

24-6478

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
WRIT OF CERTIORARI

Supreme Court, U.S.
FILED

JAN - 9 2025

OFFICE OF THE CLERK

MICHAEL STAPLETON — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL STAPLETON
(Your Name)

P.O. BOX 1000
(Address)

PETERSBURG V.A. 23804
(City, State, Zip Code)

N/A
(Phone Number)

RECEIVED
JAN 23 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

- 1) Where the District Court denied Movant's 2255 petition on procedural grounds, did the Court of Appeals violate Movant's rights to Due Process and this Court's ruling in Slack v. McDaniel by failing to grant the request for COA from the denial of the Rule 60(b) Motion?
- 2) Where the District Court created a defect in the integrity of the 2255 petition when it failed to give a merits analysis or adjudicate the (4) substantive claims of ineffective assistance of counsel under Ground Two, did the Court of Appeals violate Movant's rights to Due Process and this Court's ruling in Gonzalez v. Crosby by failing to grant a COA on a timely filed Rule 60(b) Motion?
- 3) Where the Court of Appeals held in Clisby v. Jones, en banc that the District Court must resolve all claims of constitutional issues prior to granting or denying relief, did the Court of Appeals violate Movant's rights to Due Process and the Stare Decisis Doctrine by granting countless other defendants request for COA on a Clisby error but decline to grant Movant's request for COA on the same issue?
- 4) Does it violate the Constitution for the District Court and the Court of Appeals to allow a conviction to stand on an indictment that Failed to State an Offense?
- 5) Is Movant entitled to a claim of ineffective assistance of counsel that filed failed pre-trial motions 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 a previous indictment?
- 6) Does it violate the Constitution for the District Court and the Court of Appeals to allow a conviction to stand that violated Congress Intent?
- 7) Does the District Court violate Movant's Sixth Amendment right to counsel by failing to grant Movant a claim of ineffective assistance of counsel who filed failed pre-trial motions then was subsequently discharged and

appointed as standby counsel?

- 8) Where the Court of Appeals said that the two indictments in Movant's case was the "same conduct" part of the same "common scheme or plan" with the "same modus operandi" and "common purpose" for enhancements purposes, are the two indictments also the same for Double Jeopardy purposes?
- 9) Does an indictment invoke the Court's jurisdiction if it charges Movant with a specific conduct under a criminal statute that Movant's conduct did not violate?
- 10) If the Court of Appeals, the Government and the District Court all agreed that the 2013 and 2014 indictment used in this case were the "same conduct" part of the same "common scheme or plan" with the "same modus operandi and common purpose, does Movant have a valid Double Jeopardy claim?
- 11) Is it a Miscarriage of Justice to allow a conviction to stand on a fatally defective indictment that Failed to State an Offense, violated Congress Intent, had a Jurisdictional defect and violated the Double Jeopardy Clause?
- 12) Where Movant challenged a defect in the integrity of the 2255 proceedings in the filing of a timely Rule 60(b) motion and the District Court denies relief, did the District Court violate Movant's rights to Due Process by using claims in Grounds One to deny relief on the claims raised under Ground Two when the two claims are separate and distinct?
- 13) Is a claim considered resolved if the District Court misconstrued the Sixth Amendment claim and who it was directed against or applied incorrect facts to adjudicate the misconstrued claim, is that claim considered resolved?
- 14) Did the District Court violate this Court ruling in Bobby v. Van Hook and in Strickland v. Washington by failing to grant Movant a Sixth Amendment claim of ineffective assistance of counsel at the time Movant had appointed counsel?

LIST OF PARTIES

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

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

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4, 5, 6
REASONS FOR GRANTING THE WRIT	7 - 20
CONCLUSION	20

INDEX TO APPENDICES

APPENDIX A MANDATE OF THE COURT OF APPEALS

APPENDIX B 2013 INDICTMENT

APPENDIX C 2014 INDICTMENT

APPENDIX D ORDER OF DISMISSAL OF 2013 INDICTMENT

APPENDIX E ORDER ON RULE 60(b) MOTION

APPENDIX F ORDER ON RULE 59(e) MOTION

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGES</u>
Al Douglas Wordy v. United States 2023 U.S. App Lexis 2826 (11th Cir 2023).	17
Bobby v. Van Hook 588 U.S. 130 (2009)	7,9,20
Booner v. City of Pritchard 661 F.2d 1206, 1209 (11th Cir 1981)	14
Broce v. United States 488 U.S. 563 (1989)	15
Bryant v. Warden 2022 U.S. App Lexis 3587 (11th Cir 2022)	12
Buck v. Davis 580 U.S. 137 (2017)	7,8
Clisby v. Jones 960 F.2d 925 (11th Cir 1992)	7,11,12
Cotton v. United States 535 U.S. 625, 630 (2002)	17
Gonzalez v. Crosby 545 U.S. 524, 162 (2005)	4,7,10,19,20
Jones v. United States 2024 U.S. App Lexis 4629 (11th Cir 2024)	12
Mayer v. United States 2022 U.S. App Lexis 35840 (11th Cir 2022)	12
Lonchar v. Thomas 517 U.S. 314, 324 (2000)	20
Long v. United States 626 F.3d 1167, 1291 (11th Cir 2020)	11
McCoy v. United States 266 F.3d 1245, 1249 (11th Cir 2001)	17
Menna v. New York 423 U.S. 61 (1975)	15
Michael Harding v. United States 2024 U.S. App Lexis 2926 (11th Cir 2024)	18
Muscarello v. United States 524 U.S. 125, 128 (1988)	18
Peterson v. Secretary of Dept of Corr 676 Fed. App Lexis 827 (11th Cir 2017)	12
Rhode v. United States 583 F.3d 1289, 1291 (11th Cir 2009)	11
Russell v. United States 369 U.S. 749, 765 (1962)	12,13
Senter v. United States 983 F.3d 1289 (11th Cir 2020)	11
Serfass v. United States 420 U.S. 377, 388 95 (1975)	15
Slack v. McDaniel 529 U.S. 473, 146 (2000)	4,7,8,12,20
Stapleton v. United States 143 S. Ct. 2693 (2023)	6

<u>CASES</u>	<u>PAGES</u>
Strickland v. Washington 466 U.S. 688 (1984)	7,9,20
Williams v. United States 2020 U.S. App Lexis 29600 (11th Cir 2020)	12
United States v. Adams 961 F.2d 505, 509 (5th Cir 1992)	13,18
United States v. Anaya 509 F. Supp 287, 289 (S.D. FLA 1980)	13,18,20
United States v. Assadi 223 F. Supp 2nd 208 (D.C. Cir 2002)	18
United States v. Boatright 588 F.2d 471 (5th Cir 1979)	13
United States v. Bobo 344 F.3d 1076, 1083 (11th Cir 2003)	12
United States v. Cotton 535 U.S. 625, 630 (2002)	17
United States v. Critzar 951 F.2d 306 (11th Cir 1992)	12
United States v. Garcia-Paulin 627 F.3d 127 (5th Cir 2010)	14
United States v. Harding 104 F. 4th 1291 (11th Cir 2024)	6
United States v. Peter F.3d 709, 713 (11th Cir 2002)	17
United States v. Sanchez 878 F.2d 1163 (9th Cir 1989)	13
United States v. Stapleton 39 F. 4th 1320 (11th Cir 2022)	6

STATUTES AND RULES

28 U.S.C.S 2255	6,8,9,10,11,19
28 U.S.C.S (c)	4
Rule 60(b)(1)(4)	4,5,6,8,10,11,17,19
Rule 59(e)	10,11
18 U.S.C. 1327	5
18 U.S.C 1182 (a)(2)	5
18 U.S.C.S 2	5
18 U.S.C.S. 3231	17
1324 (a)(1)(A)(v)(I)	4,5
1324 (a)(1)(A)(iv)	4,5
1324 (a)(2)(B)(ii)	5

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

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 N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

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

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

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

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

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December, 19, 2024

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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

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

For cases from state courts:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) The Fifth Amendment Right;

No person shall be held to answer to a capital, or otherwise infamous crime, unless on the presentment of an indictment of the Grand Jury; nor shall any person be subject for the same offense to be twice placed in jeopardy of life and limb; nor shall be compelled in any criminal case to be witness against himself; nor deprived of life and liberty, without Due Process of Law; nor shall private property be taken for public use, without just compensation.

2) Sixth Amendment Right;

In all criminal prosecutions, the accused shall enjoy the right to have a speedy trial by impartial jury of the state and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature of the accusation; to be confronted with the witnesses against him: to have compulsory process for obtaining in favor, and to have assistance of counsel for his defense.

STATEMENT OF THE CASE

Twenty-five years ago this Court held in Slack v. McDaniel that 1) when a federal habeas corpus petitioner sought to initiate an appeal of the dismissal of a petition after April 24, 1996 the AEDPA effective-date the petitioner's right to appeal was governed by the Certificate of Appealability (COA) provisions of the AEDPA (28 U.S.C.S. (c)); 2) when the District Court denied a state prisoner's habeas corpus petition on procedural grounds without reaching the prisoner's underlying federal constitutional claims, a COA ought to issue-and an appeal of the District Court's order might properly be taken-if the prisoner showed, at least, that jurist of reason would find it debatable both whether (a) the petition stated a valid claim of a denial of a constitutional right, and (b) the District Court was correct in it's procedural ruling; and 3) in this case at hand the District Court was correct in it's procedural ruling. Slack v. McDaniel 529 U.S. 473, 146 (2000).

Twenty years ago this Court decided Gonzalez v. Crosby where this Court held that a Rule 60(b) motion that attacks a defect in the integrity of the habeas corpus petition, is a true Rule 60(b) motion, further that Rule 60(b) of the Federal Rules of Civil Procedures preserves parties opportunity to obtain vacatur of a judgement that is void for lack of subject matter jurisdiction-a consideration just as valid in federal habeas corpus cases as in any other civil cases since absence of jurisdiction altogether deprives a Federal Court of the power to adjudicate the rights of the parties. Gonzalez v. Crosby 545 U.S. 524, 162 (2005)

This case presents questions on whether the District Court and the Court of Appeals violated Movant's rights to Due process and clearly established laws when the District Court failed to grant relief on the Rule 60(b) motion and whether the Court of Appeals denial of the request for COA was an error?

Movant was initially indicted in Case No: 13-80201-cr-UNGARO with a conspiracy beginning in September 2013 and ending on September, 19, 2013. The indictment charged Movant with one count of conspiracy of encouraging to induce an illegal alien into the United States in violation of Title 8 United States Code, Section 1324(a)(1)(A)(iv); all in violation of Title 8, United States Code, Section 1324 (a)(1)(A)(v)(I). (Count 1). Twelve counts of encouraging to induce an alien to enter the United States in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv) and Title 18,

United States Code, Section 2. (Counts 2-12). and one count of knowingly aiding and assisting a convicted felon that was inadmissible under Title 8, United States Code, Section 1182(a)(2) in violation of Title 8, United States Code, Section 1327 and Title 18, United States Code, Section 2 (Count 13).

Movant was subsequently charged in a second indictment in Case No: 14-80151-cr-Middlebrooks with two conspiracies premised on the same conduct of encouraging to induce illegal aliens beginning in November 2012 and ending on December 9, 2012, also beginning in October and ending on October, 5, 2013. The indictment charged Movant with two counts of conspiracy to encourage and induce an illegal alien to enter the United States in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv): all in violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I). (Counts 1 and 2). Twenty-two counts of encouraging and inducing an illegal alien to enter the United States in violation of Title 8, United States Code, Section 1324 (a)(1)(A)(iv) and (v)(II). and Title 18 United States Code, Section 2. (Counts 3-24). Twenty-two counts of bringing and attempting to bring illegal aliens into the United States for commercial advantage and private financial gain in violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii) and Title 18, United States Code, Section 2. (Counts 25-46). One count of aiding and assisting a convicted felon to enter the United States in violation of Title 8, United States Code, Section 1182(a)(2), and Title 18, United States Code, Section 1327 and Title 18, United States Code, Section 2. (Count 47).

Years after the captains were arrested on the failed trips while bringing the illegal aliens into the United States, Movant was arrested and extradited to the United States from Frankfurt Germany. Movant was appointed CJA Harry Solomon (CR-DE-8). Harry Solomon was eventually discharged for using scare tactics trying to get Movant to plead guilty. (CR-DE-40). Allen Kaufman was appointed as trial counsel, Allen Kaufman filed failed pre-trial motions to dismiss the 2013 and 2014 indictments (CR-DE-33). Allen Kaufman was discharged and appointed as standby counsel on December 18th 2018.

After a three day trial the jury convicted Movant on all counts of the 2014 indictment, (CR-DE-141). Attorney Richard Della Fera was appointed to represent Movant at sentencing and on Direct Appeal on May, 23, 2019. Movant was sentenced to (262) months at sentencing, (CR-DE-278).

Movant timely filed an appeal, the Court of Appeals affirmed on all grounds raised. United States v. Stapleton, 39 F.4th 1320 (11th Cir 2022). Writ of Certiorari was also denied, Stapleton v. United States, 143 S. Ct. 2693 (2023).

Movant timely filed a 2255 petition to vacate in case No: 23-81082-cv-Middlebrooks. Movant raised four grounds for relief; Ground One: Prosecutor's Misconduct, Ground Two: Trial Counsel was ineffective for failing to challenge the sufficiency of the indictment on the grounds that the indictment, Failed to State an Offense; had a Jurisdictional defect; violated Congress Intent and the Double Jeopardy Clause based on the 2013 indictment. The District Court denied relief on all grounds raised. (CV-DE-28). The District Court declined to issue a Certificate of Appealability. Movant timely filed a request for a COA, the Court of Appeals denied the request for COA on June, 27, 2024. Movant timely filed a petition for Writ of Certiorari, the Writ was denied on October, 15, 2024.

Movant timely filed a Rule 60(b) Motion, (CV-DE-46). Movant filed the Rule 60(b) Motion after the District Court failed to adjudicate the (4) substantive claims raised under Ground Two which created a defect in the integrity of the habeas corpus petition. The District Court denied the Rule 60(b) Motion without correcting the defect in the integrity of the habeas corpus petition, (CV-DE-49). In the Order denying relief of the Rule 60(b) Motion the District Court used Grounds One as a means to say that he adjudicated Ground Two, this was an error. Ground One presents claims of Prosecutor's Misconduct and Ground Two presents a claim of ineffective assistance of counsel who failed to file pre-trial motions to challenge the sufficiency of the indictment, Ground One and Ground Two presents claims that are separate and distinct. The District Court abused its discretion when its ruling rest upon clearly erroneous fact findings, an errant conclusion of law, or an improper application of law to fact. United States v. Harding 104 F. 4th 1291 (11th Cir 2024).

Movant timely filed a request for COA, the Court of Appeals joined the District Court with shutting Movant out of Court without any adjudication of the (4) substantive claims raised under Ground Two when it denied the request for COA against clearly established law.

REASONS FOR GRANTING THE PETITION:

- A. To avoid erroneous deprivation of counsel, this Court should review the order of the Court of Appeals that denied the request for COA against clearly established law. Slack v. McDaniel and Gonzalez v. Crosby.
- B. To protect this Courts ruling in Strickland v. Washington and Bobby v. Van Hook where this Court held that a defendant is entitled to a claim of ineffective assistance of counsel at the time he had counsel afforded by the Sixth Amendment.
- C. To prevent a Fundamental Miscarriage of Justice where the District Court and the Court of Appeals is allowing a conviction to stand on a fatally defective indictment where Movant was convicted and sentenced to crimes that Failed to State an Offense, violated Congress Intent, had a Jurisdictional defect and violated the Double Jeopardy Clause based on a previous indictment.
- D. To bring this case inline with the Stare Decisis Doctrine where the Eleventh Circuit granted countless of other defendants COA for a violation of their en banc ruling in Clyby v. Jones but decline to extend or issue a COA on the same issues in this case.
- E. The District Court and the Court of Appeals has so far departed from the usual course of judicial proceedings that calls for this Court to exercise it's judiciary power. The decisions of the lower Courts is in conflict with this Court's rulings.

This Court has held that a litigant seeking a COA must demonstrate that the procedural ruling barring relief is itself debatable among jurist of reason, Buck v. Davis 580 U.S. 137 (2017). This Court may review the denial of a COA by the lower Courts, when the lower Court's deny the COA and this Court concludes that their reason was so flawed, this Court may reverse and remand so that the correct legal

standard maybe applied, Buck v. Davis Id.

The two reasons for the filing of the Rule 60(b) motion was for the District Court to correct the defect in the integrity of the habeas corpus petition and the District Court choose no to do so by denying relief on facts not supported by the record in this case, also to vacate for lack of Jurisdiction.

In Slack v. McDaniel, 529 U.S. 473 (2000), this Court adopted measures that the Court of Appeals should consider when granting or denying the request for COA. Pertinent to this Writ of Certiorari, Movant will only highlight the fact that the District Court denied Ground Two of the 2255 petition on procedural grounds. This Court has held that when a District Court denies relief on procedural grounds a COA ought to issue-and an appeal of the District Court's order might properly be taken if the prisoner showed, at least, that jurist of reason would find it debatable both whether (a) the petitioner stated a valid claim of a denial of a Constitutional right, and (b) the District Court was correct in it's procedural ruling. Id.

The Court of Appeals erred when it denied the request for COA because Movant has stated valid claims of a denial of his Sixth Amendment rights of ineffective assistance of counsel to the claims raised under Ground Two of the 2255 petition where "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 Jusisdictional defect and violated the Double Jeopardy Clause based on the 2013 indictment.

In response to Movant's 2255 petition the Government erred when it said that Movant was raising a Sixth Amendment claim of ineffective assistance of counsel against standby counsel and himself. (CV-DE-25 at 16). Erroneous as it maybe, the Government overlooks the fact that Allen Kaufman filed failed pre-trial motions

to dismiss the 2013 and 2014 indictments. (CR-DE-33). Two pages down in the Government's response to the 2255 petition, the Government then says that Movant was raising a Sixth Amendment claim against Allen Kaufman "prior" to being appointed as standby counsel, the Government even quoted the failed pre-trial motion filed by Allen Kaufman. (CV-DE-25 at 18).

Despite the 2255 petition and supporting Memorandum of Law being totally void of any claims that Movant was raising a Sixth Amendment claim of ineffective assistance of counsel against standby counsel or himself and the conflicting responses by the Government just two pages apart, the District Court sided with the Government and denied the claims raised under Ground Two of the 2255 petition, stating that there was no Sixth Amendment right to standby counsel. (CV-DE-28 at 18-19). The Government was fully aware that Movant was not raising a Sixth Amendment claim against standby counsel, (CV-DE-25 at 18). Id. By agreeing with the Government the District Court created a defect in the integrity of the 2255 petition by failing to adjudicate or give a merits review to the (4) substantive claims raised by Movant under Ground Two.

This Court has held that a defendant 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), the record conclusively shows that Movant had counsel. The District Court clearly violated established law when it denied relief on the claim raised under Ground Two of the 2255 petition and further erred when it denied the Rule 60(b) motion based on Ground One when Movant was challenging the defect in the integrity of the 2255 petition to the claims raised under Ground Two.

The 2255 petition raised (4) grounds for relief. The District Court said that all of the Grounds lacked merit. The District Court went to great lengths to explain how Grounds One, Three and Four lacked merit but when it came to Ground Two the District Court only gave arguments in support of the erroneous claims that is not supported by the record that Movant was not entitled to a Sixth Amendment claim of ineffective assistance of standby counsel, this was a error.

In Gonzalez v. Crosby 545 U.S. 524 (2005), this Court held that a Rule 60(b) motion that attacks a defect in the integrity of the habeas corpus petition, it is a true Rule 60(b) motion, if timely filed, Id.

Movant challenged the defect in the integrity of the habeas corpus petition on the claims raised under Ground Two that the District Court failed to adjudicate under Rule 60(b)(1). Under Rule 60(b)(4) Movant challenged the Jusisdiction of the District Court over the 2255 petition. (CV-DE-46).

In the order denying relief of the Rule 60(b) motion, the District Court stated that Movant raised a Brady claim, alleged that the Government suborned perjury and made improper remarks during closing arguments. The District Court went on to quote a page number in support of it's claims, (id at 1; see DE 1-4). The pages that the Court quoted does not exist and is not supported by the record in this case, nor raised under Ground Two of the 2255 petition. (CV-DE 23-1). The District Court continued by stating that in review of the 2255 petition, reveals that I specifically addressed Movant's claims under Ground Two. (CV-DE-28 at 9-18). It is abundantly clear that in review of (CV-DE-28- at 9-18) the District Court gave a merits review of the claims raised under Ground One not Ground Two. As to the denial of the Jurisdictional claim the District Court said that Movant reiterated the arguments previously raised and rejected by me, quoting (DE 46 at 2). These claims are also not supported by the record in this case. The District Court never considered the Jurisdictional claims under Ground Two nor did the District Court consider it in the fileing of the Rule 60(b)(4) motion. The District Court is considering the Jurisdictional claim for the first time when it denied relief without addressing the Jurisdictional claim. (CV-DE=49). The District Court never considered the Jurisdictional claim under Ground Two..

Movant timely filed a Motion for Reconsideration under Rule 59(e) pointing out to the District all of the errors it made in deciding

the Rule 60(b) motion. (CV-DE-64). The District Court denied the Rule 59(e) motion using the claims raised under Ground One to deny the claims raised under Ground Two, even though these two claims are separate and distinct. Ground One has a claim of Prosecutors Misconduct and Groud Two has a claim of ineffective assistance of trial counsel for failing to challenge the sufficiency of the indictment pre-trial while he was appointed trial counsel.

In Clisby v. Jones 960 F.2d 925 (11th Cir 1992) enbanc, the Eleventh Circuit held that the District Court "must" resolve all claims raised in a habeas corpus petition, regardless if relief is granted or denied, Id. The Court of Appeals said that they will vacate the District Court order denying relief and remand for consideration of the unaddressed claims should the District Court fail to do so, 960 F.2d at 938; see also Rhode v. United States 583 F.3d 1289, 1291 (11th Cir 2009) (applying Clisby to 2255 proceedings).

Under Clisby, an allegation of one Constitutional violation and an allegation of another constitute two distinct claims for relief, even if both claims arise from the same set of operative facts. Michael Harding v. United States 2024 U.S. App Lexis 2926 (11th Cir 2024). Any and all cognizable claims should be included when conducting a merits review. Long v. United States 626 F.3d 1167, 1169 (11th Cir 2020). Consistant with Clisby the District Court must facilitate meaningful appellate review by developing adequate factual record and making sufficient clear findings as to the key issues; Long 626 F.3d 1170. Reformulating and Reframing a Movant's claims is permissible so long as the District Court get to the root of the problem. Senter v. United States 983 F.3d 1289, 1294 (11th Cir 2020).

The Court of Appeals granted a COA in Senter for a Clisby error without Senter establishing a Constitutional violation. The Court of Appeals also granted COA

for countless other defendants for a Clisby error. Jones v. United States 2024 U.S. App Lexis 4629 (11th Cir 2024); Peterson v. Secretary of the Dept. of Corr 676 Fed App 827 (11th Cir 2017); Long v. United States 626 F.3d 1167 (11th Cir 2010); Bryant v. Warden 2022 U.S. App Lexis 3587 (11th Cir 2022); Mayer v. United States 2022 U.S. App Lexis 35840 (11th Cir 2022); Williams v. United States 2020 U.S. App Lexis 29600 (11th Cir 2020). The list goes on and on, too many to list but in Movant's case, the Court of Appeals denied the request for COA on identical issues of a Clisby error.

In order to obtain a COA a defendant must show a denial of a Constitutional right. Slack v. McDaniel 529 U.S. 473, 483 (2000).

For Sixth Amendment purposes, under Ground Two Movant made claims 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.

A) THE INDICIMENT FAILED TO STATE AN OFFENSE AND VIOLATED CONGRESS INTENT:

The sufficiency of a criminal indictment is determined from it's face and not by the facts developed at trial, United States v. Critzar 951 F.2d 306 (11th Cir 1992). When the indictment describes the offense using the statutory language, it must also include enough "facts and circumstances" to "inform the accused of the specific offense... with which he is charged." United States v. Bobo 344 F.3d 1076, 1083 (11th Cir 2003), quoting Russell v. United States 369 U.S. 749, 765 (1962).

Movant is charged in a (47) count indictment herein attached as exhibits. The indictment charged Movant with (2) counts of conspiracy to encourage and induce an alien to enter the United States, (counts 1 and 2). Twenty-two counts of encouraging and inducing an alien to enter the United States, (counts 3-24),

Twenty-two counts of bringing and attempting to bring illegal aliens into the United States for commercial advantage and private financial gain, (counts 25-46) and one count of aiding and assisting a convicted felon to enter the United States (count 47).

Counts 25-47 Fail to State an Offense in which relief maybe granted. Counts 25-47 offers no supporting facts to establish bringing or that Movant aided and assisted a convicted felon to enter the United States. The indictment offers no facts tying counts 25-47 to the conspiracy. United States v. Boatright 588 F.2d 471 (5th Cir 1979), The indictment offers no dates or time when the allege bringing offenses took place as it relates to counts 25-47. The statutory requirements does not cure the indictment deficiencies. An indictment not framed to apprise a defendant with reasonable certainty of the nature of the accusations against him is defective, although it may follow the language of the statute, it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offenses, coming under the general description with which he is charged. Russell v. United States Id. The crimes are not tied to the conspiracy, United States v. Adams 961 F.2d 505, 509 (5th Cir 1992), because of Congress Intent, counts 25-47 cannot stand on it's own. In Anaya the enbanc Court held that subsection (a)(1) is directed towards those who was involved in the physical ingress and subsection (a)(4) is directed towards those who act as accessories. The concurring Opinion noted that by adding the offense of encouraging to induce illegal entry, Congress completed it's statutory scheme by legislating against those who's conduct is not so active as to fall within the prohibitions of bringing. United States v. Anaya 509 F. Supp 287, 289 (SD. FLA 1980). There are no Congressional Intent to pyramid the penalties of offenses that are committed simultaneously. The sentences under (a)(1) and (a)(4) cannot co-exist. United States v. Sanchez 878 F.2d 1163 (9th Cir 1989).

In Booner v. City of Pritchard the Court of Appeals adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October, 1st, 1981. 661 F.2d 1206, 1209 (11th Cir 1981) enbanc.

The Fifth Circuit vacated the conviction of a defendant for the identical reason, that had identical indictment defects that Movant is complaining about.

United States v. Garcia-Paulin 627 F.3d 127 (5th Cir 2010). Garcia-Paulin pleaded guilty bringing illegal aliens to the United States, the Fifth Circuit concluded that the indictment in which Garcia-Paulin pleaded guilty to lacked factual basis to support his conviction, the issues are slightly different but the defects in the indictment are one and the same. The Fifth Circuit rejected the Government's arguments stating that the indictment does nothing more than track the statutory language of the statute. The Fifth Circuit went on to say that there was nothing connecting the bringing charges to the conspiracy.

Based on clearly established law and circuit precedents, it is clear that the indictment in Movant's case is identical to the one in Garcia-Paulin's case and compells the same results. Counsel's performance fell below the standard of reasonableness, Counsel was ineffective for failing to challenge the sufficiency of the indictment pre-trial while he was appointed trial counsel. Movant was prejudiced by counsel's deficient performance because he was convicted and sentenced to crimes that Failed to State an Offense and violated Congress Intent. Plain view of the indictment supports these claims.

B) THE INDICTMENT VIOLATED THE DOUBLE JEOPARDY CLAUSE TO THE 2013 INDICTMENT:

The convictions on the 2014 indictment violated the Double Jeopardy Clause to the 2013 indictment. The Government did not have probable cause to charge Movant with the crimes in the 2014 indictment because the 2014 indictment was no a

separate conduct from the charges charged in the 2013 indictment and should not have been charged. Both indictments charged Movant with (3) separate conspiracies premised on the same conduct of encouraging and inducing an illegal alien to enter the United States. This charging factor violated the Double Jeopardy Clause and the convictions on the 2014 indictment must fall. Broce v. United States Supra, 488 U.S. 563 (1989) quoting Menna v. New York 423 U.S. 61 (1975). Jeopardy attached at the trial of the 2014 indictment after the Jury was empanelled. Serfass v. United States 420 U.S. 377, 388 95 (1975).

Both indictments charged Movant under the same statute. All of the locations were the same as charged in both indictments which all terminated in Palm Beach County in the Southern District of Florida. Movant's sentence was enhanced (4) levels as being the leader of both indictments. There is a substantial overlap of time between the conspiracies charged in both indictments of (16) days. The Eleventh Circuit Court of Appeals said that the 2013 and 2014 indictments were the "same conduct" part of the same "common scheme or plan" with the same "modus operandi" and "common purpose" to smuggle aliens into the United States (CR-DE-323: 24 N 13 at 21-22). The Court of Appeals came to this conclusion when they decided Movant's Direct Appeal because of the enhancement that was derived for the use of the 2013 indictment that was used to enhance Movant's sentence (2) levels for the use of a firearm. This made it abundantly clear that the 2014 indictment violated the Double Jeopardy Clause to the 2013 indictment and further the District Court abused it's discretion when it denied the pre-trial motions to dismiss the 2013 and 2014 indictments for Multiplicity and Duplicity.

The Government told the Court that attorney Allen Kaufman raised the wrong issues, his claims should have been Double Jeopardy. The District Court agreed with the Government and denied the pre-trial motions to dismiss. (CR-DE-96)Id.

Once the Court of Appeals said that the 2113 and 2014 indictment was the same conduct, the Government and the District Court switched their positions and joined the Court of Appeals calling the (3) conspiracies charged in both indictments the same and part of the same common scheme or plan. (CV-DE-25, 18-19) (CV-DE-28 at 23). The PSR also supports the concluding that both indictments charged the same conspiracies. The PSR outlined a sequence of failed trips from the Bahamas to South Florida in almost every month preceding the initial arrest. The Government took two failed trips from the beginning of the conspiracy to the end of the conspiracy creating a substantial overlap and charged it in the 2014 indictment to make it appear as if the conspiracies were separate in a bid to give Movant an increased punishment, once Movant was convicted of the charges in the 2014 indictment the Government then filed a motion to voluntarily dismiss the 2103 indictment. As malicious as it was the 2013 indictment took away the substantial overlap the Government was seeking to achieve. See Order of Dismissal of the 2013 indictment herein attached as exhibits.

Counsel performance fell below the standard of reasonableness because the Government gave counsel the cue that Double Jeopardy was the correct issue to bring against the two indictments and counsel choose not to do so. Movant was prejudiced by counsels deficient performance because he was sentenced to charges in violation of the Double Jeopardy Clause. The Statute of Limitations is (5) years had counsel filed the motion to dismiss for Double Jeopardy violations Movant would not have been in prison today because the Government would have been barred from seeking another indictment because of the passing of the statute of limitations.

c) THE INDICTMENT HAD A JURISDICTIONAL DEFECT:

District Court's has the power to adjudicate all offenses against the laws

of the United States, Title 18 U.S.C. S. 3231. An indictment that charges the defendant with violating a valid Federal statute as enacted in the United States Code is sufficient to invoke the Court's Jurisdiction. An indictment failes to charge a legitimate offense if the defendant could not lawfully be convicted, no matter how validly his factual guilt is established. Al Douglas Wordy v. United States 2023 U.S. App Lexis 2826 (11th Cir 2023). Defects in subject matter Jurisdiction ie, "Courts power to hear a case" are never "forfeited or waived" and they require correction regardless of whether the error was raised in the District Court, United States v. Cotton 535 U.S. 625, 630 (2002). "A Jurisdictional defect is one that strips the Court of the power to act and makes the judgement void from inception". McCoy v. United States 266 F.3d 1245, 1249 (11th Cir 2001).

The Jurisdictional argument was raised in the 2255 petition under Ground Two that the District Court failed to adjudicate or give a merits analysis to. The Jurisdictional argument was raised in the Rule 60(b)(4) motion, the District Court once again has failed to adjudicate or give a merits review. Under the Rule 60(b)(4) motion Movant (only) challenged the Jurisdiction of the Court in the 2255 proceedings, not in the criminal case. Rule 60(b) is not applicable in criminal cases only in habeas corpus petitions. Movant has to explain in the arguments below the events that transpired in the criminal case in order to show this Court how and why the District Court lacked Jurisdiction to adjudicate the 2255 petition.

Movant is making a claim that the indictment failed to invoke the Court's Jurisdiction because the indictment consisted of a specific conduct, that, as a matter of law, Movant could not lawfully be convicted. The Government charged Movant under a criminal statute with a specific conduct but Movant's conduct fell outside of the charging statute. United States v. Peter 310 F.3d 709, 713 (11th Cir 2002).

Movant's conduct did not violated the charging statutes outlined in counts 25-47. The charges are not connected to the conspiracy, United States v. Adams 961 F.2d 505, 509 (5th Cir 1992). This implied that Movant brought the aliens to the United States himself, the entire records including trial are totally void of those facts. Movant never brought or attempted to bring the aliens into the United States, the Grand Jury transcripts made this clear that other people were arrested for bringing the aliens to the United States in both conspiracies charged in the 2014 indictment. (CR-DE-239).

Counts 25-47 are also in violation of Congressional Intent, United States v. Anaya 509 F. Supp 287, 297 (S.D. FLA 1980), en banc. The concurring Opinion noted that by adding the offense of encouraging to induce illegal aliens Congress completed it's statutory scheme and legislated against those who's actions were not so active as to fall within the prohibitions of bringing. In viewing the indictment on it's face it is clear that the indictment violated Congress Intent. Congress intent invalidated counts 25-47, subsequently taking away the Courts Jurisdiction to hear the indictment. In the absence of the crimes not being tied to the conspiracy, as a matter of law, Movant could not lawfully be convicted of the crimes charged in counts 25-47. The conduct the Government alleged fell outside the sweep of the charging statute. Movant's conduct only amounts to encouraging illegal entry not bringing.

The Supreme Court's decision also supports this view. This Court has held that just as the word carry must be given it's ordinary meaning the word bring must be given it's ordinary meaning, Muscarello v. United States 524 U.S. 125, 128 (1988). "Bring" means to convey, carry or cause to come along from one place or another, to escort or accompany, Webster Third International Dictionary (1976), it does not mean to send or launch. Garcia-Paulin, quoting Assadi 223 F. Supp 2nd 208 D.C. Cir 2002). (bringing charges vacate). The bringing charges are invalid.

The Government also made it clear that Movant NEVER brought the aliens to the United States during trial because he stayed safely in the Bahamas while the bringing offenses took place.

Here jurist of reason would find it debatable whether Movant stated valid claims of the denial of his Sixth Amendment right to counsel and jurist of reason would find the District Court's procedural ruling debatable in the denial of the 2255 petition and the Rule 60(b) motion. NONE of the District Court rulings is supported by the record in this case. Movant never raised a claim of ineffective assistance of counsel against standby counsel or himself under Ground Two of the 2255 petition because Ground Two specifically starts with the words "Trial Counsel". Nor was the District Court's ruling in the denial of the Rule 60(b) motion because the record is totally void of any merits analysis of any of the claims raised in the Rule 60(b) motion. Ground One cannot be used to adjudicate Ground Two because these two claims are separate and distinct. The Court of Appeals joined the District Court in shutting Movant out of court with out any adjudication of any of the claims raised under Ground Two in the 2255 petition or the Rule 60(b) motion when it denied the request for COA and in doing so violated Movant's rights to Due Process and clearly established law.

Justice Stevens and Justice Souter dissending.

"Correct procedures requires that the District Court should address the merits of a Rule 60(b) motion in the first instance. Gonzalez v. Crosby Id. The District Court failed to correct a defect in the integrity of the 2255 petition when it used Ground One as a means to say it adjudicated the claims raised under Ground Two. Unfortunately the District Court under estimates the significance of the fact that Movant was effectively shut out of Court without any adjudication of the merits of Movants claims where the District Court's ruling was flatly wrong. This Court has stressed that dismissal of the first habeas corpus petition is a particularly serious matter, for the dismissal denies the petitioner the protections

afforded by the great Writ entirely, risking injury to an important interest in human liberty. Lonchar v. Thomas 517 U.S. 314, 324 (2000); see also Slack v. McDaniel 529 U.S. 473, 483 (2000). The Writ of habeas corpus plays a very valid role in protecting Constitutional rights. Gonzalez v. Crosby 545 U.S. 524 (2005).

The Court of Appeals and the district Court has violated this Court's long standing rulings that this Court took decades to develope in Slack v. McDaniel, Gonzalez v. Crosby, Bobby v. Van Hook and Strickland v. Washington. This case presents an opportunity for this Court to correct the Constitutional violations in this case. Absent some intervention by this Court the Published Opinions and decisions of the District Court and the Court of Appeals will work to undermine the carefully crafted decision of this Court. The Constitutional requirements of Due Process afforded by the Fifth Amendment of the United States Constitution compels that this Court grant this Writ of Certiorari to review the erroneous decisions of the District Court and the Court of Appeals. The Fundamental Fairness ought to protect the out come of this case. The COA should have been granted.

CONCLUSION

For all of the above listed reasons, Movant humbly moves this Court to grant the petition for Writ of Certiorari, and pray that it should be granted.

Respectfully Submitted,



Michael Stapleton 17627104

Dates this January, 09, 2025