No. 22-7669

IN THE

SUPREME COURT OF THE UNITED STATES

LARENZO GABOUREL — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LARENZO GABOUREL USMS # 29578-064
(Your Name)

FCI SAFFORD-P.O. BOX 9000
(Address)

Safford, Arizona-85548
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

May the collateral relief mechanism for Federal prisoners pursuant to 28 U.S.C. § 2255, be used to promote a claim of factual innocence ?

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:

TABLE OF AUTHORITIES CITED

COURT CASES CITED: PAGE NUMBERS

Cont'd

COURT CASES CITED CONTINUED: PAGE NUMBERS

FEDERAL STATUTES:

FEDERAL STATUTES CONTINUED: PAGE NUMBERS

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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 # 6 to the petition and is

[X] reported at No.22-6190, 2023 U.S. App. LEXIS 4594 (10th Cir.)

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix # 1 to the petition and is

[X] reported at No. CIV-22-598-D,2022 U.S. Dist. LEXIS 200435 (W.D. Okla.)

[ ] 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was _____.

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

[ ] A timely petition for rehearing was denied by the United States Court of Appeals 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. § 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

The Fifth Amendment Right to Due Process of law; (Article in Amendment V)

The Sixth Amendment Right to a trial by jury; (Article in Amendment VI)

(See Page Number 34)

STATEMENT OF THE CASE

Larenzo Gabourel, (" Petitioner ") is before this Honorable Court of the Highest regard as he is serving out a Fifteen year (180 month) sentence, for allegations of drug trafficking and possession of a firearm in furtherance of such, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846, and 18 U.S.C. §§ 924(c), including § 2.

This taken from the United States District Court for the Western District of Oklahoma, the Honorable Judge Timothy D. DeGuisti Presiding, and to which Petitioner claimed his innocence from day one, subsequently proceeded to trial by jury and continued to place the allegations to adversarial testing throughout the direct appellate process to which was ultimately affirmed.

Petitioner did not thereafter make for a collateral presentment under 28 U.S.C. § 2255, until nearly five (5) years later when one of the defendants in the case to whom was originally arrested in connection with the events leading up to the indictment, however, was released on bail, and did flee prosecution, forwarded to this Petitioner a sworn exculpatory statement of truth at his institution of confinement.

The document, however, was not made out to Petitioner, but directly to the Honorable district Judge DeGuisti, Petitioner received a mere photo copy of such.

To Petitioner's suprise, this individual had been ultimately apprehended, accepted full responsibility for the activity alleged in the indictment, was sentenced, completed the sentence, and sent the statement.

As stated, Petitioner claimed his innocence from the inception, from arrest, indictment, pretrial negotiations, trial by jury to where he did testify in his own behalf, in trial, and post trial motions, and direct appeal.

Petitioner claimed that the document being sworn testimony, was " newly discovered evidence, " that went directly to the integrity of the position of " innocence, " and thus, made for the motion for collateral relief under the terms and provisions of the statute at 28 U.S.C. § 2255(f)(4).

That, not only did this statute, but this Honorable Court's decision of like kind did provide for the review of the " innocence claim(s) " based on this type of evidence. See McQuiggin V. Perkins, 569 U.S. 383, 133 S.Ct. 1924, 185 L.Ed. 2d 1019 (2013), Bousely V. United States, 523 U.S. 614, 623, 118 S.Ct. 1604, 140 L.Ed. 2d 828 (1998), and Schlup V. Delo, 513 U.S. 298, 324, 115 S.Ct. 851, 130 L.Ed. 2d 808 (1995).

That, this testimony was essentially the " linchpin " to the defense, that, " could not have been discovered through the ' exercise of due diligence.'"

That in all reality no one could have discovered this evidence for the individual had been " on the lamb " during and throughout the prosecution of this Petitioner.

Nevertheless, the sworn statement avered that, had he known Petitioner was being prosecuted for the allegations of drug trafficking, he would have surrendered to authorities and testified on his behalf.

Petitioner presented the statement along with the motion for relief under Section 2255 withhin one year of his discovery. (See Appendix # 2, - Exhibit # 1, pg.'s 1-2)

The government did not contest the timeliness of the presentment, however, did affirmitively contend that, " claims of actual innocence " are only exceptions to the otherwise applicable limmitations periods for § 2255 Petitions; ' they are not themselves grounds for habeas release. '"(Appx. #-3, - Citing Herrera V. Collins, 506 U.S. 390, 404-05 (1993))

Furthermore, " [As] the Tenth Circuit has ' repeatedly recognized, ' actual innocence does not constitute a freestanding basis for habeas relief. " (id. Citing Farrar V. Raemish, 924 F. 3d 1126, 1131 (10th Cir. 2019)(collecting cases)

Petitioner made a reply directing the attention to the contrary, demonstrating that the Tenth Circuit had in fact granted access to the procedural mechanism for relief under Section 2255, pre-Anti-Terrorism and Effective Death Penalty Act (" AEDPA "). (See Appendix # 4 , Citing Anderson V. United States, 443 F. 2d 1226 (10th Cir. 1971))

Moreover, that the testimony goes directly to the heart of his claims of innocence from the moment the hand-cuffs were placed on him, and the " failure to hear the claim of ' factual innocence, ' coupled with the ' totality of the circumstances ' would work to produce a ' miscarriage of justice ' which Petitioner would forever go without a remedy for his claim of innocence. " (id. at Appx. # 4, citing United States V. Hayman, 342 U.S. 205, 72 S.Ct. 96 L.Ed. 2d. 232 (1952), and Kaufman V. United States, 394 U.S. 217, 222, 89 S.Ct. 1068, 22 L.Ed. 2d 227 (1969))

That, the mechanism for relief under 28 U.S.C. § 2255 certainly allowed for this type of presentment based upon " newly discovered evidence. "

The district court, gave it's ruling denying access to the mechanism for " collateral relief " under 28 U.S.C. § 2255 by adopting nearly verbatim the government's position. (See Appendix # 1)

This, that the court was bound by the Tenth Circuit's precedence, that " actual innocence " does not constitute a " freestanding basis for habeas relief. " (id. at 4, citing Farrar V. Raemisch, 924 F. 3d 1126, 1131 (10th Cir. 2019)(quoting Herrera V. Collins, 506 U.S. 390, 400 (1993))

The district court rejected this Petitioner's contentions to the contrary that was decided by the 10th Circuit in earlier years in it's decision's in United States V. Cervini, 379 F. 3d 987 (10th Cir. 2004), and Anderson V. United States, 443 F. 2d 1226, 1227 (10th Cir. 1971) (id. at 5)

The court too seemingly gleaned the merits of the petition before it regarding the " newly discovered evidence, " stating that, the " potential testimony ... ' would provide addtional support ' for the ' theory of defense that was ' fully presented at trial through the testimony of this [Petitioner], another friend (Chris white), and a codefendant Wesley Grant). '" (id. at 6)

The court admitted threwith, that, " the statements in [Mr.Norman's] affidavit ' merely provide additional support for these same arguments.'" (id.) This to which it disregarded under the high bar of the Schlup standard. (id.)

This Schlup standard however, was in regards to a " second and successive collateral motion under 28 U.S.C. § 2255(h), " and not the motion before it under 28 U.S.C. § 2255(f)(4).

Petitioner made notice of appeal and sought review of the 10th Circuit Court of Appeals itself to the matter. (See Appx. # .5)

The problem with this matter is that, as a Petitioner must obtain a certificate of appealability, the statutory requirements of such, make for the neccessity to present a " substantial showing of the denial of a constitutional right " to enter into the gates of the Court of appeals to review the motion. See 28 U.S.C. § 2253(c)(2), and Federal Rules of Appeallate Procedure 22(b)(2).

As the " freestanding claim of innocence " based upon " newly discovered evidence " that could not have been obtained despite the exercise of due diligence " under 28 U.S.C. § 2255(f)(4) that was obtained by this Petitioner from a exculpatory statment by and individual to whom not only accepted full responsibility for the activity alleged against this Petitioner, but also clarified the factual matter, and went, as the district court acknowledged, directly to the heart of the " insufficient evidence position to support a finding of guilt " and are a Fifth Amendment matter, that could in fact be heard upon the presentment of habeas relief. See Jackson V. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979) (" A federal court may review a claim that the evidence adduced at trial was not sufficient to convict a criminal defendant beyond a reasonable doubt. ")

That, it would be inconcievable to close the door to his newly discovered evidence that went to the heart of his continuing cry for review of his innocence, that of which the collateral mechanism for relief to a federal prisoner under 28 U.S.C. § 2255 should certainly provide as is an equitable remedy. (see id. at pg.'s 1-46)

The Tenth Circuit denied the request for Certaificate of appealability, and too affirmatively closed the door to this kind of claim, i.e., a " free-standing ground for innocence... " (See Appx. # 6 , citing Herrera V. Collins, 506 U.S. 390 (1993))(id. at 3)

In doing so it stated, ' ...neither the Supreme Court nor this court has recognized it as a freestanding ground for relief. " (id.) Further, that, " In Herrera V. Collins, 506 U.S. 390 (1993), the Supreme Court held that, ' a claim of actual innocence ' is not itself a constitutional claim, but instead a ' gateway ' through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits. " (id. citing LaFevers V. Gibson, 238 F. 3d 1263, 1265 n.4 (10th Cir. 2001), and Farrar V. Raemisch, 924 F. 3d 1126, 1130-31 (10th Cir. 2019))(see id. at 3-4)

The Tenth Circuit recognized that, Petitioner presented his claim as to this Supreme Court's decisionin McQuiggin V. Perkins, 569 U.S. 383 (2013), however, the panel directed the attention to the decision in McQuiggin where it stated, " in McQuiggin the Court said it ' had not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence. '" (id. at 4, citing,McQuiggin, 569 U.S. at 392; also Case V. Hatch, 731 F. 3d 1015, 1036 (10th Cir. 2013))

This closed the door by stating, " [We] have consistently denied habeas relief based on ' actual innocence alone. '" (id.)

This to which did not acknowledge the fact that this " newly discovered evidence " not only went to this Peititoner's innocence, but also to the insufficiency of the evidence against him in violation of the ...-

... Fifth Amendment right to Due Process of law, and the " evidence " adduced at trial be sufficient to convict [him] " beyond a reasonable doubt." Id. Jackson V. Virginia, supra.

Here, this Petitioner argued his innocence from the moment that he was arrested in connection with this with drug trafficking along with others who were identified as " Targets " in an " undercover drug ' buy-bust '" operation over the course of several days.

This to include, one(s) PAUL E. THOMAS, WESLEY GRANT and the Affiant, ALVIN NORMAN. (See Appx. # 2, quoting the Trial by Jury Transcripts at 2-3)

Petitioner was not identified on one single occassion throught the investigation. (id. at pg.'s 2-7)

This as to the factual basis that this entire Petition is founded. That of which was presented at trial by jury and leading into the defenses and appeals in the case. See Criminal Case No. 5:15-CR-00172-D-2, and 10th Circuit Court of Appeals case no. 16-6227. see also United States V. Gabourel, 629 F. App'x 529 (10th Cir. 2017)(Appx. # 9)

That, The investigation began when an individual Paul E. Thomas to whom is from Los Angeles, along with all of the other named defendants, and to which some are neighborhood friends. Mr. Thomas contacted Wesley Grant was at the time living in Oklahoma City, Oklahoma, because, he was " comming to Oklahoma amd 'wanted to see if Grant wanted to hang out. '" (see id. Appx. # 2 at 3, citing Trial Transcript from 1-19-2016, at 231)(Testimony From Paul E. Thomas at trial)

In agreement, Grant requested that, Thomas bring neighborhood friend Alvin Norman with him when he came. (id. citing T.Tr. at 231, and 265)

In May of 2015, Mr. Norman, a lifelong friend of this Petitioner asked him if he would like to join him to travel to Oklahoma City, from Los Angeles with him. (id. citing T.Tr. at 568-69) Initially, Petitioner declined the offer, however, as to the fact that, Petitioner had another lifelong friend that went to school with at West Los Angeles College, who had transferred to Langston University, in Langston, Oklahoma, one Chris White. (Chris White Testified to these matters at trial as a defense witness)

Petitioner contacted Mr. White and asked him if he could come and visit and " explore " the college because he was interested in continuing his education and playing football, after he obtained his two year degree from West Los Angeles College. " (id. citing T.Tr. at 556) Chris White did encourage Petitioner to come. (id.)

On May 11, 2015, Petitioner did meet with Norman, and Thomas and left Los Angeles and headed to Oklahoma City. (id. citing T.Tr. at 868-69) They were driving a white Chevy Malibu, before this occassion Petitioner did not know Mr. Thomas prior to their deprature. (id. citing T.Tr. 1-20-2016, at 232, & 568)

These individual's arrived in OKC on the eve of May 12, 2015. (id. Citing T.Tr. at 569) That evening, these individual's met with one Mr. Grant to whom invited the group to the Invitational Apts. located at 12443 Saint Andrews Drive. (id. T.Tr. at 570)

The very next day **Mr. Paul Thomas did drive Petitioner to Langston, where he met with Chris White and** stayed **at his college dorm for a week.**

The two, Chris White and Petitioner attended a couple of parties and Mr. White showed Petitioner around the University. (id. at 4, citing T.Tr. at 558, 570)

Petitioner did not leave Langston until late on May 18, 2015, and returned to OKC. (id. citing T.Tr. 559, 571) Petitioner retured to the Apt. where Mr. Thomas and Norman had first taken him. (id. Citing T.Tr. 571) At trial, Petitioner testified that he stayed at the apt. while he awaited for his family to send him some money to fly to North Carolina. (id. citing T.Tr. 571-72)

Unbeknownst to Petitioner, while he was in Langston, Mr. Thomas was in direct contact with a Confidential Informant (" CI "), informing him that it was he who had Phencyclidine, better known as PCP for sale. This CI was working in unison with the Oklahoma City Police Department (OCPD). The information that the CI relayed to the OCPD was that, " a person he knew to be ' Clay ' (Mr. Thomas) wanted to sell PCP. " (id. citing T.Tr. 1-19-2016, at 154)

During the " afternoon " of May 18, 2015, " Mr. Thomas and Mr. Norman " drove Thomas' white Chevy Malibu to a predetermined location (Walmart). (id. citing T.Tr. 155-56) The meeting was observed by detectives. (id. at T.Tr. 156), the CI exited his vehicle and entered the white Chevy Malibu. (id.) The group conversed for a few minutes and departed. (id.0 Thomas and Norman returned to the Invitational Apts. (id. at 5, citing T.Tr. 157)

On May 19, 2015, Petitioner left the apt. with Grant, Norman and Thomas and headed to a resturant " to eat. " (id. citing T.Tr. 1-19-2016, and 1-20-2016, at 329-30, and 418) While at the resturant " Thomas received a call from the CI, ' where Thomas agreed to meet the CI ' and his ' homeboy '"-

Continued from page Twelve

... at Walmart to sell him the PCP for a predetermined amount of $ 225 per ounce. (id. T.Tr. 1-19-2016, at 165-175) After departing the resturant, the group drove to a house on Myers Place in Northeast Oklahoma City. (id. citing T.Tr. 1-20-2016, 257,261,418) They then drove to the Invitational Apts. Thomas stayed in the car, while Grant, Norman and Petitioner went into the apt. (id. T.Tr. 1-19-2016, 1-20-2016, at 245, 332-33) A few minutes later, Grant and Norman returned to the car, " Petitioner stayed in the apt." (id. citing T.Tr. 1-19-2016, 1-20-2016, at 276-77,288,572)

Mr. Thomas, Mr. Norman, and Mr. Grant then drove to Wal-mart to meet the CI, and his " home boy. " (id. citing T.Tr. 1-19-2016, at 172-75, 178-79, 183-85, 244-45, 276, 280, 385-87) It was again, Mr. Norman that got out of the vehicle and got into the car with the what was later discovered to be an " undercover FBI agent. " (id. citing T.Tr. at 179) It was Mr. Norman that sold the undercover 2 ounces of PCP for $450, the very price that Mr. Mr. Thomas had originally negotiated. " (id. citing T.Tr. at 179, 214) Upon completion of this delivery, the group drove east down the turnpike, and south down broadway extension. (id. citing T.Tr. 1-19-2016, 1-20-2016 at 183,386-87,394-95)

Law enforcement then executed a " traffic stop " and placed these individual under arrest. Mr. Alvin Norman who was searched and " found to have the ' buy money ' on his person. ' (id. T.Tr. 1-19-2016, at 183) Mr. Grant was found to be in possession of a bottle of PCP on his person. (id. T.Tr. 1-20-2016, at 400-03)

Law enforcement then proceeded to obtain a search warrant for the Invitational Apt. Upon obtaining this search warrant, law enforcement proceeded to enter the apt. and as they did approach they claimed to have smelled a heavy oder of PCP, and did breach the apt. Upon entry, they encountered this Petitioner, who was laying down on a matress in the bedroom. Being startled and afraid, Petitioner grabbed a firearm which was in fact " in the bedroom " and put it in his pocket. (id. at 6, citing T.Tr. 1-20-2016, at 422, 573)

Officers directed Petitioner to get on the ground, and upon view of the Police gear, he did comply with their orders. (id.) He also alterted these that, he was in possession of a friearm. Petitioner was placed under arrest and taken to the Police Department for questioning.[1] (id. at T.Tr. 423)

These officials conducted a search of the apt. to where in the kitchen discovered " three (3) liter Ozarka Water bottle, a 20 ounce Poweraid bottle, and a juice bottle containing a liquid substance later claiming to be PCP. " (id. citing T.Tr. at 190-91, 465) This which was later determined to be 2.34 kilograms of a mixture of PCP. (id.)

Upon being taken to this police department, Petitioner learned that the other individuals had been arrested as well, and were thereafter taken to the jail. Mr. Norman was able and did make bail, and subsequently fled prosecution[2]

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n. 1: Petitioner was 19 years old and was not a felon.

n. 2: This is the person to whom later forwarded the sworn testimony that forms the basis for the " newly discovered evidence " and supports the subsequent claims of Petitioner's innocence here on certiorari review.

On August 18, 2015, Petitioner was charged in connection with the indictment issued by the grand jury sitting in the Western District of Oklahoma. (See Criminal Docket, " DKT. " # 1)

The indictment charged Petitioner with, (1) " Conspiracy to possess with the intent to distribute ' more than ' one kilogram of PCP in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, and 18 U.S.C. § 2, and (2) ' Possession of a firearm ' in furtherance of a ' drug trafficking crime, ' in violation of 18 U.S.C. § 924(c)(1)(A)(i). (id. at 1-3)

Petitioner plead not guilty, and requested trial by jury.

Petitioner remained in pretrial custody, to where he invoked his right not to speak with the prosecution. However, Petitioner's attorney, one Mr. Merle Gile did accompany Petitioner to a plea negotiations interview with the prosecution, where Petitioner continued to maintain his position, and requested trial by jury. (id. at 9) Petitioner did not know Mr. Thomas, or Mr. Grant, the only other individual that Petitioner was acquainted with was Mr. Norman. He asserted that he had absolutely nothing to do with whatever activity that they were involved with concerning PCP, or any other illicit activity. He too claimed that the firearm was not his, and that he only picked it up upon the entry of the officers into the apt. because " in Los Angeles people pose as officers regularly to make home invasions and other robberies. "

In preparation for trial, it was discovered that Mr. Thomas became a cooperating witness in the case for an exchange for a plea dea with the government. Thus, it was Mr. Grant and this Petitioner that would proceed to trial by jury, and Mr. Norman was on the lamb.

In preparation for trial, and the recent information of Mr. Thomas' decision to testify, Petitioner filed a motion in limine as to Mr. Thomas' substantial ties to criminal street gangs. (See Crim. DKT. # 66)

There was a James hearing that would determine what statements would be allowed by the sole testifying witness Thomas in concern to the relevant conspiracy. (id. Crim. DKT. #'s 81 & 82)

This for the fact that Petitioner's defense was that, Thomas was testifying against him because, Petitioner was not affiliated with the Bloods street gang, and thus, there was no " deadly consequences " as the result. (See T.Tr. 1-19-2016, at 1-21)

Upon testimony, at trial, Petitioner was astounded to discover that, in the week that he was absent in Langston college, Mr. Thomans had been obtaining quantities of PCP, Xanax, and Oxycontin from " his own sources of supply " and stayed inebirated throughout the entire stay in OKC. (See T.Tr. 236, 238-39,240,242, 243,252-54,277,279)

However, he would not definitively identify from who or where he obtained these substances, however, stated that at some point, Petitioner talked to him " about getting some money, " and that Petitioner " knew someone in OKC who would give them some ' PCP to sell. '" (see id. at 10, citing T.Tr. at 237)

This was puportedly the time when " Mr. Thomas contacted the CI " (on-May 17, 2015) who was a brother of a " friend of his. " (id. at 237)

He testified that, " [Petitioner] got some PCP ' fronted to him,' ... like three (3) days after ' [we] got out there, '... on the 15th, 16th, and the 17th. " (id. T.Tr. at 159) That, " it was a 20 ounce big jar."(id. T.Tr.-160) And it was out of this 20 ounces that " he made the sales at Wal-Mart using the vanilla extract bottles. ' (id.) He then contradicted himself and stated, that " he did not know where the PCP came fromthat was sold at the Wal-Mart parking lot. " (id. T.Tr. at 165)

That, though the PCP was at the apt., he did go elsewhere to buy PCP to " get high ' every day,'" with zannie bars (Xanax), and other drugs. (id. T.Tr. 166-168) He then unequivocally stated that, " he never saw the 20 oz. jar of PCP that was showed in the evidence at trial. " He did not know whose it was, or what happened to the PCP that supposively got fronted to this Petitioner. (id. T.Tr. at 172)

He testified that, he was a blood gang member from youth, that he was a habbitual PCP abuser and addicted, and got high on PCP every day when they were in OKC. That, it was he that sold the PCP to the CI, and that it was he that was in direct contact with the CI and the FBI.

Petitioner did in fact testify in his own defense, and against the contrdictory testimony of this sole government witness, Paul Thomas to whom essentially placed the culpability of this Petitioner who was not even at the apartment during the time frame that Thomas claimed that Petitioner supposively got " fronted PCP ' from his people.'" That he could not identify who it was " these people were , or ' when he obtained it. '" That he obtained " user quantities of PCP from other unidentified sources. "

Petitioner testified that, "he did not even know Thomas. " (See id. T.Tr. 449-473)

Petitioner affirmed that, Mr. Thomas was the one who actually drove him to Langston himeself upon arrival on May 12, and that he did not return until 8-9 pm in the evening on May 18, 2015 by way of Uber. (id. Citing T.Tr. 456) Petitioner testified that he is not a " bloods gang member, " however,where he grew up in Los Angeles this group is prevelant, but that he and his family look the other way of them. (id. T.Tr. 458-59)

He testified that he was not a felon, and that the firearm on his person the day of the arrest was not his. (id. T.Tr. 459) When Petitioner was cross examined, he testified that the PCP was not his, that he never smoked PCP, he did not see anyone smoke PCP, but he knew that people were under the influence at the apt. (id. T.Tr. at 462-463)

That, the only reason that he went into the apt. on May 19, 2015 was to sleep after eating a local resturant, and to wait on his family to send him money to fly to North Carolina. That, he never cooked in the apt., and never been in kitchen. (id.) However, he did " smell the ' chemical odor, ' " which did begin to give him a headache. (id. T.Tr. 469)

Before this testimony, the individal that he went to visit at Langston Colloge cooberated virtually every detail of Petitioner's assertions. (id. T.Tr. 440-449)

Codefendant Wesley Grant testified that he was a PCP abuser since he was 13 years old. (id. T.Tr. 397) But he claimed to not be " addicted." (id. T.Tr. 398) Also, that he abused PCP the entire stay in OKC with Mr. Paul Thomas. (id.) That, they obtained a source and quantity of PCP from OKC. (id.) He testified that he did not know Petitioner, and did not really talk to him " because he was ' so high. '" (id. T.Tr. at 403)

He testified that the reason that he and Paul Thomas, and Alvin Norman came to OKC from Los Angeles was because " it was wild in California. " (id.) This was not for the purpose of " selling PCP. " (id. T.Tr. at 404) However, he admitted, " purchasing and using PCP in OKC the whole time that he was there. " (id. T.Tr. at 405)

That, he only went to the invitational apt. to " get high. " (id.) That, Paul Thomas knew the " Mexican girl " who rented the apt. at the Invitational Apt. was " Paul Thomas' friend, " and it was he who introduced them, and invited him there. " (id.)

He too confirmed that, he saw Petitioner leave upon arrival, and leave for a few days. That, he did not originally know Petitioner, and never seen him with a gun. (id. T.Tr. at 435)

This testimony wholly refuted Mr. Thomas' Testimony. supra.

The government rested it's case against this Petitioner and Mr. Grant named in the indictment upon such. (id. T.Tr. 1-20-2016, at 375)

petitioner moved for an acquittal under Federal Rule of Criminal Procedure 29. (id. at 379-381) This that, there was " insufficient evidence to support a conviction for ' conspiracy, and possession with the intent to distribute PCP.'" (id. at 379) This to include the 924(c) count for possession of a firearm " in furtherance " of the drug trafficking offense. " That the only evidence against this Petitioner was the conflicting testimony of Mr. Paul E. Thomas. (id. T.Tr. at 380)

The government detailed this " testimony, " that Thomas gave. (id. at 380-381)

The district court overruled the motion, stating, that the " the court does not assess the credibility of witnesses... " However, it affirmed the position that, " .. much of the evidence against Petitioner was ' provided by the testimony of Mr. Thomas. '" (id. pg. 13, citing T.Tr. at 381)

The motion was renewed at the close of the trial, and the court denied the motion for much of the same reasons. (id. at 493)

Upon jury deliberations, there was a note and a question regarding " if there was a mistrial or a hung jury, " would the parties involved be limmited in presenting the same evidence in a subsequent trial, or would they be able to " present ' new evidence ' at trial ? " (id. T.Tr. at 541) And additional question was in regards to " can [we] reach a decision on one defendant and be hung on the other defendant. ? " (id.)

Th court responded to the questions presented. (id.)

On January 20, 2016, Petitioner was declared guilty on all three counts in the indictment. (id. T.Tr. at 547, also Crim. DKT. # 91)

After trial, Petitioner did also move to withdraw counsel. (DKT. # 99), Attorney Gile did therewith move to remove himself. (DKT. # 101) And on 3-08-2016, and the district court did grant the motion to withdraw. (DKT. # 102)

New counsel was appointed, and thereafter, one VIKKI Z. BEHENNA entered an appearance on Petitioner's behalf. (Crim. DKT. #'s 104-106)

On 7-27-2016, a sentencing hearing was held to where he was sentenced to a " statutory mandatory minimum sentence " of 10 years (120 months), on the drug counts for the PCP, and a statutory mandatory consecutive 60 months (5 years) for the possession of the firearm in furtherance under 18 U.S.C. § 924(c). (DKT. # 146)

Petitioner thereafter, filed an appeal to the Tenth Circuit Court of Appeals as to the basic presentment of appeal for, ' Insufficient evidence to support a finding of guilt. " (See Crim. DKT. # 154, and 10th Circuit Case No. 16-6227, Doc. # 01019719292)

The crux of the attack was as to the validity of the drug addicted witness who's testimony was wholly incredible. (id.) The government vehemently contested the validity of this claim " at the actual trial, " and did again here on appeal. (id. Doc. # 0109749694) These to which continued to support Mr. Thomas' testimony, the sole testifying witness to whom was a " lifelong gang member and drug addict, abuser of PCP. " That this was sufficient to support the evidence against this Petitioner and the corresponding 15 year sentence. (id.) (" inherent incredibility analysis ")

The Tenth Circuit affirmed this conviction, denying appellate relief. See United States V. Gabourel, 629 F. App'x 529 (10th Cir. 2017)

The 10th Circuit did in fact recognize that, the government's case in chief rested substantially upon the " testimony of Mr. Thomas, " that, under the standard of review governing the " insufficiency of the evidence claim, " the court of appeals " [would] not make ' credibility determinations, ' or weigh conflicting evidence. " Id. (Citing collecting 10th Circuit case law) (See also Appx. # 9)

Against this procedural back-drop, the Tenth Circuit did recognize the " impossibility of Mr. Thomas' assertions ' of the PCP acitvity of this Petitioner as ' not having been present during the times alleged, " including the fact that the position was cooberated by two other witnesses. That, Mr. Thomas was a known gang member, drug addict, convicted drug dealer, that Petitioner had no key or access to the apt. and other conflicts of fact,

... the fact that, what he claimed to have seen was " physically impossible. " (id.) Against, the clearly established law and the facts of this Petitioner case, the 10th Cir. stated, " none of the arguments establish an ' inherent incredibility issue...'" (id.)

The 10th Circuit stated, even without Thomas' testimony, the jury would have been able to " infer that [Petitioner] was a member of the conspiracy", for he went on a trip with two convicted drug dealers, stayed at an apt. with a third convicted drug dealer.[3] Petitioner was found with a loaded firearm in the apt. which lacked furniture other than a matress and no electricity. That, the apt. reeked of PCP such that officers testified that it could be detected from 15 to 20 feet outside of the apt. door. And finally the quantity of PCP was " the largest amount any of the police officers preveiously recovered at a single location. " (id.)

As to the " possession ' with the intent to distribute, ' and aiding and abetting, the Court of Appeals found that Petitioner ' actually possessed PCP ' with the intent to distribute it ' based on Mr. Thomas' testimony.'" (id. Citing 10th Cir. authority)

As to the 924(c)(1)(A)(i) count, the fact that Petitioner possessed the firearm at the time of the arrest, it made a secondary finding that, " five of the seven factor analysis weighed in favor of being ' **in furtherance of the drug trafficking crime. '"** (id.) This by stating, " While Mr. Gabourel and the firearm were located in the bed room, and the PCP was in the kitchen

n. 3: The Justice's did not acknowledge the fact that, both of these co-defendants testified to not knowing Petitioner. Furthermore, Petitioner testified to the same.

... of the small apt., they were not so far removed in proximity as to negate the inference of the possession of the gun was in furtherance of the drug crimes. ' (id.)

The Tenth Circuit affirmed this conviction on June 7, 2017. (id.)

Petitioner thus, had taken pains to demonstrate his " innocence, " and the " insufficient evidence to support a finding of guilt " from day one, and did so diligently and respectfully since the inception of the prosecution, leading all the way to appellate review. As Petitioner had nowhere else to litigate, he did not take a collateral attack on this conviction.

This not until he received the sworn testimony from Mr. Alvin Norman as was dated, January 17, 2022. (see Appx.# 2, EXH. # 1)

To Petitioner's dreams come true, Mr. Alvin Norman, the only one of the defendants that Petitioner was acquainted that was arrested, released on bond, and thereafter, fleeing prosecution, had now been apprehended, and plead guilty to the PCP discovered in the charges, and his own distribution in the days leading to the arrest in OKC. (id. at 1)

That, as he did discover that Petitioner was prosecuted in connection with this PCP, and for the PCP in the apt., as to the testimony of one Paul E. Thomas, and was still serving out a sentence.(id)

He claimed that Petitioner had absolutely nothing to do with this PCP in OKC, and that he merely caught a ride from Los Angeles to go to check out the Langston College. (id.)

He affirmed that Petitioner did not know Paul Thomas, nor that they were engaged in the distribution of PCP. (id.)

Petitioner affirmatively declared that he did not want anything to do with any drug dealing. (id.)

That, While in OKC, he and Thomas frequently purchased PCP through a third party. (id.) He affirmed that Petitioner never been in the apartment before this and that he had no idea that PCP was in the apartment. (id.)

He outright stated, " the PCP was not Petitioners. " (id.) He stated, that had he known that Petitioner proceeded to trial by jury, he would have turned himself in and testified on Petitioner's behalf. (id. at 2)

Norman stated, that if Thomas testified to Petitioner having any connection to drug dealing, of the PCP that was in the apt. on the date of the arrest, " he was lying. " (id.)

That, the only reason Thomas testified against this Petitioner is because, he is not a gang member and there was no fear of reprisal. (id.) Most importantly, that he has remorse for the fact that Petitioner was serving time in prison for a " crime that he did not commit. " (id.) Petitinent to Petitioner's cause is that he was ready and willing to testify to these matters at this time. (id.)

This testimony that was " not available " at the time of trial, appeal, nor withhin the time frame allowed under 28 U.S.C. § 2255(f)(1), is essentially the linchpin to Petitioner's entire position of innocence since day one.

Within the time allowed under these circumstances, Petitioner made a motion before the district court under 28 U.S.C. § 2255(f)(4). The district court cited " habeas corpus rules, " and Tenth Circuit precendence regarding such to close the door to availability for relief. (See Appx. # 's 2 & 4)

REASONS FOR GRANTING THE PETITION

The district court's decision denying access to the mechanism for " collateral relief " from judgment under 28 U.S.C. § 2255, based upon " newly discovered evidence " in the form of sworn testimony that goes directly to the integrity of his " actual (factual innocence) " is inconceivable, and wholly contrary to the basic principles and rudimentiary purposes of the Congressional intent in the creation of the statute that allows for equitable relief from judgment. See 28 U.S.C. §§ 2255(a), and (f)(4).

This based upon it's own patterned precedence, and the Tenth Circuit's directive. (See Appx. # 1, - Citing Farrar V. Raemisch, 924 F.3d 1126, 1131 (10th Cir. 2019)(quoting Herrera V. Collins, 506 U.S. 390, 400 (1993))

This to which it state(s):

> " [T]he Court has never recognized a freestanding actual innocence claims as a basis for ' federal hageas relief.'" To the contrary, the Court has ' repeatedly rejected such claims, ' noting instead that, ' claims of actula innocence based on newly discovered evidence ' have never been held to state a ground for federal habeas relief absent ' independent constitutional violation ' occurring in the underlying state criminal proceedings. "

Id.

The district court noted, " accordingly, the Tenth Circuit has been steadfast in considering ' actual innocence claim ' only as a ' procedural gateway ' to reach a substantive claim. " (id. Appx. # 1, at pg. 4, quoting Farrar V. Raemisch, 924 F. 3d at 1130-31) That, " it has applied these same principles in other § 2255 cases. " (Citing other 10th Circuit authorities)(See id. at Appx. # at pg. 5)

This systematic withholding of accessibility to the federal district court for a claim of " factual innocence " in a case in controversy like-

... the one before this Court as to this Petitioner, that has advocated for his innocence since day one, through trial by jury, including during and post-trial motions, and continuing into the appellate process, is against it's own precedence, and the plain language in the statute, and thus, misunderstands the Congressional enactment of " collateral relief available for a federal prisoner. See Anderson V. United States, 443 F. 2d 1226, 1227 (10th Cir. 1971), see also Kaufman V. United States, 394 U.S. 217, 222 n. 5, 89 S.Ct. 1068, 22 L.ed. 2d 227 (1969)(quoting Hayman V. United States, 242 U.S. 205, 212-219, 72 S.Ct. 263, 96 L.ed 232 (1952))

The principles of statutory construction require the Court to view a statute and " enforce it according to it's plain terms. " See Dodd V. United States, 545 U.S. 353, 359, 125 S.Ct. 2478, 162 L.Ed. 2d 343 (2005)(quoting hartford Underwritters Ins. Co. V. Union Planters Bank, N.A., 530 U.S. 1, 6, 147 L.Ed. 2d 1, 120 S.Ct. 1942 (2000)(citations omitted))

The statute at issue before the Court under 28 U.S.C. § 2255(a) states in it's plain language:

> " A prisoner in custody under a sentence of a court established by an Act of Congress, claiming the ' right to be released ' upon the ground that the sentence ' was imposed in violation of the Constitution or the laws of the United States, ' or ' the Court was withoutjurisdiction to impose the sentence, or that the sentence was inexcess of the maximum authorized by law, ' **or is otherwise subject to collateral attack,** ' may move the court which imposed the sentence to ' vacate, set aside or correct the sentence. '"

See 28 U.S.C. § 2255(a).

This procedural mechanism for relief was enacted in 1948 as to a matter that; " Among the serious administrative problems ' under habeas corpus ' practice in the case of federal prisoners, was inbtended to provide a more convenient forum than habeas corpus, ' in the district of confinement.'" -

... See Hayman V. United States, 342 U.S. at 213.

The enactment of such, has been clearly understood over the course of the last 70 years, that Section 2255 motions for colateral relief " are not motions for habeas corpus. " id. 342 U.S. at 221.

The habeas statute that has been adopted over the time and having withstood this procedural available mechanism for relief has been codified in a different statute at 28 U.S.C. § 2241. See Felker V. Turpin, 518 U.S. 651, 659 n. 1, 116 S.Ct. 2333, 135 L.Ed. 2d 827 (1996), Rumsfield V. Padilla, 542 U.S. 426, 124 S.Ct. 2711, 159 L.Ed. 2d 513 (2004), and Rasul V. Bush, 542 U.S. 466, 124 S.Ct. 2606, 159 L.Ed. 2d 548 (2004).

This to which has virtually the same basic language, pertinent here:

" [applications] for habeas corpus by any person ' who claims to be held in violation of the Constitution or laws, ... of the United States.'" Id. (quoting 28 U.S.C. §§ 2241(a), (c)(3))

However, does not contain the extra statutory language that states:

..." or is **otherwise subject to collateral attack, ..."**

Id. Kaufman, 394 U.S. at 221-22.

Though the Court in Kaufman, clarified that the two were commensurate, later, the Court differentiated the understanding as to the difference bewteen " habeas corpus and ' collateral review.'" See Duncan V. Walker, - 533 U.S. 167, 177, 121 S.Ct. 2120, 150 L.Ed. 2d 251 (2001), in explanation of additional language that was injected into the collateral relief statute in pursuance of the time limitations for a " state prisoner " to apply for habeas relief within " 1 year under 28 U.S.C. § 2244(d)(1). " Id. 533 U.S. at 169)(Citing The Antiterorism and Effective Death Penalty Act of 1996-

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... (AEDPA)) This where it cited the plain language of the statute, stating:

... " the phrase ' other collateral relief ' need not include Federal habeas petitions in order to have independant meaning ..." id. 533 U.S. at 172. More specifically, " Congress may also have employed the Construction ' post conviction or other collateral ' in recognition of the diverse terminology that different states employ to present different forms of collateral review that are available after conviction." id. Going further, " [I]n some jurisdictions, the term ' post conviction ' may denote a particular procedure for review of a conviction that is ' distinct from **other forms of what is conventionally is considered to be post-conviction review ...**' for example,' Florida employs a procedure that is officially entitled ' a motion to vacate, to vacate, Set Asside, or correct a sentence.'" (id. Citing Fla. Rule Crim. Proc. 3.850 (2001))

In explanation of this Florida statute for " post-conviction relief, " the Court continued: " The Florida Courts have commonly to a Rule 3.850 motion ' motion for post conviction relief ' and distinguished this procedure from other remedies for collateral review of criminal conviction, ' such as a state petition for habeas corpus. " (id. Citing Collecting Cases))

Thus, this Honorable Supreme Court has recognized the difference between these two statutes, and as presented here, Section 2255 is a more broad availability for access to the Courts. See Engle V. Issac, 456 U.S. 107, 182, 102 S.Ct. 1558, reh'n den. (US), 73 L.Ed. 2d. 1296, 102 S.Ct. 2286, and reh. den. (US), 73 L.Ed. 2d 1361, 102 S.Ct. 2976 (1982)(quoting Hayman, 342 U.S. 205, 96 L.Ed. 2d. 232, 72 S.Ct. 263 (1952))

Nonetheless, the Court has held that the the two, habeas corpus and " collateral review " are used interchangably. See Wall V. Kholi, 562 U.S. ___, 131 S.Ct. ___, 179 L.Ed. 2d. 252 (2011), Or, " analogus, : i.e., " ...-related to, ' or '... similar to ...'" See Hohn V. United States, 524 U.S. 236, 258, 118 S.Ct. 1969, 141 L.Ed. 2d 242 (1998)

The question is, how then, is this " habeas like mechanism for relief " to be used as a " motion for collateral relief. " See Clay V. United States, 537 U.S. 522, 528, 123 S.Ct. 1072 (2003)

The district court states that, it, and it's 10th Circuit overseer have systematically disallowed access to such for " freestanding claims of ' factual innocence. '" (see id. Appx. #

However, nothing in the plain language in the statute precludes such a a claim. As a matter of fact, the specific language " ... or otherwise subject to collateral attack, " though do not make clear what that means, nevertheless, it is additional language than the, " violation of the Constitution or laws of the United States..." Thus, certainly in the event that one does not raise a specific claim for relief as to a claim of the violation of the Constitution or the violation of a law of the United States, there should remain a remedy for matter such as this, " innocence. "

Here, Petitioner had plead not guilty and proceeded to trial by jury. At the trial, the basic premise was that, Petitioner was discovered in an apartment that was not registered to him, nor had he been a frequent flyer to the home, he was a mere " daytime guest, " and not even that, he was a " daytime visitor. " Thus, he had no vested interest in the premesis nor · any " privacy interests. See Minnesota V. Carter, 525 U.S. 83, 90, 119 S.Ct. 469, 142 L.Ed. 2d 373 (1998)(" Thus, an ' overnight guest ' in a home may-

... claim the protection of the Fourth Amendment, ' but one who is merely present with the consent of the owner may not.'")

This discovery was as to a search that brought the law enforcement community to the apt., as to an investigation into Three (3) identified and named individuals that had been selling PCP to an undercover FBI agent and it's informant.

These to which were caught red-handed with PCP, and " buy-money, " and were directly involved. Petitioner had come on this trip as admitted by two other witnesses, solely for the purposes of visiting a childhood friend in Langston, OK., and spending time surveying the college, this which he did do, and was actually absent from the company of the other three individuals for the entire time that they had been selling PCP.

Law enforcement had not identified this Petitioner on one single occassion leading up to the event of arrest, and had zero knowledge of his existence. Upon entry into the apt. Petitioner was sleeping in a separate room to which he had a firearm on his person. This firearm was not stolen, and Petitioner was not a felon.

In the other room, they discovered a large sum of PCP, that petitioner claimed that he did not know was there nor did he care, for the apt. was not his home. He maintained this position throughout the prosecution process. All three of the actual participants were arrested the same however, the only one that Petitioner was acquainted to had made bail, and fled prosecution. He was on the lamb throughout the entire process leading through trial. It was virtually impossible to callhim as a witness, and or to hold his attorney to investigate, nor even the government to turn over this missing person as is it's duty.

One of the individuals, one Paul E. Thomas to whom admittedly did not know this Petitioner, and all agreed that Petitioner merely caught a ride from Los Angeles, and did not know him as well.

It was not until prosecution, that Mr. Thomas became a government turncoat, and decided that he wished to avail himself of the actual dealing of the PCP that he had directly distributed to the FBI, and it's informant, that he placed blame for the supply of such upon this Petitioner.

Mr. Thomas, a lifelong gang member, and habbitual PCP abuser had been in OKC and obtaining quantities of PCP from a source he did not identify.

Petitioner refuted this testimony at trial, from this sole witness, and stated that this was insufficient, and certainly from a life long gang member drug addict, who had been actually distributing PCP to the FBI.

Petitioner via counsel motioned for acquittal for the " insufficient evidence to support a finding of guilt " as to such evidence, and was denied as to the " court's inability to assess the credibility of a witness. " Upon conviction, Petitioner proceeded to appeallate review the same, and again, the Tenth Circuit Court of Appeals refused to " assess the credibility of the witness. "

As this witness was the bedrock to the evidence against this Petitioner in the government's case-in-chief, Petitioner could not receive any review of the sufficiency of the evidence claim, only - by the jury. This to whom did inquire to the Court regarding certain question in concern to it's indecisiveness to the two co-defendants at the joint trial, one Petitioner, and two, one to whom was directly distributing to the CI and the FBI.

Petitioner did not have a constitutional claim to raise on collateral relief until, he received the sworn exculpatory statement from the -

... culprit that fled prosecution, and was actively distributing PCP along with Thomas and Grant leading up to the arrest, and throughout the period that the four came from Los Angeles to Oklahoma City, including while Petitioner was at the Langston College.

This, one Mr. Alvin Norman. To Petitioner's surprise Mr. Norman had been aprehended, plead guilty, accepting full responsibility for the accusations, and the conspiracy to distribute PCP, and possession and distribution of such, was sentenced, completed his sentence, and made for the sworn testimony to the district court.

Almost immediately after Petitioner received this documentation, he began to prepare and did present a motion pursuant to 28 U.S.C. §§ 2255(a), and 2255(f)(4).

This coupled with this testimony, went directly to the integrity to his continued quest for his innocence. That, as now with this evidence, i.e., sworn testimony, requested that the Court vacate his convictions, or hold a hearing under 28 U.S.C. § 2255(b).

He did so under the plain language of the statute at 28 U.S.C. § 2255(f)(4)'s availability which states:

> " the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. "

See id. § 2255(f)(4).

That, this Honorable Supreme Court, has made clear that these claims are available in a " post-conviction proceeding " by bringing forward new exculpatory evidence. See McQuiggin V. Perkins, 569 U.S. 383, 133 S.Ct. 1924, 1985 L.Ed. 1019 (2013), and the Tenth Circuit's decision in Anderson V. United States, 443 F. 2d 1226, 1227 (10th Cir. 1971)

This was for the fact that, this was the " missing link " to Petitioner's claims for innocence. This was the only other individual that knew Petitioner and was familiar with him prior to the OKC trip from Los Angeles, and stated that, if he knew Petitioner was being prosecuted for this crime to which he was in fact innocent, he would have turned himself in and testified on his behalf. That, Mr. Thomas was lying if he stated anything about this Petitioner and PCP, and that the drugs and the case was actually his and not Petitioners.

What got tricky, was that, the government and the district court cited the Schulp standard in Schlup V. Delo, 513 U.S. 298, 324, 115 S.Ct. 851, 130 L.Ed. 2d 808 (1995), also Herrera V. Collins, 506 U.S. 390, 404-05 (1993) (" [O]ur habeas jurisprudence makes clear that a claim of ' actual innocence ' is not iteslf a constitutional claim, but ' instead a gateway through ' which a habeas petitioner ' must pass ' to have his otherwise barred constitutional claim considered on the merits ")

Petitioner vehemently objected to the district court and the Tenth Circuit that these decision do not effectively close the door upon a claim like this Petitioner's to where he has continuously advocated for his innocence, and the insufficiency of the evidence proffered by the government.

Moreover, the exculpatory testimony, coupled with the claim(s) from the begining go directly to the continued argument to " the insufficicent evidence to support a finding of guilt, " which this Honorable Court has in fact allowed as a basis for " habeas corpus relief. " See Jackson V. Virginia 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d (1979)(" A federal court may review a claim that the evidence adduuced at trial was not sufficient to convict -

... a criminal defendant beyond a reasonable doubt ")[4]

Had Mr. Norman been available at trial, and did testify to what he is now, coupled with this Petitioner, and Mr. Grant, is there a substantial likelihood that the result of the proceeding would have been different ?

Petitioner posits that this would have been more than enough to impeach Mr. Thomas, and thus, tip the scale in concern with his hearsay testimony before any jury. Moreover, as to the fact that, the district court, and the Court of Appeals refused to test Mr. Thomas' credibility when it was clearly lacking, this testimony would have essentially assasinated his deparate attempt to receive the credit for his testimony from the government as he did receive.

Nevertheless, and again, to close the door upon an opportunity to present this evidence, when it was " not available with the exercise of due diligence " under the only available mechanism for relief because it was not couched into a Constitutional claim, this defies any logic and certainly the American system of justice that we have as to guilt or innocence on reasonable doubt to a criminal defendant that has placed the government's prosecution to it's burden of proof under the Sixth Amendment.

Therefore, Petitioner now calls upon this Honorable Supreme Court of the Highest degree to exercise it's inherent, and properly endowed discretion to review this Petition as to a matter of National importance, and GRANT certiorari, and/OR issue an Order to GRANT, VACATE AND REMAND (" GVR ") this matter to the United States District Court for the Western District of Oklahoma, with instructions clarifying that it may hear a claim of factual innocence on presentment of Section 2255, respectfully.

4: This type of claim goes to the right to Due Process of law under the Fifth Amendment.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Honorable Court exercise it's inherent authority to GRANT certiorari, and appoint competent counsel; OR, GRANT, VACATE, AND REMAND (" GVR ") this matter to the United States District Court with directions that it may hear a claim of factual innocence pursuant to the provisions of 28 U.S.C. § 2255.

Respectfully submitted,

PETITIONER, PRO SE, LARENZO GABOUREL

Date: MAY, 10th 2023