

23-6811 ORIGINAL

No. _____

In the Supreme Court of the United States

FILED

FEB 10 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In RE. Miguel Antonio Garcia
petitioner

v

United States of America
Respondant

Emergency Petition for Writ of Mandamus
pursuant to 28 U.S.C. § 1651 (a)

Miguel Antonio Garcia
United States Penitentiary Victorville
P.O. Box 3900
Adelanto Ca. 92301

Pro-Se

Questions Presented

" Does our Criminal Justice system respect the dignity and rights of all persons and adhere to our fundamental obligation to ensure fair and impartial justice for all " ? EO 14074

Does Fabricated Evidence Violate Constitutional Law § 840, As well as Due Process Clause of the 5th Amendment ?

Does Perjury Violate Constitutional Law § 840 As well as the Due Process Clause of the 5th Amendment ?

List of Parties

[x] All parties appear in the caption of the Case on the Cover Page.

Related Cases

United States of America v. Miguel Garcia
18-CR-00363-RM.

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Doc. 234 Filed 7/26/2023

Appendix B; United States Court of Appeals for the
10th Cir.

Case No. 20-1160; Doc. No. 010110399168
date 8/31/2020; Rehearing 9/28/2020

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In The
Supreme Court of the United States

Petition For writ of Mandamus
Pursuant to 28 U.S.C.S. § 1651 (a)

Petitioner respectfully Prays, for a writ of
Mandamus to compel, lower Courts to follow
the Supreme Courts Judgements in *Napue*
and *Giglio*, as well as the Constitutional
law § 840, established there of. As well as
the other Supreme Court Cases, the Constitution
of the United States, and Executive Order 14074
Argued herein. And or correct their Judgements...

- Opinions Below -

[x] For Cases in Federal Courts
The Opinion of the United States Court of
Appeals appears at Appendix B

[x] Reported at Appellate Case 20-1160.

Doc. 010110399168 ; Date Filed 8/31/2020

[x] The Opinions of the United States District Court
Doc. 212, Filed; 03/31/20; Doc. 87; Filed 02/19/19
Doc. 234; Filed 7/26/2023; Appears at Appendix A.

Statutes, and Rules

28 U.S.C. §§ 2255, 2255(e)
21 U.S.C. § 922 (g)(1)
21 U.S.C. § 841 (a), (1) and (b), (1), (A), (viii)
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28 U.S.C. §§ 455 (a), § 144
18 U.S.C. §§, 241, 242
42 U.S.C. § 1985 (1), (2), (3)
18 U.S.C. § 1001 (a), (1), (2), (3)
18 U.S.C. § 1503, § 1623
28 U.S.C.A. § 1251
28 U.S.C. § 1651 (a)
28 U.S.C. § 2403 (a) May Apply

ABA Standards for Criminal Justice 4-4.1

Fed. R. Crim. P. 33

Executive Order 14074

Joseph R. Biden Jr.; May 25th, 2022

Proclamation; March 31st, 2023

Joseph R. Biden Jr.

Jurisdiction

Construction and Application of 28 U.S.C.A
§ 1251; Implementing Original Jurisdiction
of Supreme Court. Article III

Constitutional Relevant Provisions

U.S. Constitution Article 2; cl. 1

U.S. Constitution Article 3

U.S. Constitution Amendment 4

"the right of the people to be secure in their
persons, houses, papers, and effects, against
un-reasonable searches and seizures, shall
not be violated."

U.S. Const. Amdt. V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

"Nor be deprived of life, liberty, or property, without due process of law."

U.S. Const. Amdt. VI

"to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

U.S. Const. Amdt. IX

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

U.S. Const. Amdt. XIV

"Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...."

In The Supreme Court of the United States

Miguel Antonio Garcia
Petitioner

v.

United States of America
Respondent

Emergency Petition for Writ of Mandamus
Pursuant to 28 U.S.C. § 1651 (a)

Petitioner, Miguel Antonio Garcia, respectfully
Prays, that Justice Ketanji Onyika Brown Jackson
Compel, lower Courts to "Correct legal factual
errors" Based in Judgements highlighted in
Appendix A and B. Therefore Granting Petitioner's
petitions. "Extra Ordinary" circumstances warrant
the exercise of the Courts discretionary powers, and
adequate relief cannot be obtained in any other
Court. As Extra ordinary remedies, are reserved for really
Extra Ordinary Cases. *U.S. v. Richardson*, 204 F.552 (5th, cir 1957)

Statement of facts

1. Denver Police Departments James Anderson, Spencer Grove, and Randy Yoder conspired in fabricating Evidence, (gov. exh. 11), the Super 8 swipe card sleeve. Altering the numeric number to align with the numeric number 223 that was imprinted on the actual metal key with key chain that went to the Western Inn located in Denver Colorado. Items shown in (gov. exh. 12)
2. Denver Police Departments James Anderson and Clark Smith conspired in fabricating Evidence (gov. exh. 27; D.P.D. Evidence Tag No. 981671-1; with a net weight of 307.1; with a false fraudulent percent of purity @ 69.41%; Gov. exh. 28; D.P.D. Evidence tag no. 981671-2; with a net weight of 54.162 with a false percent of purity level @ 86.08%. High lighted in (gov. exh. 30) See Id @ Doc's 181-3 [and 114-2, Filed 3/27/19]
3. July 11th 2018, Denver Police Departments Officers Randy Yoder, and Spencer Grove, searched the black back pack then inventoried all the items from the Bag. (see gov. exh. 35 Property Invoice) The list of items in black back pack completed by officer

Grove (Inv. 102-107), as well as completing their reports for July 11th, 2018.

4. July 11th, 2018, There was no room number indicated on the property invoice (Gov. Exh. 35; Item no. 13, hotel key/paper) nor was a cell phone back plate in the black back pack.
5. July 13th 2018, Denver Police Departments, Samuel Shepard, Randy Guder, and Spencer Grove, amended their Police reports to align with Defendant Andersons Reports in (Doc. 5 1, 1-1, 2). As well as (Gov. exh's 36, 37 and 38) cell phone back plate mysteriously Appears.
6. Between July 11th-13th, 2018 Above Named Denver Police Departments Officers Conspired to Deprive Rights pursuant to 18 U.S.C. § 241, Fabricating Evidence (gov. exh. 11 and 12), As well as planted Gov. exh. 36...
7. At times relevant, Detective Anderson and Forensic Scientist Smith conspired assembling materially False/Fictitious (Doc. 114-2) "Lab Report" This Doc. shows where they came up with there fraudulent percent of purity levels.

8. E-mails shows direct communication with Detective Anderson and Mr. Smith, his Supervisor (D.P.D. CE 2195) Forensic Scientist Supervisor Jason J. Schimrckel and AUSA Connor Flanagan. See. Id@pg. 13

9. December 11th, 2018; Mr. Schimrckel sent Mr. Smith an e-mail reminding him that he was not yet trained on the quant "the machine used and needed, in order to get a percent of purity levels of Methamphetamine... See Id@ pg. 13

10. December 16th-18th, 2018, Mr. Smith conducted a quantitative analysis test on D.P.D. Evidence tag no. 981671-1; (gov. exh. 27, and D.P.D. Evidence tag No. 981671-2 (gov. exh. 28). That he was not qualified to conduct to say whether the substance was "Actual" Methamphetamine.

11. December 18th, 2018 Mr. Smith's test came back with final result of 0% Methamphetamine Calibrated Compounds not found.

12. January 2nd, 2019, Mr. Anderson assembled Denver Police Departments Crime Laboratory Bureau Forensic Chemistry Units laboratory report

With Mr. Smiths fraudulent percent of purity levels highlighted in [Gov. exh. 30] To be later presented to a grand Jury to obtain Superseding indictment (doc. 47) on Jan. 10th, 2019.

13. July 26th, 2018, AUSA Beth Gibson and James Anderson, conspired to deprive rights pursuant to 18 U.S.C. § 241, utilizing the fabricated evidence [Gov. exh. 11 and 12], to obtain Indictment (Doc. 11)

14. January 10th, 2019, Mr. Anderson and AUSA Connor Flanagan, conspired to deprive rights § 241, 242, utilizing fraudulent Percent of Purity levels highlighted in [Gov. Exh. 30], To obtain Superseding Indictment (Doc. 47)

15. At time relevant law enforcement and AUSA's conspired preventing evidence to be false, fabricated, planted and unconstitutionally admitted (gov. exh. 1, 2, 11, 12, 27, 28, 30, 36, 37, 38) to grand Jury, pitit Jury, as well as the U.S. District Court, Resulting in a miscarriage, Violating My Constitutional rights; Constitutional law, and Federal laws.

16. At trial, After Detective Anderson's perjured testimony in regard to gov. exh. 12. He states that he had my bible and a fire arm found in the Black Back pack, the Day before trial. Demonstrated for the Jury that the gun matched the imprint or Marks on my bible. This being the same Crooked Detective, who committed perjury, planted evidence, and act as shown Above and below. Reasonable inference could be said he made the Marks on the Bible...

17. The 6th of February, 2019 the jury returned a verdict of guilty on all three counts of the Superceding Indictment. (possession of a fire arm and ammunition by a prohibited person in Violation of 18 U.S.C. §§ 922(g)(1), 924 (a), (2), (2) possession with intent to distribute Methamphetamine (actual) in Violation of 21 U.S.C. § 841 (a), (1), (b), (1), (A) (viii), and (3) possession of a fire arm in furtherance of a drug Trafficking Crime, In Violation of 18 U.S.C. § 924 (c), (1), (A) (i).

18. February 19th, 2019 the Court denied Motion for Judgement of Acquittal filed pursuant to rule 29, Fed. R. Crim. P. The Court used Gov. exh's 11 and 12 to deny the Motion. See [Doc. 87]

19. May 6th, 2019, At Motions Hearing pursuant to Fed. R. Crim. P. 33, I insisted that Detective Anderson to not be present at hearing. The Court Denied request. I had 15 or so motions targeted at Mr. Anderson to file Charges on him. The Court denied "the motions I filed."

20. May 10th, 2019 the Court sentenced me to 280 months imprisonment, five years supervised release, and a \$300 special assessment

21. March 31st, 2020, The District Court Denied, Doc. 169, §2255 petition

22. Aug: 23rd, 2020 and September 28th, 2020 the United States Appellate Court for the Tenth Cir. Denied Appeals.

23. At times relevant United States District Judge Raymond Moore Denied Rule 60(b) motions. See. Ide doc. 234

"Extra Ordinary Circumstances"

Proclamation By
President Joseph R. Biden Jr.
March 31, 2023

"The Love for Justice that is in us not only the best part of our being, but it is also the most true to our nature."

Executive Order 14074
Joseph R. Biden Jr.
May 25th, 2022

"By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby Order as follow"

"Our Criminal Justice System must respect the dignity and rights of all persons and adhere to our fundamental obligation to ensure fair and impartial Justice for all"

Argument

"The United States Constitution is Supreme law of the land" Art VI. My Sentence was imposed in violation of the Constitution, or laws of the United States. The Constitution vests all of "the executive power" in the President and charges him alone with the responsibility to take care that the laws be faithfully executed. "U.S. Const.

Art. 2; cl. 1

Thus President Joseph R. Biden Jr's, Executive Order 14074 "Sought to relieve people, from "bias discrimination, Obstruction of Justice, false reports, false statements under oath." EO Sec. 21(c). Here law enforcement, AUSA's, and the Court's "Conspiracy to deprive rights, pursuant to 18 U.S.C. § 241, § 242. Fabricating, as well as utilizing "The Super 8 "Key Card" See Id. @ Doc. 169 was so egregious as to shock the Conscience," See e.g. County of Sacramento v. Lewis 523 U.S. 833, 849, 118 S.Ct 1708 140 L.Ed. 1043 (1998)

Petitioners Writ of Mandamus will be in aid of the Courts Appellate Jurisdiction, "to correct the errors of fact" and law, "United States v. Morgan 346 U.S. 502, 507 74, n.ct. 247 98 L.Ed. 248 (1959) Adequate relief cannot be obtained in any other form, or from any other Court." Rule 20.1, As Shown below the Court's Violation of Constitutional Law § 840 Established in Napue and Giglio...

Forensic Fraud.

Denver Police Departments James Anderson and Clark Smith conspired to obstruct justice. Fabricating fraudulent lab test. Assembled "false writing, document knowing the name to contain any materially false, fictitious fraudulent statements or entries," Here being false percent of purity levels identified in gov. exh. 30. The "Quant" test Mr. Smith conducted, that he was not qualified to conduct. For needed purity levels to prevent "to grand jury to obtain [doc. 47] indictment," to say whether substance was "actual" methamphetamine. *United States v. Cavely*, 318 F.3d. 987, 60 Fed. R. Evid. Serv. (COC) 1052 (10th cir.)

Forensic Fraud is an aggravated form of intentional misconduct, the deliberate falsification of forensic evidence by a law enforcement officer is unconstitutional and illegal. *Pierce v. Gilchrist*, 359 F.3d. 1279 (10th cir. 2004) "Certain wrongs affect more than a single right and accordingly, can implicate more than one of the Constitutional Commands; See *Soldal v. Cook County*, 506 U.S. 56, 70, 113 N. Ct. 538 121 L. Ed. 2d. 450 (1992) 10

"The term 'Serious Misconduct' means, 'bias, discrimination, Obstruction of justice, False reports, false statement under oath."

Executive Order 14074 Sec. 21(c)

1. personal bias or prejudice 28 U.S.C. § 144 and § 455

"To correct a legal factual error, of the original proceeding during which the error transpired" (Kennedy J., joined by Stevens, Souter, Ginsberg and Breyer. J.J.). See *Id*@ Doc. 213, Doc. 87... Require reversal where the "Probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Rippo v. Baker*, 580 U.S. ___, 137 S. Ct. 905, 197 L. Ed. 2d 167 at 168 (2017) (per Curiam) quoting *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975) As detailed herein...

United States District Judge, For the District of Colorado showed prejudice "in legal proceedings", dealing with some matter in the course of making a decision "bias rule (1949) See *Id*@ Doc. 87. pg 1.

"Contents of the backpack (cell phone with out back plate and key envelope) connected with items recovered from defendants person (Cell phone with out back

plate and key bearing the imprint of the same numbers appearing on the envelope)

Conspiring with Law Enforcement and AUSA's "to deprive rights" pursuant to 18 U.S.C. § 241 Obstructing Justice, utilizing the evidence that was fabricated, (gov. exh. 11 and 12) Super 8 "Card" Sleeve... And "Actual Metal" Key. As well as evidence planted by Detective Anderson, (gov. exh. 36) "Supporting a finding of bias", striking at the integrity of the Judicial process." In re. Int'l Bus Mach. Corp, 618 F.2d 923, 927 (2d. Cir. 1980)

Pursuant to 28 U.S.C. § 455 (a)... a Judge shall disqualify himself "in any proceeding in which his impartiality might be reasonably questioned." After trial I fired Counsel, New Counsel was appointed to me for the purpose of sentencing, A week before dead line to file a petition for [Fed. Crim. P. 29]. Counsel requested for an extension of time in order to familiarize his self with my case, in order to file a petition on my behalf. Mr. Moore denied his request, I felt forced to go pro-se at that point. The Constitution requires refusal where "the

probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." (Withrow, 421 U.S. 868, 881, 129 S.Ct. 2252 173 L.Ed.2d 1208 (2009))

A "Pro-se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520-21, 30 L. Ed. 2d 652, 92 S.Ct. 594 (1972); I filed many petitions for a new trial (Fed. Crim. P. 29), that the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiffs failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements "Wanjiku v. Johnson County, 2015 U.S. Dist. LEXIS 65299 (D. Kan, Mar. 23, 2015, 10th cir. " See (Id @ Doc. 169 pg. 5)

Hearing at the United States District Court for the District of Colorado on the 6th of May, 2019.
Case No. 1:18-cr-00363-RM; Doc. 181-5,
Filed 07/22/19

pg. 123

ln. 21, 22 The Court: "I'm not dumbing you up. you are dumbing your self up by choosing to proceed pro-se."

pg. 75 " the evidence sheet where the evidence was checked into evidence on the 11th shows as item no. 13, hotel key/paper from suspect wallet "

There is no room number indicated on the property invoice item no. 13, nor was there a cell phone back plate in the black back pack July 11th, 2013. See Id@doc. 169. pg.s 6, 7.

pg. 70.. Shows Mr. Moore's Conspiracy aligning his reason as to why he denied Doc. 87, with Detective Andersons Perjured testimony..

ln 19-21. " There is a sleeve that does - well, the key tab, the teal tab thats attached to the key does seemingly fit. There is a tear in the middle does seemingly line up. "

'The Due process clause of the Fourteenth amendment establishes a constitutional floor,' for a judicial bias claim." *Brady v. Cramley* 520 U.S. 899, 904, 117 S. Ct. 1793, 138 L. Ed. 2d. 99 (1997) Further more the Court States:

pg. 102

ln. 20-23... "If it is a § 2255, it repeats matters that I have already ruled on and is arguably pre-mature. None the less I would make the same ruling I made previously and deny the motion."

There is an impermissible risk of Actual bias when a judge earlier had significant, personal involvement in a critical decision regarding the defendants case. "Due process guarantees, an absence of actual bias" on the part of a judge. "In re Marchison, 349 U.S. 133, 136, 75 S. Ct. 623 99 L. Ed. 942 (1955) The Courts failure to recuse his self, instead denying [doc. 69, § 2255] In Final Judgement, Document 213, Dated "at Denver, Colorado this 31st day of march, 2020" Id @ Judgement... "where judge has a Conflict of Interest", as well as "an unconstitutional

potential for bias, "Williams v. Pennsylvania", 579 U.S. —, —, 136 S. Ct. 1899, 195 L. Ed. 2d. 132 at 134 (2016) As shown above and below.

Further more the Court "Dismissed" and "denied" the rule 60(b)(6) petitions I filed. See Id. at. Doc. 234; 7/26/2023. The Supreme Court has acknowledged that "allowing a decision maker to review and evaluate his own prior decisions raises problems." Withrow, 421 U.S. at 58, n. 25, perhaps because the risk that a judge might "be so psychologically wedded to his or her previous position," that he or she will "Consciously or Unconsciously avoid the appearance of having erred or changed position." Williams, 579 U.S. at —, 136 S. Ct. 1899, 195 L. Ed. 2d. 132 at 142 (quoting Withrow, 421 U.S. at 51)

The Due Process Clause's guarantee of a neutral decision maker will mean little if this form of partiality is overlooked. "The equal protection clauses keeps governmental decision makers from treating differently persons who are in all relevant respects alike." Nordlinger v. Hahn, 505 U.S. 1, 10 120 L. Ed. 2d. 1, 112 S. Ct. 2326 (1992) Thus demonstrates that the judges ruling warrant Recusal which reveal such a high degree of favoritism or antagonism as to make a fair Judgement impossible. "Litecky, 510 at 550, 555

"We must acknowledge that those fatal encounters have disparately impacted Black and Brown people and other people of color."

Executive Order 14074..

as the Court States:

"Additionally, Det. Anderson testified (and demonstrated for the Jury that the key did fit into the sleeve and that the sleeve had a small rip or notch where the metal ring connecting the physical key to its plastic tag would contact the sleeve upon insertion." See Id@pg.15, Doc. 212

2. Giglio Error, perjured Testimony Napue, Fabricated evidence..

The undisclosed evidence demonstrates that the prosecutors case involved perjured testimony. [as shown above and below] The prosecution knew or should have known, of the perjury. "United States v. Agurs, 427 U.S. 97[.] "If false testimony surfaces during a trial and the government has knowledge of it. The government has a duty to step forward and disclose." Brown v. Wainwright, 785 F.2d. 1457, 1464 (11th cir. 1986) A "Conviction obtained by the prosecutors knowing use of perjured testimony is fundamentally

unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement of the jury." *Kyles v. Whitley*, 514 U.S. 419, 433 n. 7, 115 S. Ct. 1555, 131 L. Ed. 2d. 490 (1995) Deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of Justice. " *Giglio v. United States*, 405 U.S. 150 Id, at 153, 92 S. Ct. 763. 31 L. Ed. 2d. 104. (1972)

" Courts invalidate convictions tainted by such government misconduct," § 840. A Conviction obtained by the knowing use of false evidence violates due process, Constitutional law § 840 Established by this Court. which is the body of Laws of the United States Constitution, dealing with aspects of Constitutional provisions, such as restrictions on government powers and guarantees of rights. Thus the "right not to, be deprived of liberty as a result of the fabrication of evidence by a government officer." quoting *Zahrey v. Coffey* 221 F. 3d. 342, 349 (CA. 2. 2000) See. e.g. *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, L. Ed. 2d. 1217 (1959)

"Coram Nobis is an ancient Common law remedy designed
"To build and sustain fairness and accountability
through out the Criminal Justice System"

Executive Order 14074 is an extra ordinary tool
to correct a legal factual error, in "Judgement
in Documents' 213" and 87 "the proceeding prior
to judgement," by the king's bench, the remedy
designed "to correct errors of fact." *United States
v. Morgan*, 346, U.S. 502, 507, 74 S.Ct. 247, 98 L. Ed.
248 (1954) "The President's exclusive Constitutional
Powers and duties. Where the Constitution's text commits
a power to the President exclusively, Courts "refuse
to tolerate any intrusion." *Pub. Citizen v. Dep't of
Justice*, 491 U.S. 440, 485 (1989) (Kennedy J. Concurring
joined by Rehnquist, Ct. and O'Connor J)

"Prior to judgement," my lawyers Investigator
an Ex-Denver Police officer of 20+ years, conspired
to obstruct Justice, with Detective Anderson as
well as AUSA's in my case. This man sat at
my table during my trial. He lied to my lawyer
telling him there was a "Super 8" hotel up the
street from the location, where I was arrested.
That actually used "metal keys" and passed them
out in Super 8 "Card" Sleeve's. See Id @ Doc. 169
pg. 7, 8. "Certain Wrongs affect more than a single

right and accordingly, can implacate more than one of the Constitution's Commands" See *Soldal v. Cook County*, 506 U.S. 56, 70, 113 S. Ct. 538 121 L. Ed. 2d. 450 (1992) [3. SIXTH AMENDMENT]

July 11th, 2018, the day of my arrest, I fit the description of a 911 call because I was hispanic and had my bible in my hand. "We must acknowledge that those fatal encounters have disparately impacted Black and Brown people and other people of Color." E014074

"The 911 caller was never identified" see (Id @ Doc. 169. pg.s 20, 21). The Confrontation clause of the Sixth Amendment provides a criminal defendant the bedrock right 'to be confronted with the witnesses against him.' The government placed the 911 caller on the witness list, "opened the door" to the introduction of the 911 callers out of Court statements. [gov. exh. 1 and 2]. Then failed to produce him at trial. The Sixth Amendment's Confrontation Clause guarantees the right of a criminal defendant to be confronted with the witness against him. This Clause forbids the introduction of out of Court testimonial statements. Unless the witness is unavailable and the defendant had the chance to cross examine witness previously.

Samia v. United States : June 23, 2023; 2023 U.S. Lexis 2637. See also *Crawford v. Washington* ---

Ground 4

Ineffective Assistance of Counsel
Strickland v. Washington, 466 U.S. 688, 80 L.Ed.
2d. 674, 104 S.Ct. 2052 (1984)

- A. 1. Counsel made no objection to Inadmissible Hearsay evidence {gov. exh's 1 and 2}
Gochicua v. Johnson, 53 F. Supp. 2d. (W.D. Tex. 1999)

The government presented Hearsay evidence to the jury at trial. {gov. exh. 1} the audio of a 911 call, and {gov. exh. 2} the transcripts of 911 call - see {Doc. 181-1}. The government placed the 911 caller on the witness list, with the promise he was going to testify at court. At the close of the governments case they failed to produce the 911 caller. The Court directed counsel that he had untill the next morning to file a motion. Counsel "failed to object to the inadmissible hearsay statements, which implicated petitioner in the offense, consequently depriving him of his right to effective counsel."

Gochicua v. Johnson, 53 F. Supp. 2d. (W.D. Tex. 1999)
Instead he spoke about the 911 caller not testifying for 20 minutes in his closing

argument. Trial counsel's failure to "object to", and file a motion to the Inadmissible Hearsay 911 call "was clearly deficient." and "satisfying" the Strickland prejudice requirement. "The 911 call" provided the only direct evidence to the contents of the bag." *Bolander v. State of Iowa*, 978 F. 2d 1079 (CA. 8, 1992)... Acts 25:16

2. Established Duty to Investigate

Strickland v. Washington, {passim}, 104 S. Ct. 2052 (1984)

{C}ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes a particular investigation unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments, {passim, see Mapid 160.05 for expanded text.}

Counsel's decision not to investigate is not a strategy..... Counsel has a duty to investigate all reasonable lines of defense;

Shortly after Mr. Veltri came aboard on my case as my new trial counsel. He told me that his investigator, conducted an investigation on the items implamented in {gov. exh. 12}. Mr. Veltri told me that there was a Super 8 Hotel up the street from where I was arrested. He told me that they used the exact same metal key with key chain that I had in my pocket at the time of my arrest. I learned after trial, by simply making a few phone calls this to be a lie. "Counsels decision not to undertake substantial pretrial investigation is patently unreasonable....." Here it is evident that counsel did not have a strategy of pointing to holes in the evidence" {gov. exh. 11, 12}, or "trying to create a reasonable doubt in jurors mind." *Fisher v. Gibson*, 282 F. 2d. 1283 (CA. 10, 2002).

"Counsel cannot be said to have made a tactical decision with out first procuring the information necessary to make such a decision." *Riley v. Payne*, 352 F. 3d. 1313, 1324 (9th Cir. 2003). Counsel failed to investigate, and introduce into evidence {gov. exh. 12} to be false. "That demonstrates his clients

factual innocence", or "sufficient doubt as to undermine confidence in the verdict, renders deficient performance." *Hart v. Gomez*, 174 F. 3d. 1067, 1070 (9th cir. 1999).

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information. {ABA Standards for Criminal Justice 4-4.1} Thus the ABA Standards for Criminal Justice... describes the obligation and duty to investigate. *Bobby v. Van Hook*, 558 U.S. 4, 175 L. Ed. 2d. 255, 130 S. Ct. 13 (2009)

3. Counsel failed to request a Constructive possession Jury instruction, and challenge the actual possession instruction.

Henderson v. United States, 135 S. Ct 1780, (Feb. 24th, 2015)

At the time of my arrest on July 11th, 2018, I was not in actual possession of "any" back pack. I was 50 yards away from the back pack

Denver Police officers found next to "two" men. With no evidence of finger prints or forensic's presented to the jury, to confirm or deny who the "two" fire arms and substance belonged to

Thus plain-error standard applies here, the jury might have based its verdict on the erroneously given instruction. The error "seriously affects the fairness, integrity or public reputation of judicial proceedings" *United States v. Mendoza*, 696 F.3d. 1033 (10th cir.) quoting (*United States v. Olano*, 507 U.S. 725, 736 113 S. Ct 1770, 123 L. Ed. 2d. 508 (1993).)

A "Plainly erroneous jury instruction affects a defendant's substantial rights if the instruction concerns a principal element of the crime, thus suggesting that the error affected the outcome of the case." *United States v. Duran*, 133 F.3d. 1324, 1330 (10th cir. 1998)

Thus after the law changed when the Supreme Court held that constructive possession contains an additional element. "Intent is no longer enough to show that 'I' knew about the items and could control them. Instead the government needed also to show 'I' had intended to exercise control over the items." (*United States v. Little*, 829 F.

3d. 1177 (10th cir. 2016) citing *Henderson v. United States*, 135 S. Ct. 1780, 1784 (2015).

which was impossible for the government to show, so they mislead the jury with an Actual possession instruction with the "video", (gov. exh's. 14, 15, 16, 17). Which showed me with a black back pack approximately 30 minutes prior to the time I was detained. "Prosecutors invited the jury to rely on the instructions error, confusing the jury. see e.g. *United States v. Simpson*, 845 F. 3d. 1039, 2017, U.S. App. Lexis 459 at 43-46 (10th cir. 2017)

Finding a likelihood of prejudice when the prosecutors invited the jury to consider the evidence, in a way that likely caused the Jury to rely on the error in the Jury instruction) *United States v. Serawop*, 410 F. 3d. 656, 670 (10th cir. 2005). *United States v. Bader*, 678 F. 3d. 858 869 (10th cir. 2012)

Criminal law recognizes as "Actual" and "constructive" possession alike. In legal terminology the word "possession" is interchangeable used to describe both, actual and the constructive kinds. "Actual possession exists when a person ["HAS"] direct "physical" control over a thing. Constructive possession is established when though

lacking such physical custody, still has the power and intent to exercise control over object. (see black's Law Dictionary; 2A Omalley § 39.12)
United States Supreme Court (2015) 135 S. Ct. 1780;
Henderson v. United States Feb. 24th, 2015 -----

"An improper instruction on an element of the offense violates the sixth Amendment's Jury trial guarantee, *Nedra v. United States* 527 U.S. 1, 12, 119 S. Ct. 1827, 144 L. Ed. 2d. 35 (1999)

Ground: 5

a.) Standard of Proof beyond a reasonable doubt.
In. Re Winship, 397 U.S. 358, 90 Ct. 1068, 25 L. Ed. 2d. 369 (1970)

Excluding the governments "false, fictitious, fraudulent" evidence {exh's: 1, 2, 11, 12, 27, 28, 30, 36, 37, 38}. The only evidence remaining is the "Video", {exh's 14, 15, 16, 17}. That does not show proof beyond a reasonable doubt of every fact necessary to constitute the crimes which I was charged and convicted of. It proves no more than I had a black backpack approximately 30 minutes before I was detained by D.P.D.'s

Officer Sheppard. Approximately 12-15 minutes after being detained, a black back pack was found next to two men, out in the open, not stashed 50 yards away from where I was detained. See (O.P.D. body Camera's. "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt *In. Re Winship*, 397 U.S. (1970) The "Video" is Constitutionally insufficient to sustain the Conviction, in which I was Convicted, In light of the Misconduct from law enforcement and AUSA's, with no evidence of fingerprints or forensics on firearms or "Substance" A Conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is Constitutionally infirm. See *Vachon v. New Hampshire*, 414 U.S. 478; *Adderly v. Florida*, 385 U.S. 39; *Gregory v. Chicago*, 394 U.S. 111 E. Thus the "no evidence" doctrine of *Thomas v. Louisville* thus secures to an accused the most elemental of due process rights Freedom from a wholly arbitrary deprivation of liberty---

6. Government and law-enforcement Misconduct

"Public safety therefore depends on public trust and public trust in turn requires that our Criminal justice system as a whole embodies fair and equal treatment, transparency, and accountability."

In General, it means that a prosecutor, police officer, or forensic analyst violated an official duty in the investigation or prosecution of a Criminal Case. Some forms of misconduct are deliberate by definition - perjury by a law enforcement official or forensic fraud are always deliberate in operation.

At the Start of my trial, AUSA Connor Flanigan, presented gov. exb. 12 in his opening statements, In front of give or take 20 AUSA's, his ontourage as the Court put it. He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring a just one {548 F Supp. 321} Berger v. United States, 295 U.S. 78, 88, 79 L. Ed (1935)

In the words of the late Justice William O Douglas, "The function of the prosecutor under the Federal Constitution is not to tack as many skins of {1982 U.S. Dist. Lexis 126} victims as possible to the wall. His function is to vindicate the right of people as expressed in the laws and give those accused of a crime a fair trial." *Donnelly v De Christoforo* 416 U.S. 637, 648-649, 40 L. Ed. 2d. 431, 94 N. Ct. 1868 (1974) (Douglas J. dissenting)
(See Id @ Doc. 169 pg's 10-13)

Closing -

I am in Custody in violation of the United States Constitution - As well a Constitutional law as shown above. The Denver Police Department failed to obtain a warrant to search black Back pack, in violation of the 4th Amendment. The Due process clause of the Fifth Amendment provides "No person shall be deprived of life, liberty, or property, with out due process of law." U.S. Const. amend V In Criminal prosecutions, the clauses primary guarantee is the right to a fundamentally fair trial. See *U.S. v. Bagley* (1985) *Pennsylvania v. Ritchie* (1987), *Brady v. Maryland* (1963)
See Id @ Doc. 169

"Nor deny to any person within its jurisdiction the equal protection of the laws" U.S. Const. Amend. 14
Where I was discriminated against for being
a "Hispanic Male with a Bible," and not white..

"To acknowledge the legacy of systemic racism in our criminal justice system and work together to eliminate the racial disparities that endure to this day, Doing No Harm All Americans." EO 14074 - "The entire executive power belongs to the President alone" *Pela Law LLC v.*

Consumer Fin. Prot. Bureau, 140 S. Ct. 2183, 2197 (2020)
"Where he gave the 'Kings', 'bench', an Extra Ordinary tool to correct the legal factual errors, shown herein." "to determine the Underlying Cause of Action." *CF, Marbury v. Madison*, 1 Cranch, 137. 2 L. Ed. 60 (1803)

This Court Could, and Should Grant Writ of Mandamus Correcting the lower Courts in their Orders, where the Supreme Court has already established, in regards to Fabricated Evidence, and Perjured Testimony in the Judgements in Napue and Giglio. As well as Constitutional law § 840. As Mandamus relief is an "extra Ordinary remedy" appropriate for the "exceptional Circumstances" now before this Court, where the lower Courts failure to follow this Courts clear dictates has left.

petitioner with "no other adequate means" to
enforce his "clear and indisputable rights."
Cheney v. United States District Court for D.C. 542
U.S. 367, 380-81, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004)

Therefore "This Order shall be implemented consistent
with applicable law." Executive Order 14074 Sec. 23(b)

"To ensure the American Dream is within reach
of all who live in our Nation, because it is the
right thing to do for Humanity." Proclamation
[Joseph R. Biden Jr. March 31st, 2023]

Therefore I Miguel Antonio Garcia, prays,
In Jesus Name, that the Court grants the
Following Relief.

1. Enter an injunction, of a new judgement in the
Same Order of Final Judgement in Doc. 213; Filed
March 31st, 2020, Case No. 18-cr-00363-rm. "To
Correct errors of fact "Vacate that Order grant Doc.
169, 52255, to be released upon the ground
that the sentence was imposed in violation of the
Constitution or laws of the United States." § 2255(a)

2. Enter an Injunction, of a new judgement in the Same Order, of Final Judgement, In Doc. 87, Filed 02/19/19, where the Court Vacates the Old Order, Reverse Order Denying Motion for Judgement of Acquittal, acquitting me of all charges "to Correct a legal Factual Error."

3. Enter an Emergency Preliminary Injunction, to be released Immediately...

And Any Further relief as the Courts deem Just and Proper...

I hereby Certify that Foregoing Document,
was sent to Office of the Clerk, @ the Supreme
Court; 1 First St. N.E. Washington D.C. 20543
On

Respectfully Submitted on Jan 30th, 2024
Miguel Antonio Garcia # 44824-013
United States Penitentiary Victorville
P.O. Box 3900; Adelanto CA. 92301


CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Miguel Antonio Garcia

Date: Jan 30th, 2024