

FROM: 17627104
TO:
SUBJECT: Reconsideration 1
DATE: 11/25/2024 08:18:01 PM

SUPREME COURT OF THE UNITED STATES
WRIT OF CERTIORARI

CASE NO: 24-5427

MICHAEL STAPLETON
Movant

v.

UNITED STATES OF AMERICA
Respondent

MOTION FOR RECONSIDERATION

Comes Now,
Movant, Michael Stapleton hereby files this [REDACTED] Motion for Reconsideration and states the following in support of this motion;

Movant is layman of the law and lacks the tact, decorum or skill to present his case to this Court without creating some deficiencies or some confusion as to how he should have formulated the questions presented and the reasons as to why this Court should have granted this Writ of Certiorari. Movant humbly ask this Court to consider this Motion for Reconsideration pursuant to this Court's ruling in *Haines v. Kerner* 404 U.S. 519, 521 (1972). Movant has reframed the questions presented to conform with Rule 10 which governs consideration for review of Certiorari. The District Court and the Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings in a way that calls for this Court to exercise it's supervisory power, the decisions of the lower Court's also conflicts with this Court's prior rulings that should be corrected.

QUESTIONS PRESENTED

- 1) Is it a Miscarriage of Justice to allow a conviction and sentence to stand that was imposed in violations of the Double Jeopardy Clause?
- 2) Is it a Miscarriage of Justice to allow a conviction to stand on a claim of Actual Innocence?
- 3) Is the evidence sufficient to convict on charges that violates Congressional Intent?
- 4) If two indictments are the same conduct, part of the same common scheme or plan, with similar modus operandi for enhancement purposes, are they also the same for Double Jeopardy purposes?
- 5) Did the District Court violate the Double Jeopardy Clause and this Court's ruling in *Rutledge v. United States* when a special assessment of \$100.00 was imposed on each count of conviction?
- 6) Did the District Court violate this Court's ruling in *Gonzalez v. Crosby* and Movant's rights to Due Process by failing to adjudicate or give a merits analysis to the claims raised under Ground Two of Movant's & 2255 petition?



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- 7) Is a claim considered adjudicated by the District Court if the District Court misconstrued the claim raised and denied relief based on the misunderstanding or misapplication of the Sixth Amendment claim of ineffective assistance of counsel?
 - 8) Did the Court of Appeals violate Movant's rights to Due Process when they declined to issue a Certificate of Appealability where the denial of Ground Two of the & 2255 petition, where the District Court misconstrued the claim raised regarding standby counsel when no such claim was made against standby counsel but in fact was against trial counsel appointed prior to self representation?
 - 9) Did the Eleventh Circuit violate this Court's ruling in *Buck v. Davis* by placing too much of a heavy burden on Movant by adjudicating the claims raised by Movant under Ground Two on the merits at the C.O.A. stage?
 - 10) Did the District Court violate this Court's ruling in *Strickland v. Washington* and *Bobby v. Van Hook* by failing to grant Movant a Sixth Amendment claim of ineffective assistance of counsel at the time he had trial counsel?
 - 11) Is Movant entitled to a claim of ineffective assistance of counsel who filed failed pre-trial Motions, then was subsequently discharged and appointed as standby counsel?
 - 12) Does an indictment invoke the Court's Jurisdiction if the indictment charges Movant under a criminal statute that his conduct did not violate?
 - 13) If Movant's conduct did not violate the charging statute, should the conviction stand?
 - 14) Does it violate the Constitution to allow a conviction to stand on charges that violates Congress Intent?
 - 15) Should the actual innocence exception be applied to a sentence imposed in violation of Congress Intent?
 - 16) Should the actual innocence exception apply to none capital sentencing errors?
 - 17) Should a conviction stand if a defendant aided and abetted a crime that violated Congress Intent?

Movant is invoking the Fundamental Miscarriage exception in this Motion for Reconsideration based on this Court's ruling in *Dretke v. Haley* 541 U.S. 386 (2004). Movant is also invoking the fact that he is actually innocent of the convictions and sentences imposed on counts 25-47. Movant was convicted and sentenced on charges that violated the Double Jeopardy Clause and for crimes that he is actually innocent of because of Congressional Intent. The Constitutional errors in this case resulted in the imposition of an unauthorized conviction and sentence, it also follows that Movant is a victim of a Miscarriage of Justice. *Wainwright v. Sykes* 433 U.S. 72 (1977). It is this Court's responsibility under the U. S. Constitution to ensure that no criminal defendant whether citizen or not is left at the mercies of an incompetent counsel. This Court has held that in cases in which the cause and prejudice standard is inadequate to protect against Fundamental Miscarriage of Justice, the cause and prejudice requirement "must yield to the imperative of correcting a Fundamental Miscarriage of Justice." *Engle v. Isaac* 456 U.S. 107, 135 (1982).

DOUBLE JEOPARDY

Attorney Allen Kaufman was appointed to represent Movant at trial. Allen Kaufman filed pretrial motions to dismiss the 2013 and 2014 indictment. (CR-DE-28-33). The Government said that Allen Kaufman raised the wrong issue, his claim should have been Double Jeopardy, the Government maintained that both indictments correctly charged three separate conspiracies. (CR-DE- 46-99). The District Court agreed with the Government and denied the pretrial motions filed by Allen Kaufman. (CR-DE-96). Attorney Richard Della Fera was appointed to represent Movant at sentencing and on Direct Appeal. Richard Della Fera did not raise the Double Jeopardy issue premised on the 2013 indictment for direct review. Instead, Della Fera raised an enhancement error where the District Court imposed a two-level enhancement for dangerous weapon. The Court of Appeals denied relief on the two-level enhancement of the unchanged September 2013 operation which occurred between the charged December 2012 and October 2013 offenses. The Court of Appeals said that in applying sentencing enhancements, the Court must consider all "relevant conduct that is proven at sentencing by a preponderance of evidence," and "all acts and omissions committed... by the defendant ... that were part of the same course of conduct or common scheme or plan of the offense of conviction."

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The Court of Appeals went on to say that the September 2013 crossings was part of the same "common scheme or plan" to smuggle migrants to the United States as the December 2012 and October 2013 (crimes charged in the 2014 indictment) crossings because these three operations shared, at the very least, a similar modus operandi and common purpose. (CR-DE-323 at 21-22). The Government then switched their positions from their decision pre-trial when they said that both indictments correctly charged separate conspiracies and joined the Court of Appeals calling the conspiracies charged in both indictments the "same conduct" and part of the same "common scheme or plan" in their response to the claims raised by Movant under Ground Four on the 2255 petition. (CV-DE-25 at 18-19). The District Court also joined the Court of Appeals, calling the 2013 indictment relevant conduct. (CV-DE-28 at 23). This position taken by the Court of Appeals made it abundantly clear that the 2013 indictment was the "same conduct" as the crimes charged in the 2014 indictment, also that the charges in the 2014 indictment violated the Double Jeopardy Clause to the 2013 indictment. The Government did not have probable cause to charge Movant with the 2014 indictment because the 2014 indictment was not a separate conduct. Jeopardy attached when the jury was impaneled at the trial of the 2014 indictment. *Serfass v. United States* 420 U.S. 377, 388, 95 (1975).

The Government made no mistakes when they agreed with the Court of Appeals that both indictments charged the "same conduct" and was part of the "same common scheme or plan." This Court has made it clear that the second indictment that charged the same crime as the first indictment, violated the Double Jeopardy Clause, even if the conviction on the first indictment was not had. *Broce v. United States* Supra, 488 U.S. 563 (1989) quoting *Menna v. New York* 423 U.S. 61 (1975).

The Opinion by the Court of Appeals made it clear that Allen Kaufman was ineffective for failing to raise the Double Jeopardy claim premised on the 2013 indictment pre-trial while he was appointed trial counsel and Richard Della Fera was ineffective for failing to raise the Double Jeopardy claim premised on the 2013 indictment on direct appeal. Both attorney's decided to raise non-merits claims pre-trial and on direct appeal. Both attorney's failed to raise the Double Jeopardy claim premised on the 2013 indictment. Movant was prejudiced by counsel's deficient performance because Movant was convicted and sentenced on charges that violates the Double Jeopardy Clause. The miscarriage of justice is manifested, *Dretke v. Haley* 541 U.S. 386 (2004).

Under Ground Two of the 2255 petition, Movant raised the Double Jeopardy claim premised on the 2013 indictment. The District Court misconstrued the claim stating that Movant was directing a Sixth Amendment claim of ineffective assistance of counsel against standby counsel, instead of its intended purpose against trial counsel and denied relief based on the Court's misunderstanding as to who the claim was directed against. Had the District Court not made this error of interpretation, Movant would have been granted relief on the Double Jeopardy claim that is premised on the 2013 indictment. The Court of Appeals, the Government and the District Court has all admitted that "both" indictments were the "same conduct" and part of the "common scheme or plan."

Counts 25-47 also violates the Double Jeopardy Clause. A special assessment of \$100.00 dollars was imposed in violation of the Double Jeopardy Clause. Counts 3-24 are lesser included offenses to counts 25-47 therefore because of the special assessment imposed on each count of conviction, the conviction and sentences imposed must fall. *Rutledge v. United States* 517 U.S. 292 (1996). This Court in vacating the convictions in *Rutledge* said that the special assessment imposed on each count of conviction is an adverse collateral consequence requiring the convictions and sentences to be vacated. *Rutledge*. Id. Movant's case presents the identical error this Court reversed in *Rutledge*, which compels the same result in this case. This claim was mentioned under Ground Three of the 2255 petition in support of the Sufficiency of the Evidence claim. This claim maybe procedurally defaulted, Movant humbly ask this Court to excuse the procedural default in the interest of Justice in order to prevent a Fundamental Miscarriage of Justice.

The Opinion of the Court of Appeals in Movant's direct appeal also made it clear that the District Court abused its discretion when it denied Movant's pre-trial motions for Multiplicity and Duplicitous. (CR-DE-33). Multiplicity invokes the Double Jeopardy Clause, which protects against multiple punishments for the same offense, where the United States Congress has not authorized cumulative punishments for one offense. *United States v. Woener* 709 F.3d 527 (5th Cir 2013). A count in an indictment is Duplicitous if it charges two or more separate and distinct offenses. *Davis v. United States* 2021 U.S. App Lexis 2191 (11th Cir 2021). The decision by the District Court should be reversed because relief should have been granted, the denial of the pre-trial motions to dismiss was in error.

Movant had satisfied the cause and prejudice prong on the Double Jeopardy claim under the *Strickland v. Washington* 466

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U.S. 688 (1984). Under the Strickland test counsel's representation fell "below an objective standard of reasonableness," 466 U.S., at 104 S. Ct. 2053, 80 L. Ed. 2d. 674, and there must be "reasonable probability that but for counsel's professional errors the results of the proceedings would have been different."

ACCTUAL INNOCENCE

Movant is actually innocent of the crimes charged under counts 25-47. Counsel failed to challenge the sufficiency of the evidence used to convict on counts 25-46. Movant challenged the sufficiency of the evidence under Ground Three of the 2255 petition but the District Court denied relief. The District Court said that because Movant aided and abetted the crimes of bringing illegal aliens, Movant could still be found guilty. Movant's conduct never violated the charging statute outlined in counts 25-47. Congress Intent made it impossible for Movant to be convicted for the crimes charged under counts 25-47. The charges are not connected to the conspiracy, this implied that Movant brought the aliens to the United States himself, the entire record of this case is totally void of those facts." The Court of Appeals made it clear when they decided Movants direct appeal by stating that, "the indictment makes it clear that Stapleton was charged with the substantive offenses (counts 25-47) because he personally committed them himself, not because he aided and abetted their commission" (CR-DE-323 at 14) id. Movant never brought or attempted to bring any aliens to the United States. Movant's conduct only amounted to encouraging to induce an alien to enter the United States. Movant should have never been charged with bringing aliens to the United States when the Government was fully aware that other people was arrested for bringing the aliens to the United States, years before Movant was arrested for this crime, the Grand Jury transcripts made this clear (CR-DE 239). The indictment charged Movant under a criminal statute with a conduct that he did not commit.

The law should apply equally to all defendants because the Fifth Circuit Court of Appeals and the D.C. Circuit gave other defendants relief for the identical crimes, for the identical reasons that had identical indictment defects. *United States v. Garcia-Paulin* 627 F.3d 127 (5th Cir 2010) quoting *United States v. Assaddi* 223 F. Supp 2nd 208 (D.C. Cir 2002). If this Court applies the same principles the Enhanc Court held in *United States v. Anaya* 509 F. Supp 287, 297 (S.D. FLA 1980), relief should be granted. The Enhanc Court held that Subsection (a) (1) is directed towards those who were involved in the physical ingress and Subsection (a) (iv) is directed towards those who act as accessories. The concurrent Opinion noted that by adding the offence of encouraging to induce illegal entry, Congress completed it's statutory scheme. *United States v. Anaya* 509 F. Supp 287, 289 (S.D. FLA 1980). In viewing the 2014 indictment of conviction on it's face, it is clear that the indictment violated Congressional Intent.

In applying the principles in *Anaya*, *Assaddi*, and *Garcia-Paulin* it becomes abundantly clear that Movant is actually innocent of any charges beyond counts 3-24. Counts 25-46 gave Movant a sentence of ten years with a mandatory minimum of five years. Count 47 gave Movant an 11 level enhancement. In the absence of the charges outline in counts 25-47 that violated Congress Intent the sentence imposed would have been 12-16 months at level 12 as a first time offender, Movant is now serving a sentence of of 262 months handed down in violation of the Constitution. Movant is actually innocent of the bringing charges, Movant's conduct did not violate the charging statute, further the record in this case is void of any facts to support convictions or sentences imposed. The Miscarriage of Justice exception is manifested, *Dretke v. Haley*. Id. The decision of the District Court should be reversed because Movant's conduct did not violate the charging statutes outlined in counts 25-47.

DUE PROCESS VIOLATIONS

The District Court created a defect in the integrity of the & 2255 petition in violations of this Court's ruling in *Gonzalez v. Crosby* 545 U.S. 524 (2005). The District Court misconstrued the claims raised by Movant under Ground Two. Movant raised a claim that "trial counsel" was ineffective for failing to challenge the sufficiency of the indictment on the grounds that the indictment Failed to State an Offense, violated Congress Intent, had a Jurisdictional defect and violated the Double Jeopardy Clause based on the 2013 indictment. The District Court in error misconstrued the claims raised and assumed that Movant was raising a Sixth Amendment claim against standby counsel and himself, instead of it's intended purpose of being direct against Allen Kaufman when he was appointed trial counsel. This error by the District Court lead the District Court not to adjudicate or give a merits analysis to the four substantive claims raised by Movant under Ground Two. The District Court created a defect in the integrity of the proceedings when it denied relief without giving a merits analysis or adjudicating the claims raised under Ground Two, essentially shutting Movant out of Court without any adjudication on the claims raised. Id.

Movant has made valid Sixth Amendment claims under Ground Two that can give Movant all the relief he is entitled to if this case is sent back for the District Court to resolve the claims that the District Court misunderstood and failed to adjudicate on the merits. This case compels the same results this Court extended in *Dretke*. Every claim that Movant is complaining about was left unresolved under Ground Two, and should be resolved by the District Court in the first Instance, *Gonzalez v. Crosby*. Id. Movant is being denied Due Process of law on the unadjudicated claims that the District Court misconstrued.

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TO:

SUBJECT: Reconsideration 3

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Movant timely filed a request for a Certificate of Appealability, (COA). The Court of Appeals denied the request for COA in violation of this Courts ruling in *Buck v. Davis* 580 U.S. 137 (2017). In the denial of the request for COA on the claims raised under Ground Two, the Court of Appeals said that there was no Sixth Amendment right to standby counsel. The Court of Appeals exceeded the scope of the COA analysis. The COA statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and, if so, an appeal in the normal course. 28 U.S.C. 2253. At the first stage, the only question is whether the applicant has shown that jurist of reason could disagree with the District Court's resolution of the Constitutional claim or... could conclude the issues presented are adequate to deserve encouragement to proceed further. *Id.*

In Movant's case the Court of Appeals denied the request for COA based on claims not supported by the record in this case. No such claim exists where Movant was directing a Sixth Amendment claim of ineffective assistance of counsel against standby counsel or himself. The Court of Appeals has joined the District Court in shutting Movant out of Court without any adjudication of the four substantive claims raised by Movant under Ground Two. This Court has held that when the District Court denies a prisoner's habeas corpus petition on procedural grounds without reaching the underlying federal constitutional claims, a COA ought to issue-and an appeal of the District Court's order might properly be taken. *Slack v. McDaniel* 529 U.S. 473 (2000). The Court of Appeals conclusion was wrong because the Court of Appeals essentially decided an appeal without jurisdiction by stating that there was no Sixth Amendment right to standby counsel, where no such claims existed. The question for the Court of Appeals should not have been whether Movant raised a Sixth Amendment claim against standby counsel or himself, it should have been whether jurist of reason could debate the fact that the District Court reached it's conclusion in error because the words standby counsel does not exist in any part of the 2255 petition or supporting Memorandum of Law. The Court of Appeals accepted the decision that was made by the District Court in error and compounded the problem by justifying the District Court's error to deny the request for COA. The COA should have been granted based on the District Court's error in law or fact, because the denial of Grounds Two and Three were debatable or wrong.

Movant has demonstrated valid claims of a denial of his Sixth Amendment rights to counsel. The Opinion made by the Court of Appeals in Movant's direct appeal made it clear that Movant is in prison in violation of the Double Jeopardy Clause. It is clear that Movant was convicted on charges that violated Congress Intent and further, because of Congress Intent, Movant was convicted and sentenced on charges under a criminal statute that his conduct did not violate. Movant was prejudice by counsel's deficient performance.

The record conclusively shows that Movant had trial counsel so he is entitled to a claim of ineffective assistance of counsel at the time he had counsel. *Bobby v. Van Hook* 588 U.S. 130 (2009) quoting *Strickland v. Washington* 466 U.S. 688 (1984). This was also confirmed by the Government to the claims raised by Movant under Ground Four of the 2255 petition. (CV-DE-25 at 18-19). The Government said that Movant was raising a Sixth Amendment claim against Allen Kaufman "prior" to being appointed as standby counsel, the Government also quoted the failed pre-trial motion filed by Allen Kaufman. (CR-DE-33).

Bearing in mind that this Court is not in the business of correcting errors of the lower Courts, it is the duty of this Court to ensure the fair administration of Justice and to protect the Constitution of the United States. The question here is, would this Court reconsider the denial of the Writ of Certiorari in order to protect the Constitution? A sentence was imposed for a criminal conduct, under a criminal statute where the evidence was insufficient to convict. This is the kind of Constitutional violations that this Court is at duty to protect. The fundamental fairness ought to protect the outcome of this case. Lack of evidence supporting a conviction of a criminal offense and a violation of Double Jeopardy Clause is a violation of Due Process of the Federal Constitution's Fifth and Fourteenth Amendment. Due Process requires proof of each element of a criminal offense beyond reasonable doubt. *re Winship* 397 U.S. 358 (1970). In this case the District Court did not prove each element of the criminal offense, the record is totally void of any facts to support the convictions and sentences imposed on counts 25-47.

Movant prays that this Court reconsider the denial of the Writ of Certiorari and grant this Motion for Reconsideration for all of the above listed reasons.

Respectfully Submitted,

Dated, November, 26th, 2024

TRULINCS 17627104 - STAPLETON, MICHAEL - Unit: PEM-E-S

Sign 
Michael Stapleton
17627104

TRULINCS 17627104 - STAPLETON, MICHAEL - Unit: PEM-E-S

FROM: 17627104

TO:

SUBJECT: Grounds For Relief

DATE: 11/25/2024 02:32:51 PM

UNITED STATES SUPREME COURT
WRIT OF CERTIORARI

CASE NO: 24-5427

MICHAEL STAPLETON
Movant

v.

UNITED STATES OF AMERICA
Respondent

GROUND'S FOR RELIEF

Movant, Michael Stapleton hereby certify and declare under the penalty of perjury that this petition for rehearing presents new questions of law with some substantial grounds not previously presented.

GROUND'S INCLUDED TO BE CONSIDERED

- 1) Violation of Movant's Fifth Amendment rights to be free from Double Jeopardy
- 2) Actual Innocence
- 3) Fundamental Miscarriage of Justice Exception
- 4) Violation of Movant's Fifth and Fourteenth Amendment rights to Due Process that requires proof of each element of the criminal offense beyond reasonable doubt.

Declared this date, November, 26th, 2024.

Signed


Michael Stapleton

17627104

TRULINCS 17627104 - STAPLETON, MICHAEL - Unit: PEM-E-S

FROM: 17627104

TO:

SUBJECT: Certificate of Good Faith

DATE: 11/25/2024 06:23:00 PM

UNITED STATES SUPREME COURT
WRIT OF CERTIORARI

CASE NO: 24-5427

MICHAEL STAPLETON

Movant

v.

UNITED STATES OF AMERICA

Respondent

CERTIFICATE OF GOOD FAITH

Movant, Michael Stapleton hereby submit this Certificate of Good Faith and states the following;

Movant, Michael Stapleton hereby certify and declare under the penalty of perjury that this petition for rehearing is submitted in good faith and is not to delay any proceedings.

Declared this date, November, 26th, 2024.

Sign


Michael Stapleton
17627104

TRULINCS 17627104 - STAPLETON, MICHAEL - Unit: PEM-E-S

FROM: 17627104

TO:

SUBJECT: Certificate of Service

DATE: 11/25/2024 06:23:18 PM

CERTIFICATE OF SERVICE

I Michael Stapleton do certify that on November, 26th, 2024 I sent a copy of the Motion for Reconsideration via the United States Postal Service using certified mail to the following;

United States Supreme Court
1 1st ST NE
Office of the Clerk
Washington D.C. 20543

Solicitor General
950 Pennsylvania AVE NW
Room 5614
Washington D.C. 20530

Certified this date, November, 26th, 2024.

Signed: 

Michael Stapleton
17627104

