FACT ONLY VANDALISM.] The theory chose by the government was to fabricate a false narrative that the co-conspirators made an attempt to commit arson by using a Molotov cocktail in gross detail that the witnesses testified they believed the targeted window was selected because they believed someone was sleeping in the room. It can not be proven beyond a reasonable doubt that the fabricated theory supported by perjured testimony did not influence the jury to believe that the co-conspirators did fill a bottle with gasoline lite it and throw it at the subject property. The government was aware of laboratory results that disputed the theory and testimony.

The testing of the bottle and label still attached did not detect any flammable fluids or compounds for the bottle evidence to be defined as a Molotov. The error was plain, and obvious to allow perjured testimony in order to mislead a jury thus it is clearly demonstrated "substantial rights" were violated and affected.

The assertion by the petitioner is that he was prejudiced by the governments conduct and did not recieve a fair trial. Material evidence was fabricated that was introduced to strengthen the governments case. The fabricated theory and testimony was directly relevant to the crime charged and to 'other crimes' that the government used to support its case, which consisted all of undisputable evidence of arson attempts except the subject property, which this case is based. The cumulative effect affected the outcome of the District Court proceedings. Errors were plain and strightforward, fitting the defintion of outrageous and prosecutorial misconduct.

The aforementioned has been articulated solely by a pro se litigant, unlettered in the law. I am relying upon the United States Constitution the fairness and the integrity of the judicial system. Surely, I may not have formulated a perfect petition for Writ of Certiorari, but for being denied the attempt by the court and counsel to raise issues during the direct appeal process, and [p]revented by the Circuit Court from doing so at the En Banc rehearing stage because no stay would be granted as the Law office of Beles & Beles withheld petitioners case file and records, the denial for rehearing was made as an attempt was made to retain never provided records. I pray the Highest Court in the land reviews my petition on its Merits. My attempt is to show that the cumulative effect of the errors committed with malice by the government and by the Ninth Circuit affirming the Distrcit Court judgment departs from the accepted and usual course of judicial proceedings thus equating to a compelling reason for a Writ of Certiorari to be granted. Furthermore in an attempt to show the alleged conduct was not subject to Federal prosecution, the petitioner requests that the Highest Court Of The Land take judicial notice of the Ninth Circuits decision it now ignores see Af-Cap Inc. v. Chevron Overseas(Congo) Ltd., 475 F.3d at 1088-89 (2007).

The Ninth Circuit Held that it construes property used for a commercial activity in the United States when it is put into action, put into service, or employed for a commercial activity. Not in connection with a commercial activity or in relation to such. Id. at 1091; see also id. at 1089. Af-Cap Inc. v. Chevron Overseas (Congo).

In conclusion [reason] to grant this writ is because in Jones v. United States, 529 U.S. 848 (2000) the Justices in the unanimous decision in the Federal Arson precedent case did not express a view on the question whether the Federal Arson Statute 18 U.S.C. § 844(i), is constitutional in its application to all buildings used for commercial purposes as alleged in this case. Twenty Three Years later, The Highest Court In The Land is requested to find because the District Court denied subpoenas requested by petitioner for buisness and tax records dealing with the subject property this case can only fit the genre to the law enforcement authorities of the State thus warranting the request to vacate the conviction and reverse the judgment of the Court of Appeals with prejudice. Citing Wilborg v. United States, 163 U.S. 632, 16 S. Ct. 1127, 41 L. Ed. 289 (1896); Clyatt v. United States, 197 U.S. 207, 25 S. Ct. 429, 49 L. Ed. 726 (1905). The Supreme Court is at liberty to correct the plain errors committed in the case at hand, as well as to expand on the Jones ruling and answer if the subject property [as] what the record reflects applicable to the § 844 (i) statute. Furthermore correct the violation of the due process clause of the Fourteenth Amendment for the government did not correct the testimony of principal witnesses that was false. Lauren Dodsen stating that glass from the broken window was in her room when she awaken the next morning when in fact the double pane window on the bedroom side did not break, Kristopher Alexis-Clark and Dennis Williams testimony that they threw a Molotov cocktail (a bottle filled with gasoline) at the subject property when the lab results showed that was not the truth, and testimony of Special Agent Buenaventura that she requested the casino footage after the 30 day window that the casino perserved its surveillance footage when she did not do so and the false allegations made by Assistant United States Attorney Kevin Rubino telling the court the government did not possess any casino footage when the defendant filed a Bill of Particular's Motion. Pursuant to Napue v. Illinois,

even when the co-defendant's promise of consideration denial went uncorrected as with the other false testimony uncorrected, because the government was aware that each false statement under oath made was contrary to the evidence it possesed the setting aside the conviction is warranted as held in an opinion by the Supreme Court of the United States see Napue v. Illinois , 360 US 264, 3 L Ed 1217, 79 S.Ct 1173 and 2 L Ed 2d 1575 and 3 L. Ed 2d 1991. The Napue violation occurred an the results of such violation is deemed a constituitional violation, making the conviction obtained by the use of known perjured testimony fundamently unfair, and grounds for the conviction to be set aside. There is a likelihood that the false testimony could have affected the judgment of the jury. See United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct 2392, 49 L.Ed. 2d 342 (1976). The evidence in question was false aforementioned, the prosecutors representing the United States government knew or should have known the testimony and remarks made to the court and or jury were false based upon the discovery and the false testimony and evidence was material. Hayes v. Brown, 399 F.3d 972, 984 (9th Cir. 2005). Even a honest mistake gives testimony "the ring of truth," making it all the more likely to affect the jury's decision.

In conclusion the Court of Appeals may not avoid to discipline the prosecutorial misconduct by presenting a false narrative to the jury in regards to a material aspect of the case nor for allowing their witnesses to go un-corrected when they were under oath and did not tell the truth as they swore to do infront of the court, jury and before God. The acts were not harmless and require an automatic reversal. Each assertion is a part of the record and should a evidentary hearing be granted will be made clear to the reviewing court beyond a reasonable doubt. The overwhelming evidence of the defendants' guilt is evident that the cumulative errors resulting in a 18 year sentence for a conspiracy to commit arson when no fire occurred and [a] overt act as a matter of law beyond a reasonable doubt was merely vandalism not applicable to the crime charged under 18 U.S.C. § 844 (i). Based upon the merits and the petitioners presentation in pro se the Highest Court in the Land is requested to grant the petitioners' writ of certiorari to the United States Court of Appeals for the Ninth Circuit as well as the Motion of petitioners' leave to proceed in forma pauperis, and Vacate the Judgment of conviction with prejudice as a prayer if not at the least remand to the United States Court of Appeals for the Ninth Circuit for further consideration to the aforementioned and notwithstanding the Courts recommendations.

April 6th 2023

DATED IN APRIL 2023

David Jah, Sr. MSW In Pro Se