No. 23-6856

ORIGINAL

(23A563)

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHEN AGUIAR — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stephen Aguiar, Reg. No. 03722-082
(Your Name)

Federal Medical Center Devens
(Address)

P.O. Box 879, Ayer, MA 01432
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. IF I WERE DONALD TRUMP WOULD THIS COURT GRANT REVIEW OF THIS CASE TO DECIDE WHETHER THE SECOND CIRCUIT WRONGLY DENIED A COA IN THIS CASE GIVEN THAT PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING FOR FRAUD ON THE TRIAL COURT, THE APPEALS COURT, THE SUPREME COURT, AND THE HABEAS COURT IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b) AND WHETHER THE PETITIONER IS ENTITLED TO AN OPPORTUNITY TO SHOW THAT THE GOVERNMENT'S FRAUD ON THE COURTS STEMMING FROM ITS ILLEGALITY TAINTED A SUBSTANTIAL PART OF THE GOVERNMENT'S CASE AGAINST THIS PETITIONER?

2. IF I WERE DONALD TRUMP WOULD THIS COURT GRANT REVIEW OF THIS CASE TO DECIDE WHETHER THE SECOND CIRCUIT WRONGLY DENIED A COA IN THIS CASE GIVEN THAT THE PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING TO CONSIDER PETITIONER'S 28 U.S.C. SECTION 2255 PRO SE-ARTICULATED CLAIMS RAISED THAT THE DISTRICT COURT EITHER AVOIDED OR DID NOT ADDRESS ON THEIR MERITS IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b)?

3. IF I WERE DONALD TRUMP WOULD THIS COURT GRANT REIVEW OF THIS CASE TO DECIDE WHETHER THE SECOND CIRCUIT WRONGLY DENIED A COA IN THIS CASE GIVEN THAT REASONABLE JURISTS COULD DEBATE THE COURT'S RULING BECAUSE THE PETITIONER SHOWED BY CLEAR AND CONVINCING EVIDENCE OF LAW AND FACT UNDER STRICKLAND V. WASHINGTON THAT HE WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT?

4. IF I WERE DONALD TRUMP WOULD THIS COURT GRANT REVIEW OF MY CASE TO DECIDE WHETHER THE SECOND CIRCUIT WRONGLY DENIED A COA IN THIS CASE GIVEN THAT THE COURT IS REQUIRED TO REEVALUATE THE CUMULATIVE EFFECT OF TRIAL COUNSEL'S ERRORS COMBINED WITH BOTH THE NEW EVIDENCE OF THE GOVERNMENT'S FRAUD ON THE COURT AND THE PETITIONER HAVING EXPUNGED HIS PRIOR CONVICTIONS?

5. IF I WERE DONALD TRUMP WOULD THIS COURT GRANT REVIEW OF MY CASE TO DECIDE WHETHER THE SECOND CIRCUIT WRONGLY DENIED A COA IN THIS CASE GIVEN THAT THE PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING TO CONSIDER THE MERITS OF HIS PRO SE-ARTICULATED 28 U.S.C. SECTION 2255 CLAIM OF CONFLICT OF INTEREST OF COUNSEL THAT THE DISTRICT COURT AVOIDED DECIDING OR INVESTIGATING AND WHETHER ITS FAILURE TO INVESTIGATE VIOLATED SECOND CIRCUIT BINDING AUTHORITY IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b)?

LIST OF PARTIES

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

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

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

The opinion of the United States district court appears at Appendix B; C to the petition and is

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

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

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

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

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

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was September 14, 2023.

[x] 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 _____.

[x] An extension of time to file the petition for a writ of certiorari was granted to and including February 12, 2024 (date) on December 20, 2023 (date) in Application No. 23 A 563.

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

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.....PASSIM

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be take for public use, without just compenstion....PASSIM

Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted withthe witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.....PASSIM

STATEMENT OF THE CASE

On November 6, 2000, Burlington, Vermont Police Department ("BPD") Lead Detective James Brigham arrested Petitioner Stephen Aguiar ("Mr. Aguiar") in possession of 23 grams of heroin and 84.6 grams of cocaine after contacting the Drug Enforcement Administration ("DEA") as a result of his state drug trafficking investigation. See Appendix D; see also United States v. Aguiar, No. 2:09-cr-90, ECF 807-1 at 4-5* (D. Vt. 2011)(court-filed amended Fed. R. Civ. P. 60(b) motion to reopen habeas proceeding). Mr. Aguiar was charged in the Vermont district court and the court appointed Attorney David Williams as defense counsel. Id. at 3-4. Relying on Attorney Williams's; the government's; and the district court's inaccurate statements of both the law and fact, Mr. Aguiar involuntarily pled guilty to count one of the indictment charging his having possessed with intent to distribute over 100 grams of heroin on November 6, 2000 despite his having possessed only 23 grams of heroin at the time of his arrest under an defective plea agreement and an inapplicable 21 U.S.C. Section 851 enhancement. Following off-record plea negotiations between counsel, the government, and the sentencing Judge, Mr. Aguiar received an unlawfully-increased 6 year mandatory minimum term of supervised release. See United States v. Aguiar, No. 2:00-cr-119, ECF 100-1 (D. Vt. 2001)(court-filed proposed amended 28 U.S.C. Section 2255 motion). In January 2007, Mr. Aguiar was released from federal custody and began serving his unlawfully-imposed 6 year mandatory minimum term of supervision that was transferred from Vermont to Massachusetts. See United States v. Aguiar, No. 1:07-cr-10257, ECF 1 (D. Mass. Jan. 24, 2007).

In November 2008, police informant ("PI") Justin Gaboriault was detained by police and agreed to cooperate. PI Gaboriault told Vermont BPD Detective Michael Morris that Mr. Aguiar was supplying cocaine in the Burlington area to William Murray, Brian Tahair, and Herbert "Buddy" Lawrence. See ECF 633 at 52-55; 103-107.

On December 29, 2008, police physically surveilled PI Gaboriault's movements and conversations as Gaboriault purchased approximately two grams of cocaine from Lawrence with the help of Brian Tahair. Id. at 80-81.

On January 1, 2009, PI Gaboriault met with Det. Morris and made an unsuccessful attempt to set up a drug deal by placing a recorded call to a person he told Det. Morris was Mr. Aguiar, see id. at 59-63, but Det. Morris had no foundation to identify that Mr. Aguiar was the person that Gaboriault had called. Id. at 64. The next day, PI Gaboriault called Tahair that led to three controlled drug buys from Tahair. The first two occurred on January 9, 2009 and January 21, 2009. Police again physically surveilled PI Gaboriault's movements and conversations during both sales that took place at Tahair's residence. Mr. Aguiar was not observed during either of the first two transactions. Id. at 72; 80; 116-122.

On January 23, 2009, the DEA became actively involved in the investigation by reportedly installing the first of many GPS tracking units on the first of Mr. Aguiar's three of cars and employing the DEA's use of a private company to search, read, and record Mr. Aguiar's movements using a Global Positioning System ("GPS"). See Appendix E.

Private company and government contractor Corp Ten International's ("Corp Ten") computer server and software tracked and recorded Mr. Aguiar's 2009 movement's on DEA's behalf per a licensing agreement. See Appendix E, Paragraphs 16-17; see also Aguiar v. DEA, No. 1:14-cv-240, ECF 87-3; 93-1 (D.D.C. 2015), remanded, 865 F.3d 730 (D.C. Cir. 2017). Corp Ten's server and software received Mr. Aguiar's location data directly from the GPS units attached to his cars. See Appendix E, Paragraphs 16-17. To search Mr. Aguiar's movements, the DEA first installed Corp Ten's software on a DEA end-user laptop. Id. The software allowed the DEA to then connect to Corp Ten's server via "a secure internet connection." Id. Once connected to Corp Ten's system, the software also allowed the DEA to prompt, set, and control the frequency of the location data emitted from each of the GPS units that the DEA had attached to Mr. Aguiar's cars. Id. The DEA searched Mr. Aguiar's long-term movements from January 23, 2009 through his July 30, 2009 arrest. See ECF 614.

On January 23, 2009, the DEA installed a GPS unit on Mr. Aguiar's 2008 Subaru Impreza and Corp Ten's server and software began recording Mr. Aguiar's movements at 7:09 a.m. Id. at 108-121. Later, the DEA connected to Corp Ten's server and tracked Mr. Aguiar's Impreza from Farrell Street in South Burlington to Casella Waste Management on Lakeside Avenue in Burlington where Tahair worked at which time the DEA transmitted Mr. Aguiar's whereabouts to Det. Morris who was out on surveillance, see id. at 109, who could not recall having "complete eyes on [Mr. Aguiar's Impreza] the whole way." ECF 633 at 94-95. PI Gaboriault later met with Det. Morris and purchased cocaine for the police from Tahair at Casella Waste Management during which time the DEA continued to track Mr. Aguiar's movements using Corp Ten's tracking system.

Beginning January 23, 2009, the DEA conducted "[a]round the clock [GPS] monitoring," see ECF 614 at 144, and "analyze[d the GPS] data all the time" and "look[ed] for" and "pa[id] attention to when [Mr. Aguiar's] vehicle [went] to a [new] location" and "if [and when it] le[ft] and c[a]me[] to Vermont...." Id. at 125.

On January 30, 2009, the GPS tracking unit on Mr. Aguiar's 2008 Impreza malfunctioned. On January 31, 2009, the DEA removed the broken GPS unit from Mr. Aguiar's 2008 Impreza and attached a new tracker. See ECF 766-3 (copy of government Jencks/Giglio material that Attorney Williams refused to share with Mr. Aguiar detailing the Jan. 30, 2009 GPS unit malfunction and subsequent Jan. 31, 2009 reinstallation evidencing 5 months of inaccurate GPS data). The DEA continued GPS tracking of Mr. Aguiar's 2008 Impreza and "started seeing...patterns...in Massachusetts...and...reported to [lead case Agent] Justin [Couture] and...compar[ed] notes...about this location near Columbia [Road] and Holden Street...." Id. at 126. "At the beginning [of its investigation], obviously [the DEA] had no clue about...who lived...at that location." Id. at 136. In February 2009, the DEA came to "belie[ve] that that location was [the] source location [at which Mr. Aguiar was obtaining drugs]." Id. at 170.

* Independent references to "ECF" (electronic case filing) refer to documents located on the trial court's docket in the criminal case: United States v. Aguiar, No. 2:09-cr-90 (D. Vt. 2011)(the "drug conspiracy case").

In February 2009, the "GPS [also] picked up Mr. Aguiar's vehicle on Hayward Street [where Jeremy Mackenzie lived]" and "at other places that month" that included "Casella Waste [Management where Tahair worked]" and "Chestnut Terrace [where Tahair lived]." Id. at 166-167. "[Q]uite often [the DEA] would be monitoring [using GPS and] would [] transmit[] what [the DEA] was seeing on the screen to the agents that were out on surveillances, and to [lead case Agent Justin] Couture...." Id. at 169.

The GPS units attached to his cars** allowed the DEA to track Mr. Aguiar's movements "almost around the clock" between January 23, 2009 and June 4, 2009. Id. at 113-118. Using Corp Ten's tracking system to search Mr. Aguiar's whereabouts, DEA investigators were able to identify several additional suspects in Vermont and Massachusetts that included Edwin Reyes,*** Jeremy Mackenzie, Nate Fleming, Jason Opalenik, and Jessica Adcock.****

Between January and July 2009, the DEA tracked Mr. Aguiar's movements between his Quincy, Massachusetts home and South Burlington, Vermont where he resided with his father when in Vermont.

Based on Corp Ten's GPS tracking system data, the DEA reportedly learned that Mr. Aguiar would stop near 644 Columbia Road in Dorchester before leaving Massachusetts and again on his return trip from Vermont. Using the GPS data, the DEA was also able to track Mr. Aguiar's vehicles to the residences of several codefendants including Brian Tahair (Chestnut Terrace, Burlington); Jeremy Mackenzie (Hayward Street, Burlington); Jessica Adcock/Jason Opalenik (Riverside Avenue/Buell Street, Burlington); and Lisa Foy (West Center Street/Main Street, Winooski). See ECF 614.

On February 25, 2009, for example, the DEA tracked Mr. Aguiar as he drove around the Burlington area with Lisa Foy. Enabled by Corp Ten's GPS tracking data, the DEA observed Mr. Aguiar and Foy arrive at Mr. Aguiar's father's 7 Farrell Street apartment in South Burlington and were able to surveil Mr. Aguiar removing a duffle bag from the trunk of his car. Tipped off to Mr. Aguiar's probable destination, by the GPS tracker, investigators were standing by when Mr. Aguiar and Foy arrived at Foy's Winooski, Vermont apartment. See, e.g., In re Tahair, No. 2:09-mc-34, ECF 3-2, Paragraph 36 (D. Vt. 2009). Several weeks earlier, on February 13, 2009, the DEA trailed Mr. Aguiar as he and Foy visited multiple car dealerships in Burlington and Vergennes.

On March 30, 2009, a person cited for traffic violations by the BPD agreed to work with police as a drug informant. The newly-minted cooperator later told the DEA that he had stopped by "Jeremy's" house on Hayward Street in Burlington on March 27, 2009 to discuss purchasing cocaine from "Jeremy."

Based on Corp Ten's GPS tracking data, the DEA already knew that on February 22,2009 and March 27, 2009, Mr. Aguiar's 2008 Impreza had been parked in the area of 113 Hayward Street where Jeremy Mackenzie lived with his mother. Mackenzie was no stranger to case agent Justin Couture. Several years earlier, Detective Couture had been a member of a team who had arrested Mackenzie for selling drugs at a local park. In March 2009, Mackenzie was being supervised by the Vermont Department of Corrections while serving a furlough sentence for a second state drug convictions. See In re Tahair, No. 2:09-mc-34, ECF 13-3, Paragraphs 50-53.

On April 1st, 3rd, and 16th, 2009, the DEA used its informant to purchase cocaine from Mackenzie at his Hayward Street home. In April 2009, the DEA used Corp Ten's GPS tracking system to track Mr. Aguiar's Impreza as it travelled between Hayward Street and Harvest Lane, where codefendant Jason Opalenik's employer, Natural Provisions was located. See ECF 614 at 161-162.

Following the GPS-related lead that the 644 Columbia Road Dorchester, Massachusetts apartment was a suspected drug source location, see id. at 170, Vermont DEA contacted Boston, Massachusetts DEA on April 7, 2009 to conduct surveillance of the Columbia Road apartment revealed by the GPS evidence. Id.at 205. The DEA had concluded that Mr. Aguiar would pick up drugs from someone who lived at that address while on his way to Vermont and drop money off at that address before driving back to his home in Quincy, Massachusetts.

** In May 2009, the DEA attached new GPS units on Mr. Aguiar's 2007 Mazda RX8 (in South Burlington, VT) and 2008 Impreza (in Quincy, MA). See ECF 614 at 145. The DEA attached a GPS unit to Mr. Aguiar's newly-purchased 2009 Subaru Impreza on June 19, 2009, see id. at 145-147, that also malfunctioned on July 16, 2009 and forced the DEA to again replace that broken GPS tracking unit on the 2009 Impreza, see id. at 149-150, that then enabled the DEA to search his July 30, 2009 movements using Corp Ten's system to effect his arrest in Vermont. Id. at 150.

*** The DEA originally believed that Edwin Reyes was supplying cocaine to Mr. Aguiar from the Columbia Road and Holden Street suspected source location based on the GPS tracking. Through wiretap evidence, the DEA was able to only later discover in July 2009 that Edwin Reyes was incarcerated and decided that Daniel Reyes was the suspected source of supply for Mr. Aguiar. See ECF 521 at 67-69.

**** See In re Tahair, No. 2:09-mc-34, ECF 3-2, Paragraphs 2-5, 29-36 (D. Vt. 2009)(Apr. 14, 2009 pen Register/Trap and Trace Affidavit); see also id., ECF 13-3, Paragraphs 14, 40, 50, 75, 77, 113, 126, 127-131, 152-159, 170-171 (June 18, 2009 Title III Affidavit); see also Aguiar, No. 2:09-cr-90, ECF 614 (GPS tracking system tracks Mr. Aguiar's 2008 Impreza to Natural Provisions where Jason Opalenik, not "Jeremy Fitzgerald [sic]" worked); see also id., ECF 521 at 110 (trial transcript of cooperating codefendant Jason Opalenik testimony).

After Mr. Aguiar arrived, the Boston DEA saw a 2008 Subaru Impreza drive to the Columbia Road apartment building and park in the driveway. The Boston DEA then saw Mr. Aguiar get out of the car and walk toward the apartment. The Boston DEA then took surveillance photographs of Mr. Aguiar carrying a duffle bag as he walked to the 644 Columbia Road apartment and back to his car -- photographs later introduced at Mr. Aguiar's trial. See ECF 484, Exhibits 115(a)-115(h); ECF 616 at 210.

On April 3, 2009, investigators filed in the district court the first of five applications requesting hybrid pen register/trap and trace orders for a number of cell phones that the DEA suspected were being used by Mr. Aguiar and his newly-discovered coconspirators that authorized the DEA to obtain cell site data, signaling information, and other data from service providers based on the leads and evidence developed from Corp Ten's GPS data that provided critical information to investigators and allowed them to corroborate information from informants and link Mr. Aguiar to targets of other ongoing drug investigations.

Thus Agent Couture's affidavit made the following references to Corp Ten's GPS data and police surveillance made possible by it: See In re Tahair, No. 2:09-mc-34, ECF 1-2, Paragraphs 24-25 (on January 23, 2009, BPD officers observe Mr. Aguiar's car at 409 Farrell Street and at Casella Waste Management's 175 Lakeside Avenue parking lot shortly before Gaboriault purchases cocaine from Tahair); 31 (on March 27, 2009, Mr. Aguiar's car is parked in the area of 113 Hayward Street in Burlington where convicted drug dealer Jeremy Mackenzie lives); 36-37 (investigators have established that Mr. Aguiar travels regularly from VT to MA before coming to VT. On his return trips to MA, Mr. Aguiar stops at the same address in Dorchester, MA before returning to his Quincy home. Surveillance made possible by GPS data places Mr. Aguiar "at the residences of several of the TARGET SUBJECTS."); 39 (GPS data shows Mr. Aguiar stopping regularly at Nate Fleming's Foster Street home); 43 (GPS data shows that Mr. Aguiar spends a great deal of time at Lisa Foy's apartment at 36 Main Street in Winooski, VT).

On June 3, 2009, the United States Attorney's Office filed with the district court a Department of Justice-authorized Title III application to intercept Mr. Aguiar's conversations of his cell phone. The district court granted the application and issued the first of four wiretap orders authorizing the DEA to intercept Mr. Aguiar's calls.

As with the applications for the hybrid pen register/trap and trace orders, the first (and subsequent) Title III applications also relied on information developed from the GPS data sent to Corp Ten's server that the DEA reportedly collected. Thus Agent Couture's June 18, 2009 Title III affidavit made the following references to the GPS data and the police surveillance made possible by it: See In re Tahair, No. 2:09-mc-34, ECF 13-3, Paragraphs 14 (Aguiar is believed to be obtaining drugs from, and channeling cash payments to, an individual named Edwin Reyes of 644 Columbia Road in Dorchester, MA, making weekly trips between his Quincy, MA home and Burlington, VT); 40 (January 23, 3009 surveillance of Aguiar's Impreza preceding Justin Gaboriault's purchase of cocaine from Brian Tahair); 50 (Mar. 27, 2009 surveillance of Aguiar near Jeremy Mackenzie's Hayward Street home in Burlington, VT); 75 (surveillance of Aguiar visiting Nate Fleming at his Foster Street Burlington home in February 2009); 126 (surveillance of Aguiar at Reyes's home in Dorchester, MA, April 7, 2009, noting Aguiar with a duffle bag in Vermont on Feb. 25, 2009 similar to the one seen in Dorchester in April, and discussing his weekly trips to Vermont from Massachusetts); 130-131 (investigators observe Aguiar's vehicle at Jessica Adcock's Buell Street home in April and May 2009); 137 (surveillance of Aguiar visiting Nate Fleming's home on Foster Street on May 15, 2009); 152-159 (summary of surveillance of Aguiar made possible by the use of GPS tracking devices, connections to Reyes, Adcock, Foy, Fleming, Tahair, and Mackenzie).

On July 30, 2009, the DEA used Corp Ten's tracking system to locate Mr. Aguiar's movements to Vermont to effect his arrest. See ECF 614 at 150. On July 31, 2009, Mr. Aguiar appeared before the district court and the court again appointed Attorney Williams -- the same attorney who misadvised Mr. Aguiar in his 2000-2001 criminal proceedings -- as CJA defense counsel.

On September 3, 2009, the district court issued a pretrial order directing the government to turn over, disclose and/or make available to the defense all discoverable evidence under Federal Rules of Criminal Procedure 16. See ECF 109.

In February 2010, Attorney Williams contacted prosecutors via e-mail directing prosecutors to allow him access to all Title III-referenced GPS-related discovery and specifically requested access to the original GPS evidence possessed by the government. See ECF 766-5. AUSA Wendy Fuller's e-mail responses were elusive. Id. AUSA Fuller advised Attorney Williams falsely that the discoverable GPS evidence was in the form of only documents, see id., despite knowing that AUSA Fuller could have easily permitted Attorney Williams to access Corp Ten's server to access Mr. Aguiar's authentic GPS tracking file and integrated software using the DEA's end-user laptop. See Appendix E, Paragraphs 16-17. AUSA Fuller instead impeded Attorney Williams's access to the the government's reported GPS evidence. Attorney Williams was therefore forced to meet the March 3, 2009 suppression filing deadline and blindly move the district court to suppress all GPS-related tracking evidence. See ECF 171. Ignoring repeated requests for this original GPS evidence, the government knowingly, willfully, and intentionally violated Fed. R. Crim. P. 16 and the DEA's agency policy***** and destroyed Mr. Aguiar's authentic GPS evidence from Corp Ten's server in or about August 2010. See Appendix E, Paragraphs 16-17.

***** See DEA Agent Manual Sections 6211.6(C); (G) (2002) (requiring retention of surveillance notes until case closing); see also id., Sections 6232.31(B); 6232.32(A) (defining case closing as a time when "final judicial action" has been completed).

During the August 2010 district court omnibus motion proceedings, the defense again objected to the GPS surveillance and complained about the defense's inability to challenge the Title III wiretap warrants and other evidence based on the government's failure to reveal; to turn over; or to make available to the defense its purported GPS surveillance evidence and about where the GPS units were installed on Mr. Aguiar's vehicles. See ECF 622 at 48-52.

It was not until November 4, 2010, however, that the government provided the defense as part of discovery inaccurate surveillance data in the form of GPS spreadsheets well after the authentic GPS tracking evidence of Mr. Aguiar's 2009 movements had been destroyed -- evidence material to the success of the government's Title III wiretap warrants relied on to intercept Mr. Aguiar's calls as detailed above and later induce those arrested to cooperate with the government in this case as detailed below. After the government provided its defendants with its false and inaccurate GPS evidence on November 4, 2010 to justify the necessity requirement of its Title III applications and prevent defendants' suppression of that surveillance-related evidence that would be fatal to the government's case, Attorney Williams conducted no further investigation of the government's GPS evidence despite Mr. Aguiar's demands that Attorney Williams do so.

In November 2010 [and again in January 2011], Attorney Williams insisted that Mr. Aguiar should accept the government's plea offer and plead guilty to conspiracy, see ECF 737-4, but Mr. Aguiar insisted that he was innocent and demanded that counsel give Mr. Aguiar all evidence relevant to his defense.

Because Mr. Aguiar refused to plead guilty in the drug conspiracy case and began studying the law and investigating all aspects of his defense, Attorney Williams feared that Mr. Aguiar may discover Attorney Williams's past unethical conduct and deficient performance in Attorney Williams's earlier CJA representations of Mr. Aguiar and knowingly and intentionally violated the Vermont Rules of Professional Conduct by: (1) ceasing to fully inform Mr. Aguiar about his constitutional and statutory rights; (2) not allowing Mr. Aguiar to receive or review vital legal documents of his 1994-1995, 2000-2001, or 2009-2014 criminal cases; (3) giving Mr. Aguiar only bits and pieces of information about his defense; (4) strategically choosing which of Mr. Aguiar's letters to answer and ignore; (5) knowingly and intentionally abandoning Mr. Aguiar's every attempt to communicate with Attorney Williams by e-mail and telephone; and (6) knowingly and intentionally misadvising Mr. Aguiar about his federal cases by giving Mr. Aguiar misleading information about his rights to influence and manipulate Mr. Aguiar's course of action and about how and when to pursue such rights and post-conviction claims including those in his drug conspiracy case motion under 28 U.S.C. Section 2255. See, e.g., Aguiar v. Williams, No. 1042-12-18 CnCv, Index 14 (Vt. Super. Ct. 2019), remanded, 2021 VT 8, LEXIS 13 (Vt. Feb. 19, 2021)(resolved civil action on remand alleging conversion of property, breach of fiduciary duty, and common law fraud).

In December 2010, while representing Mr. Aguiar in Aguiar, No. 2:09-cr-90, Attorney Williams knowingly and intentionally destroyed his firm's (Sleigh and Williams) records of Mr. Aguiar's 2000-2001 legal file and documents related to his 2000-2001 CJA representation of Mr. Aguiar in Aguiar, No. 2:00-cr-119, see, e.g., Aguiar, No. 2:00-cr-119, ECF 100-1, Exhibit J (Dec. 21, 2016 letter from SleighLaw confirming that such records were destroyed in or about Dec. 2010), that were used to increase Mr. Aguiar's drug conspiracy case punishment under 21 U.S.C. Section 851, see ECF 396, and United States Sentencing Guidelines ("U.S.S.G.") Sections 4A1.1; 4A1.2; and 4B1.1. See 2011 PSR, Paragraphs 88; 110; 112; 113; 118.

In December 2010, Attorney Williams next acted against Mr. Aguiar's interests, violated the ABA Rules of Professional Conduct, and created an actual conflict of interest in Mr. Aguiar's drug conspiracy case, see Appendix F, and hired former BPD detective-turned-defense-investigator James Brigham -- the former lead investigating BPD detective and arresting officer in Aguiar, No. 2:00-cr-119, responsible for Mr. Aguiar's 2001 drug conviction that was likewise used to increase Mr. Aguiar's drug conspiracy case punishment under Section 851 and the Guidelines -- to investigate Mr. Aguiar's drug conspiracy case defense. See Appendix F; but see Appendix D (detailing that Det. Brigham had arrested Mr. Aguiar on Nov. 6, 2000).

Attorney Williams shut Mr. Aguiar out of his own criminal case by denying Mr. Aguiar access to his own property, i.e., his legal files as held by the Vermont Supreme Court. See Aguiar v. Williams, 2021 VT 8, LEXIS 13 (Vt. Feb. 19, 2021)(holding that plaintiff's legal files possessed by former attorney defendant related to CJA representation of plaintiff in his federal criminal cases belong to the client under Vermont State property law and the ABA Vermont Rules of Professional Conduct). Mr. Aguiar fell victim to Attorney Williams's misconduct before trial, during trial, and after trial while on appeal during which time Mr. Aguiar could not meaningfully participate in his own defense.

After the government violated Fed. R. Crim. P. 16 by providing its defendants as part of discovery false and inaccurate GPS surveillance evidence in the form of 351 pages of spreadsheets containing GPS data, the government engaged in further misconduct that including violating Federal Rules of Evidence 1002 and committing fraud on the courts.

Before Mr. Aguiar's trial, the government concealed the existence of Corp Ten's role in the DEA's investigation and instead purchased a generic online tracking program and manually uploaded to its newly-purchased program the false evidence of its GPS spreadsheets. See, e.g., ECF 484, Exhibit 68(d) (copy of this one of numerous evidenced exhibits introduced at Mr. Aguiar's trial); see also Appendix G (same).

On April 1, 2011, prosecutors knowingly and intentionally violated the confrontation clause under the Sixth Amendment by concealing the existence of Corp Ten's tracking system that recorded Mr. Aguiar's 2009 movements on DEA's behalf, see, e.g., Aguiar, No. 1:14-cv-240, ECF 87-3; 93-1 (D.D.C. 2015), and committed fraud on the courts through prosecutors' material government witness, DEA Agent Richard Carter, by introducing false evidence and testimony at Mr. Aguiar's trial. See ECF 614.

Prosecutors committed fraud on the district court through Agent Carter first by introducing at trial the fraudulent spreadsheets of false GPS data, see ECF 484, Exhibits 67(a)-67(f), as Agent Carter testified falsely that the DEA searched Mr. Aguiar's movements from January 23 to May 14, 2009, see id., Exhibit 67(a) using a "single device." See 614 at 120; but see ECF 766-3 (DEA notes reporting that the Jan. 23, 2009-installed GPS unit malfunctioned on Jan 30, 2009 and was replaced on Jan. 31, 2009). Prosecutors next coordinated Agent Carter's commission of fraud on the court as Agent Carter swore under oath that the DEA tracked Mr. Aguiar's 2009 movements using a "computer server that [the DEA] maintain[ed]" which was a "DEA system" and "software" that collected the surveillance evidence. See ECF 614 at 24-25. Agent Carter also claimed fraudulently that the introduced screen shots, see, e.g., ECF 484, Exhibits 68(b)-68(d), were "the actual image[s] from [his] screen [while he was] monitoring the tracking device[s in 2009 that showed] the actual date, time, longitude and latitude that the Aguiar vehicle[s were] at." See ECF 614 at 151-152. Agent Carter committed fraud on the court further by swearing that Trial Exhibit 68(b) contained "an actual view of the software that we utilize[d] with this tracking device." Id. at 137.

Agent Carter convincingly testified further about the GPS surveillance and how it was material to identifying Mr. Aguiar's codefendants and obtaining wiretaps. See ECF 614. The faux GPS maps introduced by prosecutors depicted Mr. Aguiar's travel routes, surveillance photographs of him in Massachusetts and Vermont, and wiretapped conversations each made possible by the unprovided original evidence of Corp Ten's tracking data that bolstered the allegations that Mr. Aguiar aided the sale of cocaine by alleged coconspirators Brain Tahair and Jeremy Mackenzie. Prosecutors also introduced wiretapped conversations and damning government witness testimony of investigators and cooperating codefendants that were each made possible by the unprovided original surveillance evidence of Corp Ten's tracking data. See Aguiar v. DEA, No. 1:14-cv-240, ECF 87-3; 93-1. On April 11, 2011, Mr. Aguiar was convicted. See ECF 479.

On August 11, 2011, the court noticed Mr. Aguiar that he would be sentenced on December 12, 2011. See ECF 534. Despite Mr. Aguiar's conviction, Attorney Williams continued refusing to give Mr. Aguiar his legal documents. See ECF 807-1.

On December 12, 2011, both AUSA Wendy Fuller and Attorney Williams violated the Fifth and Sixth Amendments and committed fraud on the court by telling the court that each had received a copy of the still sealed imported August 2009 supervised release warrant petition, allowed the court to revoke Mr. Aguiar's term of supervision in Aguiar, No. 2:00-cr-119, based on sealed events on the district court's docket, and misled Mr. Aguiar about his rights to appeal. See ECF 807-1 at 5-17. Next, Attorney Williams: (1) failed to consult Mr. Aguiar about his appeal; (2) lied to Mr. Aguiar about his appeal rights and the district court's mishandling about Mr. Aguiar's pro se letter to contemporaneously appeal his drug conspiracy case/revocation of supervised release case convictions and sentences; (3) knowingly and intentionally failed to perfect Mr. Aguiar's appeal; and (4) knowingly and intentionally misled and misadvised Mr. Aguiar's understanding about the law, his rights, and his post-conviction deadlines and claims during the entire time Mr. Aguiar was on direct appeal. Id.

As Mr. Aguiar proceeded on appeal, the Second Circuit decided Attorney Williams's intentionally-constricted appeal limited to only Mr. Aguiar's drug conspiracy case and decided that the argued unlawful warrantless search of Mr. Aguiar's iPhone WAS HARMLESS. See United States v. Aguiar, 737 F.3d 251, 263 (2d Cir. 2013). Concluding that the GPS evidence in Mr. Aguiar's case WAS NOT HARMLESS, the court proceeded to the merits of Mr. Aguiar's unlawful GPS evidence claim under false pretenses. Id. at 254-262. Indeed, the Second Circuit was fraudulently misled to believe that the "GPS device[s] transmitted a live signal to a DEA server" and that "[t]he DEA [had] developed software that allow[ed agents to save, track and analyze the data generated by the GPS device[s]." Id. at 255; but see Appendix F. The Second Circuit concluded, however, that the good faith exception to the exclusionary rule applied and affirmed Mr. Aguiar's wrongfully-obtained convictions that resulted from the government's misconduct. See id. In October 2014, the United States Supreme Court denied Mr. Aguiar's petition for review. See Aguiar v. United States, 574 U.S. 959 (2014).

In 2015, relying on Attorney Williams's misdirection about his post-conviction rights, see ECF 807-1, Mr. Aguiar unsuccessfully moved the court to obtain legal documents of his revocation of supervision and drug conspiracy conviction cases. See ECF 807-1. At the misdirection and misadvice of Attorney Williams, Mr. Aguiar also filed with the VT district court a 28 U.S.C. Section 2255 motion in the drug conspiracy case raising integrated and interdependent claims of ineffective assistance of counsel ("IAC") about Attorney Williams's conflict of interests and conflictedly-ineffective representation of Mr. Aguiar in BOTH HIS REVOCATION OF SUPERVISED RELEASE AND DRUG CONSPIRACY CASES. See ECF 723-1. Mr. Aguiar's pro se-articulated IAC claims related directly to Attorney Williams not giving Mr. Aguiar his legal documents for BOTH CASES. Id. at 88-92; see also ECF 708; 728. Without his COMPLETE legal files, Mr. Aguiar moved the court to supplement and expand the record to include his prior 2000-2001 case. See ECF 728; 735. Mr. Aguiar also argued IAC because trial counsel failed to investigate the government's false GPS evidence and request a taint hearing. Through a Freedom of Information Act action, see Aguiar, No. 1:14-cv-240 (D.D.C. 2015), Mr. Aguiar further discovered the possible involvement of a private company related to the DEA tracking his 2009 movements using GPS and moved the court to further supplement his pro se-articulated Section 2255 motion, see ECF 756, and to strike Agent Carter's testimony and GPS-related evidence. See ECF 757.

The government continued its commission of fraud this time on the habeas court in response to Mr. Aguiar's Section 2255 post-conviction claims. Specifically, the government misled the district court about the so-called DEA software and swore under oath that the "software did not independently generate its own GPS coordinate." See ECF 747 at 31-32 n.19; but see, e.g., Appendix E, Paragraphs 16-17 (evidence from a high-level DEA official detailing that the DEA employed the use of the private company's server and software TO RECORD Mr. Aguiar's 2009 movements using GPS).

Magistrate Judge John M. Conroy's Report and Recommendation ("R & R") decided to not address the merits of Mr. Aguiar's GPS-related pro se-articulated TRIAL COUNSEL IAC claim and instead constrictedly evaluated the IAC claim of ONLY APPELLATE COUNSEL. See ECF 767 at 68 n.25. Nor did the R & R address Mr. Aguiar's raised pro se-integrated revocation of supervised release/drug conspiracy IAC claims that counsel withheld and destroyed Mr. Aguiar's legal documents in Aguiar, No. 2:00-cr-119, that were used to enhance his drug conspiracy case sentence and revoke his 2001-imposed term of supervised release without due process and its effect on direct appeal and that Attorney Williams had hired former BPD Detective James Brigham as his drug conspiracy case defense investigator. See ECF 767 at 63-68; see also Exhibit F. The Magistrate Judge's R & R also recommended that the district court not address Mr. Aguiar's pro se claim to be resentenced once Mr. Aguiar's prior convictions are vacated and hold the claim in abeyance. Id. at 75. The R & R further recommended that Mr. Aguiar's motion to strike Agent Carter's testimony and the GPS-related evidence be denied as moot. Id. at 79.

In his pro se objections to the R & R, Mr. Aguiar objected, see ECF 776 at 32-40, specifically that the R & R had failed to address counsel's conflict of interest that implicated counsel's employing former Det. Brigham as Mr. Aguiar's drug conspiracy case defense investigator and engaging in attorney misconduct to cover up his past mistakes in Aguiar, No. 2:00-cr-119, each of which violated the Fifth and Sixth Amendments. Id.

Accordingly, Judge Sessions -- who also had a conflict of interest in this case because Judge Sessions signed a July 2, 2009 Title III wiretap warrant with an incomplete Department of Justice authorization page-- issued only a five page flawed opinion and order adopting the R & R in full that likewise failed to address each of the specific objections or pro se articulated claims that Mr. Aguiar had raised in his Section 2255 motion. See ECF 780.

In August 2018, Mr. Aguiar moved the district court to reopen his habeas proceedings because the court failed to address all of the combined and integrated drug conspiracy/revocation of supervised release pro se-articulated IAC claims that Attorney Williams had directed Mr. Aguiar to raise in his drug conspiracy case Section 2255 motion. See ECF 792. Mr. Aguiar also moved the district court to consolidate those interdependent and interrelated not-yet-addressed post-conviction claims raised in Aguiar, No. 2:00-cr-119, with those raised in his drug conspiracy case. See ECF 794. Mr. Aguiar further moved the court to amend his Rule 60(b) motion each time his diligent efforts revealed new facts and evidence to support his not-yet-addressed pro se-articulated claims that he raised in his drug conspiracy case Section 2255 motion. See ECF 797; 803; 807.

On April 21, 2020, the district court denied all of Mr. Aguiar's Rule 60(b) motion and all related amendments were beyond the scope of Rule 60(b). See Appendix B.

On May 15, 2020, Mr. Aguiar moved the court to alter or amend its judgment under Federal Rules of Civil Procedure 59(e). See ECF 820. On March 8, 2023, the district court denied the Rule 59(e) motion. ECF 824; see also Appendix C.

On May 2, 2023, Mr. Aguiar filed a timely notice to appeal and moved the Second Circuit to grant him a COA. ECF 826. The appeal was divided into two cases under two docket numbers and the Second Circuit ordered that the appeals under both case numbers be heard in tandem: United States v. Aguiar, No. 23-6443; 23-6446 (2d Cir. 2023).

On September 14, 2023, the Second Circuit disregarded the legal threshold and facts of Mr. Aguiar's case and denied Mr. Aguiar a COA without explanation. See Appendix A. Meanwhile, Mr. Aguiar noticed that this Supreme Court will once again honor Donald Trump's request to review his arguments. Mr. Aguiar knows that he is not as prolific as Donald Trump, but were he Donald Trump, would this Court honor HIS request to review his arguments especially because the former CJA attorney in the case was compromised in his representation of his client from the start and sabotaged his client's defense while the government had fabricated the defendant's GPS surveillance evidence [material to its Title III wiretap warrants] and committed fraud on the courts when the legal standard of Rule 60(b) was met but the court below wrongly denied a COA?

REASONS FOR GRANTING THE PETITION

Jurist of Reason Supreme Court Justice Sonja Sotomayor has expressed material concern about the correct standard of review being made by lower courts through the process of reviewing applications for certificates of appealability:

> The federal courts handle thousands of noncapital habeas petitions each year, only a tiny fraction of which ultimately yield relief. See N. King, Non-Capital Habeas Cases After Appellate Review: An Empirical Analysis, 24 Fed. Sentencing Reporter 308, 309 (2012) (Table 2) less than 1% of randomly selected cases in an empirical study). While the volume is high, the stakes are as well. Federal's judges grow accustomed to reviewing convictions with sentences measured in lifetimes, or in hundreds of months. Such spans of time are difficult to comprehend, much less to imagine spending behind bars. And any given filing-though it may feel routine to the judge who plucks it from the top of a large stack-could be the petitioner's last best shot at relief from an unconstitutionally imposed sentence. Sifting through the haystack of uncounseled filings is an unglamorous but vitally important task. COA inquiries play an important role in the winnowing process. The percentage of COA requests granted is not high, see id., at 308 (study finds that 'more than 92 percent of all COA rulings were denials'), but once that hurdle is cleared, a nontrivial fraction of COAs lead to relief on the merits, see id., at 309 (Table 2) (approximately 6%). At its best, this triage process focuses judicial resources on processing the claims most likely to be meritorious. Cf. Miller-El, 537 U.S., at 337, 123, S. Ct. 1029, 154 L. Ed. 2d 931 (AEDPA's COA requirement 'confirmed the necessity and the requirement of differential treatment for those appeals deserving attention from those that plainly do not'). Unless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down. A court of appeals might inappropriately decide the merits of an appeal, and in doing so overstep the bounds of its jurisdiction. See Buck, 580 U.S., at ___, 137 S. Ct. 579, 187 L. Ed. 2d 931(slip op., at 13); Miller El, 537 U.S., at 336-337, 123 S. Ct. 1029. A district court might fail to recognize that reasonable minds could differ. Or, worse, the large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp, especially for pro se litigants. We have periodically had to remind lower courts not to unduly restrict this pathway to appellate review. See, e.g., Tharpe v. Sellers, 583 U.S. ___, 138 S. Ct. 545, 199 L. Ed. 2d 424 (2018)(per curiam); Buck, 580 U.S. ___, 137 S. Ct. 759, 197 L. Ed. 2d 1; Tennard v. Dertke, 542 U.S. 274, 124 S. Ct. 2562, 159 L Ed. 2d 384 (2004).

McGee v. McFadden, ___ U.S. ___, ___, 139 S. Ct. 2608, 2611 (2019)(J. Sotomayor dissenting from the denial of a writ of certiorari).

Justice Sotomayor also succinctly articulated the low threshold legal standard for granting a COA under the United States Supreme Court's jurisprudence:

> At the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Buck v. Davis, 580 U.S. ___, ___ 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017)(slip op., at 13)(quoting Miller-El Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003)).This 'threshold' inquiry is more limited and forgiving than 'adjudication of the actual merits.' Buck, 580 U.S., at ___, 137 S. Ct. 759, 197 L. Ed. 2d 1 (slip op., at 13)(quoting Miller-El, 537 U.S. at 337, 123 S. Ct. 1029, 154 L. Ed. 2d 931); see also id., at 336 (noting that 'full consideration of the factual or legal bases adduced in support of the claims' is not appropriate in evaluating a request for a COA).

Id. at 2609 (some internal quotations removed).

A. A JURIST OF REASON WOULD DISAGREE WITH THE COURT'S RULING THAT PETITIONER'S MOTION TO REOPEN HABEAS PROCEEDING ALLEGING A CREDIBLE CLAIM OF FRAUD ON THE COURT IS BEYOND THE SCOPE OF FEDERAL RULES OF CIVIL PROCEDURE 60(b) OR THAT THE CLAIM PRESENTED DOES NOT DESERVE ENCOURAGEMENT TO PROCEED FURTHER

Consistent with Justice Sotomayor's reasoning, jurists of reason would disagree with the court not granting Mr. Aguiar a COA regarding the debatable ruling: (1) that Mr. Aguiar's credible claim of fraud on the court exceeds the scope of Federal Rules of Civil Procedure 60(b); (2) that Mr. Aguiar's fraud on the court claim under Rule 60(b) is denied without resolving the merits of the issue; and (3) that Mr. Aguiar's fraud on the court claim does not deserve encouragement to proceed further because binding legal authority requires that he given a meaningful opportunity to show that the evidence surrounding the government's fraud on the courts and its destruction of Mr. Aguiar's original, authentic, and accurate GPS surveillance evidence [that the government replaced with false GPS evidence] tainted a substantial portion of the otherwise suppressible direct and derivative evidence introduced against Mr. Aguiar at his trial.

1. FRAUD ON THE HABEAS COURT IS PROPERLY RAISED UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)

A motion under Fed. R. Civ. P. 60(b) alleging a claim of fraud on the habeas court attacks a defect in the integrity of the federal habeas proceeding and is appropriately brought under Rule 60(b). See Gonzalez v. Crosby, 545 U.S. 524, 532 n.5 (2005). Any jurist of reason would disagree with the district court's March 2023 order wrongly resolving Mr. Aguiar's fraud on the habeas court claim under Rule 60(b). See Appendix C, p.5. In denying Mr. Aguiar's Rule 60(b) motion, the district court misapplies this Court's 28 U.S.C. Section 2244-related appellate ruling that Mr. Aguiar did not meet 28 U.S.C. Section 2255(h)'s legal standard equally to the legal standard required under Fed. R. Civ. P. 60(b). See id. The strict legal standard of 28 U.S.C. 2255(h), i.e., new evidence showing that no reasonable fact finder would find a movant guilty or a new rule of law made retroactive by the Supreme Court, however, is not applicable to the liberal legal standard of Rule 60(b), i.e., attacking a defect in the integrity of the habeas court proceeding. Because the district court's resolution of Mr. Aguiar's motion to reopen habeas proceeding alleging a claim of fraud on the court could be decided differently among jurists of reason and the Supreme Court's holding in Gonzalez nullifies any ruling that Mr. Aguiar's claim is beyond the scope of Rule 60(b), both the district court and the Second Circuit Court of Appeals erred by not granting Mr. Aguiar a COA in this case.

2. THE GOVERNMENT COMMITTED FRAUD ON THE HABEAS COURT

The Second Circuit concluded that the "data gathered by the GPS [units in Mr. Aguiar's 2009 criminal investigation] aided law enforcement in identifying avenues of investigation, supported applications for wiretap warrants, and led investigators to other evidence collected and introduced at trial...[and] constitutes a 'search' for Fourth Amendment purposes." United States v. Aguiar, 737 F.3d 251, 254 (2d Cir. 2013)(internal citation and quotation marks omitted). Reasonable Jurist William K. Sessions likewise concluded that the "[GPS] tracking techniques utilized by the DEA [agents] played a fundamental role in the criminal investigation [and that the e]vidence obtained from [the] GPS played a correspondingly significant role in Aguiar's trial and conviction." Aguiar v. Carter, No. 2:17-cv-121, 2018 U.S. Dist. LEXIS 139751 (D. Vt. Aug. 17, 2018).

Therefore, any "evidence obtained by illegal means and the fruits of such evidence must be suppressed." United States v. Maggaddino, 496 F.2d 455, 459 (2d Cir. 1974). "This exclusionary rule reaches not only primary evidence obtained by an illegal search or seizure, but also evidence later discovered and found to be derivative of an illegality or 'fruit of the poisonous tree'" United States v. Cacase, 796 F.3d 176, 188 (2d Cir. 2015)(internal citations omitted). "Evidence obtained by the exploitation of a primary illegality is regularly excluded under traditional taint analysis as the 'fruit of the poisonous tree.'" United States v. Morales, 788 F.2d 883, 885 (2d Cir. 1988)(citing Wong Sun v. United States, 371 U.S. at 487-88).

Therefore, the question is "whether granting establishment of the primary illegality, the evidence to which the instant objection is made has been come at by the exploitation of that illegality...." Wong Sun v. United States, 371 U.S. 471, 488 (1963). The significance of the destruction of evidence and then compelling a party who objects to use of that evidence to go forward with a showing of taint and then to withhold from him the means or tools to meet that burden is to create an absurdity in the law. See United States v. Huss, 482 F.2d 38, 47 (2d Cir. 1973). "The government may not knowingly use false evidence including false testimony, to obtain a tainted conviction." United States v. Alston, 899 F.3d 135, 147 (2d Cir. 2018)(internal citations omitted).

To show fraud on the court, Mr. Aguiar "must prove by clear and convincing evidence that the [government] interfered with the judicial system's ability to adjudicate impartially and that the acts of the [government] must have been of such a nature as to have prevented [Mr. Aguiar] from fully and fairly presenting a case or defense." Mazzei v. The Money Store, 62 F.4th 88, 92 (2d Cir. 2023). Fraud on the court includes "fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." Hadges v. Yonkers Racing Corp., 48 F.3d 1320, 1325 (2d Cir. 1995) (internal citation and quotation marks omitted). Undeniably, "prosecutors [] are officers of the court...." Donnelly v. De Christoforo, 416 U.S. 637, 651 (1974). Moreover, "the intentional governmental suppression of evidence useful to the defense at trial will mandate a virtual automatic reversal of a criminal conviction." United States v. Stofsky, 527 F.2d 237, 243 (2d Cir. 1975).

Mr. Aguiar's entire court proceedings after his 2009 arrest were conducted under fraudulent pretenses. As detailed above, see pp.4-9 of this petition, the government knowingly and intentionally destroyed Corp Ten's original, authentic, and accurate GPS data and replaced the destroyed evidence with its own version of false GPS-related evidence used to support its Title III wiretap warrants consisting of 351 pages of spreadsheet documents detailing GPS units allegedly used by the DEA and GPS tracking data. See id. Mr. Aguiar unknowingly and unwillingly lost his due process right to seek suppression of all of the direct and derivative GPS-related evidence that the government destroyed and covered up before, during, and after his trial. But for his FOIA action, Mr. Aguiar would never have known about neither the government's fraud on the courts nor his having been deceived by its intentional misconduct.

In his 2015 Section 2255 motion, Mr. Aguiar raised pro se-articulated IAC claims in the district court suggesting that the government violated the rules of discovery and evidence, Brady v. Maryland, and the due process and confrontation clauses of the Fifth and Sixth Amendments, see ECF 723-1, during the time that his FOIA action was ongoing. The government's court-filed oppositional response falsely stated:

> In advance of trial, the government provided the latitude and longitude coordinates for Aguiar's vehicles as generated by the GPS devices....The software used by the DEA merely sends the GPS generated latitude and longitude coordinates to Google maps and directs Google maps to plot the coordinate on a map...It was not novel or complicated and THE SOFTWARE DID NOT INDEPENDENTLY GENERATE ITS OWN GPS COORDINATE...AGUIAR RECEIVED ALL OF THE RAW DATA FROM THE GPS DEVICES AND HAS NOT, AND CANNOT, ESTABLISH THAT RECEIPT OF THE SOFTWARE WOULD HAVE IMPACTED THE RESULT OF HIS TRIAL.

ECF 747 at 31-32 n.19 (emphasis added). This, was intentional fraud on the habeas court. See ECF 807-1, Attachment 2, Paragraphs 16-17 (declaration of top level DEA official revealing that the private company's server and software was used to read and record Mr. Aguiar's 2009 movements -- movement data that the government destroyed in or about August 2010).

In November 2015, Mr. Aguiar received documents in his ongoing FOIA action that supported his suspected GPS-related IAC claims. Mr. Aguiar moved the district court: to supplement his IAC claims, see ECF 756; to appoint counsel to investigate, see ECF 735; and to strike Agent Carter's fraudulent testimony and all tainted direct and derivative GPS-related evidence. See ECF 757. In its opposition, the government continued its fraud on the habeas court by stating:

> Aguiar has not, and cannot, establish that the government suppressed information about a GPS tracking 'software program' or that the information would have been favorable to him...Aguiar fails to prove that...the DEA even had such a program...[and] that the so-called mapping software used to plot the coordinates generated by the GPS device[s] on Aguiar's vehicles was simply Google maps, not some proprietary program used by the DEA or any so-called contractor employed by the DEA.

ECF 763 at 2-3; but see ECF 807-1, Attachment 2. Undeniably, the government continued "its fraud perpetrated by the officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." Hadges, 48 F.3d at 1325. Indeed, the court's impartial task of adjudging this case was impeded by the the fraud on the habeas court as evidenced by the R & R's adverse ruling that "beyond affirming the EXISTENCE of the contractor's service, I cannot discern whether such a service was used in Aguiar's case." ECF 767 at 74 (emphasis in the original); but see ECF 807-1, Attachment 2. Moreover, prosecutors' fraud caused the R & R rejecting Mr. Aguiar's "unproven" claims surrounding Agent Carter's false testimony. See ECF 767 at 74-75.

Here, Mr. Aguiar has established by clear and convincing evidence that officers of the court committed fraud on the defense; the trial court; the appeal court; the Supreme Court; and the habeas court before, during, and after Mr. Aguiar's trial about GPS-related evidence and all direct and derivative evidence must be excluded as fruit of the poisonous tree.

3. BINDING LEGAL AUTHORITY ENTITLES PETITIONER THE OPPORTUNITY OF A TAINT HEARING

The aforementioned clear and convincing evidence shows that the government committed fraud on the court surrounding the GPS-related evidence. In Mr. Aguiar's criminal case, the Second Circuit held on appeal that the search of Mr. Aguiar's iPhone was harmless. Aguiar, 737 F.3d at 263. Concluding that the GPS evidence in Mr. Aguiar's case was NOT harmless, the court held that the "data gathered by the GPS [units in Mr. Aguiar's 2009 criminal investigation] aided law enforcement in identifying avenues of investigation, supported applications for wiretap warrants, and led investigators to other evidence collected and introduced at trial...[,]" United States v. Aguiar, 737 F.3d 251, 254 (2d Cir. 2013)(internal quotation marks and citation omitted), and proceeded to the merits of the DEA's search of Mr. Aguiar's 2009 movements while being simultaneously misled about the means by which the DEA tracked and recorded those movements in its 2009 investigation. Reasonable jurist Judge Sessions has further made clear that the "[GPS] tracking techniques utilized by the DEA [agents] played a fundamental role in the criminal investigation [and that the e]vidence obtained from [the] GPS played a correspondingly significant role in Aguiar's trial and conviction." Aguiar v. Carter, No. 2:17-cv-121, 2018 U.S. Dist. LEXIS 139751 (D. Vt. Aug. 17, 2018).

"Evidence obtained by the exploitation of a primary illegality is regularly excluded under traditional taint analysis as the 'fruit of the poisonous tree.'" Morales, 788 F.2d 883, 885 (citing Wong Sun, 371 U.S. at 487-88). Nor may the government "knowingly use false evidence including false testimony, to obtain a tainted conviction." Alston, 499 F.3d at 147 (internal citations omitted).

"The overwhelming weith of authority favors the view that given a 'primary illegality,' the defendant must be given some opportunity to resolve the issues of taint -- either at a 'full evidentiary hearing' or a trial on the merits." United States v. Vilar, 530 F.Supp. 2d 616, 641 (S.D.N.Y. 2008); United States v. Aguiar, No. 2:09-cr-90, 2016 U.S. Dist. LEXIS 182703 n.13 (D. Vt. Aug. 12, 2016)(accord). "Where a defendant seeks a 'taint' hearing, the question presented is whether the evidence to which the objection is made has been obtained by the exploitations of illegal government conduct." United States v. Mullens, 451 F.Supp. 2d 409, 440 (W.D.N.Y. 2006). "The intentional destruction of evidence relevant to proof of an issue at trial can support an inference that the evidence would have been unfavorable to the party responsible for its destruction." Kronisch v. United States, 150 F.3d 112, 126 (2d Cir. 1998). "[T]he destruction of the[e GPS] evidence cannot be understated in this case. To compel a party who objects to the use of that evidence and go forward with a showing of taint and then to withhold from him the means or tools to meet that burden is to create an absurdity in the law. Huss, 482 F.2d at 47.

Justice calls on this Court to grant this petition and remand this case back to the Second Circuit. Reasonable jurists would disagree with the court's ruling. The standard of a COA was deserving on whether the issue presented here deserves encouragement to proceed further. Both courts below erred by failing to grant Mr. Aguiar a COA on the issue of whether existing precedent required that be given his opportunity to show that direct and derivative GPS evidence tainted a substantial part of evidence introduced at his trial thus validating his Rule 60(b) motion to reopen habeas proceeding. Indeed, Mr. Aguiar has shown that the government violated his rights, the United States Constitution, and countless court rules of the trial, appeal, Supreme, and habeas courts and reasonable jurists of the United States Court of Appeals for the Second Circuit and even Judge Sessions themselves have each concluded that the GPS evidence in this case was material to the DEA's investigation and Mr. Aguiar's 2011 trial and conviction.

B. JURISTS OF REASON WOULD DISAGREE WITH THE DISTRICT COURT'S RULING TO DENY PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING UNDER FEDERAL RULES OF CIVIL PROCEDURE 60(b) TO CONFRONT HIS PRO-SE ARTICULATED RAISED INTEGRATED REVOCATION OF SUPERVISION AND DRUG CONSPIRACY CASE CLAIMS THAT THE HABEAS COURT FAILED TO ADDRESS

Reasonable jurists would debate whether the court wrongly denied granting a COA surrounding the denial of the Rule 60(b) motion advancing a claim that the habeas court failed to confront or resolve Mr. Aguiar's pro se-articulated raised Section 2255 claims that trial counsel provided IAC: (1) by failing to fully investigate and suppress before trial all direct and derivative false and inaccurate GPS evidence; and (2) by not allowing Mr. Aguiar access to this legal documents of both his revocation of supervised release and drug conspiracy cases and failing to perfect Mr. Aguiar's direct appeal to include his revocation of supervised release. See ECF 807-1.

The Tenth Circuit holds that a Fed. R. Civ. P. 60(b) motion alleging a claim that the district court failed to consider a claim raised in a previous 28 U.S.C. Section 2255 petition constitutes a "true 60(b) motion" that attacks a "defect in the integrity of the proceedings" within the meaning of Gonzalez and its progeny. See Spitznas v. Boone, 464 F.3d 1213, 1225 (10th Cir. 2006). Other courts have made similar determinations. See, e.g., Marmolejas v. United States, No. 05 Civ. 10963, 99 Cr. 1048, 2010 U.S. Dist. LEXIS 92070 (S.D.N.Y. Sept. 2, 2010)(concluding that petitioner's claim of fraud on the court and that the court failed to consider several arguments previously advanced in his amended petition attacks the integrity of the proceeding and not the merits of his claims asserts a proper Rule 60(b) claim); In re Hartzog, 444 Fed. Appx 63, 67 n.3 (5th Cir. Oct. 7, 2011)(assuming petitioner's Rule 60(b) motion that the district court failed to rule on certain claims is non-successive and constitutes a proper Rule 60(b) motion); see also United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2019)(finding "[i]f the purported defect did not ripen, until after the conclusion of the previous petition, the later petition on that defect may be non-successive").

1. THE DISTRICT COURT REFUSED TO CONSIDER PETITIONER'S PRO SE-ARTICULATED RAISED GPS-RELATED IAC OF TRIAL COUNSEL CLAIM FOR FAILING TO CONDUCT A PRETRIAL INVESTIGATION AND MOVE THE DISTRICT COURT TO CONDUCT A TAINT HEARING FROM THE GPS EVIDENCE

As detailed above, jurists of reason would disagree with the district court denying Mr. Aguiar's "claims that the Magistrate Judge failed to address certain issues" and that "as to any claims that were not addressed...Aguiar has had ample opportunity to present his arguments to this Court...." Appendix C, p.4. This reasoning is circular. Indeed, Mr. Aguiar has repeatedly advanced these arguments before the court under Rule 60(b) since he first filed in Rule 60(b) motion in 2018. See ECF 792. Mr. Aguiar's Section 2255 motion raised a GPS-related pro se-articulated claim suggesting an IAC claim of both trial and appellate counsel. ECF 723-1 at 92-100. The R & R failed to confront or resolve the IAC of trial counsel claim. See ECF 767 at 68 n.25. Objecting to the R & R, Mr. Aguiar made clear to the district court that his pro se-articulated GPS-related claims raised included IAC of trial counsel. See ECF 776 at 40-51. The objection was ignored. See ECF 780.

Based on the above-cited law and facts, reasonable jurists would disagree with the district court and instead conclude that the unopposed Rule 60(b) motion filed below claiming that the district court failed to address Mr. Aguiar's GPS-related trial counsel IAC claim is a true 60(b) motion. The court below erred in not granting a COA on this issue

2. THE DISTRICT COURT REFUSED TO CONSIDER PETITIONER'S PRO SE-ARTICULATED SECTION 2255 CLAIM THAT COUNSEL FAILED TO ALLOW PETITIONER ACCESS TO HIS LEGAL DOCUMENTS THAT INCLUDED BOTH HIS REVOCATION OF SUPERVISED RELEASE AND DRUG CONSPIRACY CASES AND FAILED TO PERFECT PETITIONER'S APPEAL TO INCLUDE THE REVOCATION OF SUPERVISION CASE

Reasonable jurist would likewise disagree with the district court's flawed reasoning surrounding Mr. Aguiar's claim under Rule 60(b) that the court failed to address his raised Section 2255 pro se-articulated claim that Attorney Williams refused to allow Mr. Aguiar to access his legal documents that included BOTH his revocation of supervised release and drug conspiracy cases and failed to perfect Mr. Aguiar's direct appeal. See ECF 807-1. In fact, Attorney Williams knowingly and intentionally destroyed/withheld Mr. Aguiar's legal files of his criminal cases. See, e.g., Aguiar v. Williams, No. 1042-12-18 CnCv, remanded, 2021 VT 8, LEXIS 13 (Vermont Supreme Court Feb. 19, 2021). To be clear, the district court's improper spontaneous joinder of Mr. Aguiar's revocation of supervised release case to his drug conspiracy case without advance notice at his December 12, 2011 drug conspiracy case sentencing spawned court-created confusion for Mr. Aguiar about how to proceed and aided Attorney Williams's intentional misadvice. Id.

The record shows that Mr. Aguiar's motion to supplement the record made clear to the habeas court that Attorney Williams refused to give Mr. Aguiar requested legal documents of both his revocation of supervision and drug conspiracy cases. See ECF 728. Mr. Aguiar also sought permission to file the revocation of supervised release-related IAC claims past the Section 2255 filing deadline. Id. Notwithstanding this claim, Mr. Aguiar's Section 2255 motion also claimed that Attorney Williams had denied Mr. Aguiar's access to legal documents that included those of his revocation of supervised release case. See ECF 723-1 at 88-92. Mr. Aguiar's pro se-articulated claims explained that Attorney Williams's action to not perfect the appeal prevented Mr. Aguiar from raising his revocation of supervised release issues on direct appeal, see id. at 88, in a pro se capacity or participating in any decision about the direct appeal filed. Id. at 90. Mr. Aguiar articulated that he needed his legal documents that included those of his revocation of supervised release case from Attorney Williams to file a pro se appeal because Attorney Williams intentionally misadvised Mr. Aguiar in 2012 that he could not file an appeal in his revocation of supervised release case and Mr. Aguiar would have perfected his own appeal and filed a pro se appeal. See ECF 723-1 at 91. Mr. Aguiar made clear to the court that Attorney Williams denied his access to his own legal documents from January 2011 and beyond his appeal and told Mr. Aguiar not to speak at sentencing or he would receive a life sentence. See id. at 90.

The R & R, however, did not address the revocation of supervised release-related aspect of Mr. Aguiar's pro se-articulated IAC claim that counsel withheld his revocation of supervised release case documents and failed to perfect Mr. Aguiar's direct appeal, see ECF 767 at 63-68, and stated that there is "no indication that Aguiar would have been permitted to proceed pro se on appeal." Id. at 67. The district court adopted the R & R's incomplete resolution of Mr. Aguiar's IAC claim. See ECF 780.

In his Rule 60(b) motion, Mr. Aguiar fully detailed Attorney William's sinister actions and the habeas court's failure to confront or resolve Mr. Aguiar's previously raised complicated IAC claim on this point, see ECF 807-1, but the district court's nonsensical response simply stated that "as to any claims that weren't addressed [by the habeas court, Mr.] Aguiar has had ample opportunity to present his arguments to this Court." Appendix C, p.4. In sum, jurists of reason would disagree with the court's ruling and could conclude that Mr. Aguiar's Rule 60(b) motion claiming the the habeas court failed to confront, address, or resolve his complicated pro se-articulated Section 2255 claims here is a true Rule 60(b) motion and that his claims deserve encouragement to proceed further. Here, the court below therefore erred by not granting a COA.

C. REASONABLE JURISTS WOULD DISAGREE WITH THE DISTRICT COURT AND FIND THAT ATTORNEY WILLLIAMS PROVIDED PETITIONER INEFFECTIVE ASSISTANCE OF COUNSEL AND COMMITTED FRAUD ON THE COURT

The district court appointed Attorney Williams as counsel in November 2000, see Aguiar, No. 2:00-cr-119, ECF 3, and July 2009, see Aguiar, No. 2:09-cr-90, ECF 47, to represent Mr. Aguiar under the CJA. Mr. Aguiar met the legal standard of a COA to decide whether Attorney Williams provided IAC and whether his claims must be considered in the aggregate. See ECF 807-1.

Mr. Aguiar's pro se articulated unopposed Rule 60(b) motion explained that Attorney Williams failed to adequately investigate his case and and committed fraud on the court at Mr. Aguiar's drug conspiracy case sentencing and sent AUSA Wendy Fuller a 2015 e-mail containing intentional misrepresentations that prosecutors then drafted to oppose Mr. Aguiar's Section 2255 motion that the habeas court relied on over Mr. Aguiar's certified declarations under penalty of perjury. Id.; see also supra.

Additionally, in Aguiar v. Williams, 2021 VT 8, 2021, LEXIS 13 (Feb. 19, 2021), the Vermont Supreme Court held Mr. Aguiar's legal files that Attorney Williams destroyed and/or refused to give Mr. Aguiar belonged to Mr. Aguiar. Id. Therefore, Attorney Williams violated Mr. Aguiar's Constitutional right to his legal documents, i.e., his property under the Fourth Amendment, that counsel withheld and destroyed. Moreover, the habeas court violated Mr. Aguiar's right to due process under the Fifth Amendment to the United States Constitution because in order to consider the merits of Mr. Aguiar's IAC claims in Aguiar, No. 2:09-cr-90, the district court had to first consider the merits of Mr. Aguiar's interdependent IAC claims of Aguiar, No. 2:00-cr-119, ECF 100-1. This Court should grant the writ presented here because the court erred in failing to grant a COA on Attorney Williams's IAC in the aggregate as the claims presented deserve encouragement to proceed further under Supreme Court jurisprudence.

D. JURISTS OF REASON WOULD DISAGREE WITH THE DISTRICT COURT'S RULING TO DISMISS PETITIONER'S CLAIMS RAISED IN HIS UNOPPOSED FEDERAL RULES OF CIVIL PROCEDURE 60(b) MOTION WITHOUT REEVALUATING THE CUMULATIVE EFFECT OF COUNSEL'S ERRORS COMBINED WITH THE NEW EVIDENCE OF THE GOVERNMENT'S FRAUD ON THE COURT AND PETITIONER HAVING EXPUNGED HIS PRIOR CONVICTIONS

Second Circuit and Supreme Court legal authority requires that this Court consider all errors in Mr. Aguiar's case in the aggregate. See Lindstadt v. Keane, 239 F.3d 191, 199 (2d Clr. 2001); Wiggins v. Smith, 539 U.S. 510 (2003); Porter v. McCollum, 558 U.S. 30, 40-42 (2009).

The court wrongly dismissed Mr. Aguiar's Rule 60(b) motion and wrongly faulted Mr. Aguiar for following Attorney Williams's misadvice. See ECF 807-1. Nor did the court properly consider Mr. Aguiar's claims involving clear and convincing prejudicial new evidence of fraud on the court that also warranted a COA in this case in the face of Mr. Aguiar having met the legal threshold for a COA. This Court is asked to intervene and grant a COA in this case in the interest of justice on this issue.

E. PETITIONER MEETS THE LEGAL STANDARD OF A COA TO CONSIDER THE MERITS OF HIS PRO SE-ARTICULATED SECTION 2255 CLAIM OF CONFLICT OF INTEREST OF COUNSEL THAT THE DISTRICT COURT AVOIDED DECIDING OR INVESTIGATING AND WHETHER ITS FAILURE TO INVESTIGATE VIOLATED BINDING CIRCUIT AUTHORITY IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b)

Under the Sixth Amendment, if a defendant has a constitutional right to counsel, he also has a constitutional right to representation that is free of any conflict of interest. Wood v. Georgia, 450 U.S. 261, 271 (1981). "[D]efense attorneys have the obligation, upon discovering a conflict of interests, to advise the court at once of the problem." Holloway v. Arkansas, 435 U.S. 475, 485-86 (1978)(internal citation and quotation marks omitted).

A presumption of prejudice under Cuyler v. Sullivan, 466 U.S. 335 (1980), is appropriate if counsel actually represented conflicting interests and the "actual conflict of interest adversely affected his lawyer's performance." Id. at 348. "[A] 'significant conflict of interest arises' when an attorney's 'interest in avoiding damage to his own reputation' is at odds with his client's 'strongest argument-i.e., that his attorneys had abandoned him.'" Christeson v. Roper, 574 U.S. 373, 378 (2015)(quoting Maples v. Thomas, 564 U.S. ___, ___, n.8, 132 S. Ct. 912, 925 n.8 (2012)(second alteration in original).

Moreover, "where a defendant's [IAC] claim is based on an alleged conflict of interest, a defendant is entitled to a presumption of prejudice if he can demonstrate that his attorney labored under an actual conflict of interest and the actual conflict of interest adversely affected his lawyer's performance. United States v. Davis, 239 F.3d 283, 286 (2d Cir. 2001)(internal citation and quotation marks omitted).

"When the court is sufficiently apprised of even the possibility of a conflict of interests, the court...has an inquiry obligation." United States v. Levy, 25 F.3d 147, 153 (2d Cir. 1994). "To show a lapse in representation, a defendant need not demonstrate prejudice - that the outcome of [the] trial would have been different but for the conflict - but only that some other plausible alternative defense strategy or tactic might have been pursued but was not and that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests." Amiel v. United States, 209 F.2d 195, 199 (2d Cir. 2000).

Here, the Second Circuit erred by not granting Mr. Aguiar a COA. Indeed, multiple courts cited above have held claims that the habeas court failed to address a previous Section 2255 claim is a true Rule 60(b) motion. In this case, the habeas court did not confront, address, or resolve Mr. Aguiar's pro se-articulated Section 2255 conflict of interest claim nor did the court investigate this suggested claim, see ECF 723-1 at 88-93; 728, as required by Levy, 25 F.3d 147, despite Mr. Aguiar's objections to the R & R clarifying this claim. See ECF 776 at 33; 36. Indeed, reasonable jurists could debate that Mr. Aguiar's Rule 60(b) motion was beyond the scope of Rule 60(b) as reasoned by the district court. Appendix B; C.

In his amended Rule 60(b) motion, see ECF 807-1, Mr. Aguiar asked the district court to revisit grounds of the habeas proceeding because the court failed to read, address, confront, or resolve his very complicated and integrated revocation of supervised release and drug conspiracy case-related pro se claims that his Section 2255 motion had suggested including that counsel operated under a conflict of interest. See id. Mr. Aguiar's Rule 60(b) motion directed the district court's attention to the fact that Attorney Williams's previous IAC in Aguiar, No. 2:00-cr-119, created an obvious conflict of interest compromising counsel's 2009-2014 CJA representations of Mr. Aguiar in both his drug conspiracy and revocation of supervised release cases from the start. See id.; see also Aguiar, No. 2:00-cr-119, ECF 100-1.

Mr. Aguiar's Rule 60(b) motion also informed the district court that his original Section 2255 motion's pro se-articulated conflict of interest claim also included the claim that Attorney Williams improperly hired former Burlington, Vermont police Detective James Brigham as Mr. Aguiar's drug conspiracy case defense investigator IN THIS CASE who had arrested Mr. Aguiar in 2001 and was responsible for Mr. Aguiar's prior 2001 drug conviction used to increase Mr. Aguiar's drug conspiracy case punishment under Section 851 and the Guidelines resulting in the 30 year prison term he now serves. See ECF 807-1 at 4 -5; see also Appendix F. Indeed, Mr. Aguiar had moved the district court to expand the record, see ECF 720; supplement the record, see ECF 728; and appoint counsel in this case, see ECF 735, to help him better articulate and develop his conflict of interest claims given that Mr. Aguiar has mental health illness and other personality disorders including a diagnosed traumatic brain injury and has had to continually rely on other prisoners to fully pursue his rights and present his claims to the courts in a legally coherent form. See, e.g., 2011 PSR, Paragraphs 128-129.

Mr. Aguiar's Rule 60(b) motion also clarified to the district court that his unresolved and unaddressed Section 2255 motion's claim of a conflict of interest included that Attorney Williams committed fraud on the court by telling the district court at Mr. Aguiar's December 12, 2011 sentencing that he had received a copy of Mr. Aguiar's [sealed] August 2009 Massachusetts district court-filed violation of supervised release petition that was imported still filed under seal when he, in fact, had not, see ECF 807-1 at 5-7, and deceived Mr. Aguiar to believe that Attorney Williams had received a copy of Mr. Aguiar's NEVER TRANSFERRED June 2009-filed violation of supervised release petition as detailed inaccurately in the 2011 PSR. Id.; see also 2011 PSR, Paragraphs 110; 118; and p.45. Indeed, Mr. Aguiar's Rule 60(b) motion fully evidenced Attorney Williams's deceitful conduct and conflict of interest and failure to perfect Mr. Aguiar's direct appeal to include appeal issues surrounding his 2001 case that thwarted Mr. Aguiar's relentless diligent efforts to pursue his rights in the courts, see ECF 807-1 at 6-23, and adversely affected how, and the way in which, Mr. Aguiar raised his post-convictions claims that Mr. Aguiar had in fact raised to the district court.

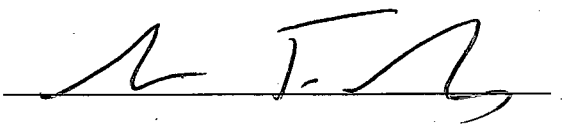
In sum, Mr. Aguiar raised the above-evidenced conflict of interest claim in his Section 2255 motion, but the court never confronted, addressed, or resolved this suggested claim supported by clear and convincing evidence of law and fact. Thus, jurists of reason could disagree that Mr. Aguiar's motion is beyond the scope of Rule 60(b), see Appendix B; C, and the Second Circuit erred by not granting a COA since Mr. Aguiar simply sought resolution of the habeas court's failure to resolve his previously raised conflict of interest claim and the habeas court's failure to investigate this claim as required the court's own holding in Levy. The COA standard was met about whether Mr. Aguiar's conflict of interest claim was raised deserves encouragement to proceed further and whether the district court was required to investigate the pro se-articulated conflict of interest claim that Mr. Aguiar had in fact suggested.

In conclusion, it would be a manifest injustice to not grant Mr. Aguiar's writ presented to the Court here or, in the alternative, at the very least GVR this case back to the Second Circuit to grant a COA. The record below shows that reasonable jurists would debate the reasoning of the district court and the appellate court to reject Mr. Aguiar's request for a COA having met the legal standard as articulated by Justice Sotomayer above.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: February 7, 2024

APPENDIX A