

No. 24A301

ORIGINAL

24-6494

FILED

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Brandon Green 50400054 PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals, 2d. Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brandon Green 50400054
(Your Name)

FCI Butner Medium 11 PO BOX 1500
(Address)

Butner NC 27509
(City, State, Zip Code)

915-575-8000
(Phone Number)

QUESTION(S) PRESENTED

- 1) WHETHER, THE SECOND CIRCUIT'S AFFIRMATION OF MR. GREEN'S CONVICTION, DESPITE OVERWHELMING EVIDENCE OF PROSECUTORIAL MISCONDUCT INVOLVING THE USE OF FALSIFIED DOCUMENTS, UNRELIABLE TESTIMONY FROM OFFICER SISCO, AND THE FAILURE TO CONSIDER THE CREDIBILITY OF THE EVIDENCE PRESENTED AS ESTABLISHED IN BRADY V. MARYLAND AND NAPUE V. ILLINOIS, WHERE THE PROSECUTION MUST REFRAIN FROM MISLEADING THE JURY AND MUST ENSURE THAT THE EVIDENCE PRESENTED IS NOT ONLY TRUTHFUL BUT ALSO RELIABLE?
- 2) DOES THE FAILURE OF TRIAL COUNSEL TO MOVE FOR SUPPRESSION OF EVIDENCE OBTAINED DURING AN CONSTITUTIONAL STOP-AND-FRISK, WHERE THE STATE DID NOT PRESENT SUFFICIENT EVIDENCE TO ESTABLISH REASONABLE SUSPICION AND WHERE THE BRONX COUNTY SUPREME COURT ACKNOWLEDGED A PATTERN OF UNCONSTITUTIONAL PRACTICES BY LAW ENFORCEMENT, CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, AS ESTABLISHED IN STRICKLAND V. WASHINGTON, 466 U.S. 688 (1984), WARRANTING REVIEW BY THE SUPREME COURT TO RESOLVE A CONFLICT IN THE INTERPRETATION OF INEFFECTIVE ASSISTANCE STANDARDS?

LIST OF PARTIES

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

[x] 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 judgement is subject of this petition is as follows:

Brandon Green 56400054, Petitioner
FCI Butner Medium II
PO BOX 1500
Butner, NC 27509

Andrew K. Chan, Respondent
United States Attorney's Office for the Southern District of New York
One Saint Andrew's Plaza
New York, NY 10007

RELATED CASES

- *United States v. Green*, No. 1:16-cr-00281, U.S. District Court for the Southern District of New York. Judgement entered July 26, 2021.
- *United States v. Green*, No. 21 1896, U.S. Court of Appeals for the Second Circuit. Judgement entered January 24, 2024.

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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

☒ For cases from **federal courts**:

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

☒ reported at United States v. Green, 2024 U.S. App; or, Lexis 1617
☐ has been designated for publication but is not yet reported; or, 12d. Cir. 2024
☐ is unpublished.

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

☐ reported at _____; 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 January 24, 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: July 9, 2024, and a copy of the order denying rehearing appears at Appendix A.

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

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The Fifth Amendment of the United States Constitution provides: "No person shall be...deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

The Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to...be informed of the nature and the cause of the accusation;...and to have the assistance of counsel for his defense."

The Fourteenth Amendment of the United States Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any persons of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

- 18 U.S.C. § 924(c)(1)(A)(i), (ii) and (iii) - Firearms charges
- 18 U.S.C. § 1962(d) - RICO conspiracy
- 28 U.S.C. § 1254(1) - Supreme Court jurisdiction
- N.Y. Crim. Proc. Law § 160.06 - Sealing of records

STATEMENT OF THE CASE

The present case centers on the government's prosecution, which is fundamentally premised on allegations of systematic government misconduct. This misconduct encompasses an illegal traffic stop, dishonest officers, suborned perjured testimony, fabricated evidence, and unreliable testimony from government witnesses. These elements were allegedly employed to falsely connect Mr. Green to a group known as the Blood Hound Brims ("BHB") and the Honeywell Projects.¹

In August 2010, officers received a call from an unidentified individual reporting a verbal dispute with a Black male. The caller explicitly stated that no firearm was involved (App. Ct. Appx. 97.14). Despite this clear statement, Officer Sisco responded to a traffic stop at the intersection of Monterey Avenue and East 180th Street in Bronx, New York (See 302 Note 3516-03). Mr. Green did not match the description provided by the caller, yet Sisco erroneously stated in his 302's that the caller had referenced a "man [with a] firearm" (App. Ct. Appx. 97.19-20).

On January 28, 2019, investigators Feinstein and Harney disclosed their 302 reports, which revealed that Sisco had actually canvassed two large buildings known as the "Honeywell Projects" and stopped an individual named Evans who matched the caller's description (See 302 Note 3516-06). Despite Officer Sisco informing investigators on both October 11, 2018, and January 28, 2019, that "Mr. Green was not the subject of the call," that the traffic stop occurred on Monterey Avenue, and that "the actual subject of the call was in possession of cocaine," investigators allegedly permitted Sisco to fabricate evidence. This fabricated evidence included cocaine, maps, and photographs (GX 141, 227-28, 236) of the Honeywell Projects and the area around East 180th

¹ Doc. No. __ means district court docket number; App. Ct. Doc. No. __: Appx. __ means Appeals Court docket number __; Appendix No. __; Appx. __ means Appendix A or B attached hereto, GX __ means Government Exhibit __; and Tr. __ means Transcripts at __.

Street, while intentionally omitting Monterey Avenue as the true location of the traffic stop and the government ultimately concluding that “unfortunately Monterey Avenue is not shown on the maps”. (See GX 141, 227-28, 236).²

The government misled the jury by failing to correct misinformation regarding Mr. Green's August 3, 2010, traffic stop and arrest, which were subsequently dismissed by the Bronx Supreme Court and sealed as unconstitutional. The court record reveals that beyond mere dismissal, the case was formally terminated in Mr. Green's favor pursuant to Section 160.06 of the Criminal Procedural Law of New York. The court determined that the arrest and prosecution were "deemed a nullity," and Mr. Green was restored, in contemplation of law, to the status he occupied before the arrest and prosecution (See Doc. No. 438, 502, 520-24).

In August 2012, Mr. Green successfully filed a lawsuit against Officer Sisco and the New York Police Department ("NYPD") for illegal arrest and wrongfully alleging that he possessed 32 grams of cocaine (See Doc. No 491, 501, 521-24 and App. Ct. Doc. No 150: Appx. 63). During these civil proceedings, Mr. Green's attorney explicitly refuted the claim that any drugs were recovered during the traffic stop, asserting that Officer Sisco had manufactured evidence. The case concluded with Mr. Green receiving a settlement.

On May 5, 2017, marshals allegedly discovered narcotics paraphernalia in the first-floor kitchen cabinet, six firearms in a handbag concealed behind clothing in an upstairs bedroom closet, and approximately \$2,000 in cash in a separate upstairs closet (See Tr. 750-60, 2472-73). A grand

² Despite knowing that the Bronx Supreme Court dismissed the traffic stop, the district court Judge erroneously stated that the traffic stop was dismissed by the Bronx district attorney office. Despite knowing the traffic-stop occurred at Monterey Avenue, the District Court still erroneously stated the "traffic-stop" took place [right] at the Honeywell-Projects". (Tr.2961,2848). This allowed the prosecution and Green's attorneys to erroneously stipulate to the traffic stop occurring at the Honeywell Projects and being dismissed by the Bronx district attorney. "Puff" was previously identified as someone your client (referring to Mr. Green) supplied drugs with, who sold drugs in the Honeywell-Projects, and this arrest ("traffic-stop") took place right at the Honeywell-projects. (Quoting Judge Gardephe).

jury subsequently indicted Mr. Green on three counts. The RICO count charged that from 2005 through December 2016, in the Southern District of New York and [elsewhere], Green and other Blood Hound Brims ("BHB") members conspired to conduct gang affairs through a pattern of racketeering activity involving drug trafficking, in violation of 18 U.S.C. 1962(d). The Drug Count alleged similar activities, and the third count charged that from 2006 through December 2016, Green "used" firearms "during and in relation to," and "possessed firearms in furtherance of (in the Southern District of New York)," the charged RICO and drug conspiracies, in violation of 18 U.S.C. 924(c)(1)A)(i), (ii) and (iii) (See Doc. No. 417-1: Indictment at Counts One, Four, and Five).

On February 19, 2019, Mr. Green proceeded to trial (See Doc. No. 529). During the proceedings, Officer Sisco provided false testimony, claiming that on August 3, 2010, he responded to a traffic stop after receiving a radio call about a "man [with a] firearm" (App. Ct. Doc. No. 153: Appx. 755, 758). Sisco testified to observing three occupants in the stopped vehicle, including Mr. Green, despite the fact that Mr. Green did not match the suspect's description. According to Sisco's testimony, he frisked Mr. Green, allegedly felt "a hard object in his waistband," determined it to be "a bag of cocaine," and proceeded with the arrest (Id. at 760, 777).

During direct examination, Officer Sisco placed Mr. Green's arrest at East 180th Street and Mohegan Avenue, describing it as "one city block...away from the Honeywell housing projects" (Id. at 755, 766). Using a map of the purported arrest location (App. Ct. Doc. No. 154: Appx. 981), Sisco marked the corner of 180th Street and Mohegan Avenue and the Honeywell Projects (App. Ct. Doc. 153: Appx. 755-77). When challenged on cross-examination about discrepancies with his memo-book and arrest report, which listed the location as 180th Street and Monterey Avenue,

Sisco maintained his position, stating "I recall it being...[a] block away from the Honeywell Projects" (See App. Ct. Doc. No. 153: Appx. 767-71).

The government knowingly utilized Officer Sisco's questionable testimony to mislead the jury, initially acknowledging that his testimony was "in evidence" while noting he mistakenly believed the traffic stop occurred "right outside of the Honeywell Projects, when it turns out that it was about ten blocks away" (See Tr. 962). Despite awareness of Sisco's unreliability and evidence fabrication related to the original traffic stop, the government later altered its position, claiming "Green was arrested ten blocks away from Honeywell... should be disregarded," and asserting that "the distance from his arrest location to Honeywell is actually not in evidence." They emphasized that "[w]hat is in evidence" is Officer Sisco's testimony and his arrest report, and that he "mistook...Monterey for Mohegan" (See Tr. 3279, 3319)³.

Furthermore, other government witnesses proved unreliable and provided false testimony. Witness Daly stated during proffer sessions, "I don't know why that person wrote it. I guess you have to speak with the person who wrote it, but I didn't say it" (See Tr. 2729-30). Daly testified that he had observed the government revising notes and changing dates (See Tr. 2715).

Witness Adams admitted to fabricating his testimony with the assistance of government agents, stating, "I don't know why somebody writes what they write. I'm not the one writing, so I don't know. All I'm doing is talking" (See Tr. 709). When questioned further, the following exchange occurred:

Q. "Now, do you think they were just writing their own thoughts?"

A. "I don't know what they were writing in their pads. They were just writing."

Q. "They were just writing. It could have been anything, right?"

A. "Correct." And "[l]ike I said, I don't know what this is, and I don't remember saying anything about talking to Showtime on the phone. The only person I spoke to on the phone from jail was Ten Thousand, that's it." (See. Tr. 671-72).

³ Please take judicial notice that the government did not preserve these maps (GX 227-28, 236) and or destroyed them after trial.

Another witness, Jones, when asked at trial, "Looking at the document, does it refresh your recollection at all?" replied, "No, it's written wrong" (See Tr. 1910, see also Tr. 1908) ("Like I said, they could put a mistake on the paper because I never would say Price shot and killed Easy.")

The testimony from these witnesses contradicted and discredited the statements and evidence upon which the government relied during grand jury proceedings to indict Mr. Green⁴. Their inconsistencies and false testimonies illuminate the fabrication and discrepancies in the witnesses' manufactured statements during proffers and at trial (See Tr. 692-93). The government relied heavily on such incredible witness testimony to support their case that Mr. Green was the primary supplier of drugs and firearms and that he operated a drug business out of the Honeywell Projects through the BHB's.

In mid-2017, the government provided trial counsel, Eric Breslin and Melissa Geller, with the NYPD arrest report and Officer Sisco's memo-book pertaining to the August 3, 2010, arrest of Mr. Green, who was allegedly in possession of 32 grams of cocaine at the time (See App. Ct. Doc. No. 150: Appx. 29-85). In October 2018, the government served notice of its intent to introduce at trial evidence regarding Mr. Green's possession of approximately 32 grams of cocaine in the vicinity of Monterey Avenue and East 180th Street, (Bronx), New York, on or about August 3, 2010 (Id. at Appx. 87-91).

In January 2019, trial counsel sent two items to the government: a certificate of disposition indicating that the Bronx Supreme Court had dismissed the criminal case and sealed its records, and records from a lawsuit filed by Mr. Green against New York City, including the August 2012 disposition transcripts of Officer Jeffrey Sisco (See App. Ct. Appx. At 94-94, 99). In Mr. Green

⁴ The Government misconduct in this case permeated the entire proceedings. They used perjured testimony and fabricated to indict, try and convict Mr. Green. One example of this is the fabricated murder plot (Doc. 640 in the District Court. Trial Counsels' post-trial Rules 29 and 33 motion discussing, inter alia, the elaborate story CW Adams made up about a plot to murder David Cherry).

and Crystal Williams' lawsuit, they claimed wrongful arrest and other civil rights violations. New York City settled Mr. Green's suit for a five-figure sum (Appx. 1000).

Several weeks prior to trial, counsel informed the district court that "most of the records regarding the August 2010 incident were difficult to obtain" due to, inter alia, the sealing of the criminal matter (App. Ct. Doc. No. 154: Appx. 1000). Trial counsel was "not yet sure" what actions they would take regarding the available records, was "still investigating," and was still in the process of gathering information that should have been produced by the government months earlier (See App. Ct. Doc. No. 150: Appx. 1000). Trial counsel stated, "We have not made a motion because we do not know if there is one, what it should be." Trial counsel never moved to suppress the evidence obtained from the 2010 illegal arrest and the cocaine evidence.

On March 27, 2019, after five rigorous weeks of testimony supported by fabricated evidence, Mr. Green's trial concluded (See Doc. No 570: Verdict). The jury returned a verdict of guilty on all three counts: One, Four, and Five.

On appeal, Mr. Green raised several grounds for relief challenging his sentence and conviction including Sufficiency of the Evidence for Firearm Offenses; Constructive Amendment or Prejudicial Variance; Ineffective Assistance of Counsel; Rule 33 Motion; Summation of Errors; and In-Court Identification (See App. Ct. Doc. No. 155: Opening Brief).

Notably, in Mr. Green's pro se claims, he raised significant concerns of prosecutorial misconduct and ineffective assistance of counsel prior to sentencing which included: Sufficiency of the Evidence for Racketeering and Narcotics Conspiracies; Fourth Amendment Violations; Prosecutorial Misconduct; Ineffective Assistance of Counsel Claims Pre-sentencing; and Recusal Motion (See United States v. Green 2024 U.S. App. LEXIS 1617 (2d Cir. 2024) (See also App. Ct. Doc. No. 182).

On January 24, 2024, the Second Circuit denied his appeal, stating: The evidence was sufficient to sustain the defendant's firearms conviction, as it was not evident that the jury based its 18 U.S.C.924(c) conviction solely on the guns seized in the search of his apartment, and additional evidence demonstrated that the defendant had used a gun in furtherance of or in relation to the charged narcotics conspiracy. Regarding the claims that the terms of the indictment were constructively amended that there was a prejudicial variance, there was no plain error where both the narcotics conspiracy and racketeering conspiracy counts charged the defendant with selling marijuana, in addition to other drugs. The evidence established that an enterprise sold marijuana as a part of the conspiracy, and texts between the defendant and another person were reasonably inferred to relate to that enterprise. Green, 2024 U.S. Appx. LEXIS at *1 (See App. Ct. Doc. No. 279).

With respect to Mr. Green's pro se claims of prosecutorial misconduct, the court reasoned, "Green claims that the proceedings against him were infected with prosecutorial misconduct, and that he is entitled to vacatur of all his convictions and dismissal of his indictment. Green does not point to any record evidence demonstrating that the Government knowingly or recklessly misled the jury, which is the required showing for such an 'extraordinary remedy.' We reject his argument accordingly." (Id. at. p. 15: see also App. Ct. Doc. No. 279 at p.11).

On June 5, 2024, Mr. Green filed a petition for rehearing (See Ap. Ct. Doc. No. 319: Rehearing Petition). On July 9, 2024, that request was denied (See App. Ct. Doc. No. 323: Rehearing Denied). This request for a writ of certiorari is timely under *Clay v. United States*, 537 U.S. 522, 123 S. Ct. 1072, 155 L.Ed. 2d 88 (2003).

REASON FOR GRANTING THE PETITION

THE SECOND CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION - IN A DIRECT CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT

The Second Circuit's affirmation of Mr. Green's conviction raises significant questions about the integrity of our judicial system. Considering overwhelming evidence of prosecutorial misconduct, specifically the utilization of falsified documents, unreliable testimony from Officer Sisco, and the failure to ascertain the credibility of evidence, this case presents an important federal question that conflicts with established Supreme Court precedents regarding the rights of defendants. As established in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Napue v. Illinois*, 360 U.S. 264 (1959), the prosecution has an unequivocal duty to disclose exculpatory evidence and to present truthful testimony. Thus, the Second Circuit's ruling not only undermines the core principles of due process and the right to a fair trial enshrined in the Fifth, Sixth, and Fourteenth Amendments but also sets a dangerous precedent that erodes the ethical foundation of our criminal justice system.

In addition, Mr. Green seeks a writ of certiorari to address a significant issue of ineffective assistance of counsel arising from his trial counsel's failure to suppress evidence obtained during an unconstitutional traffic stop. The Second Circuit's ruling not only disregards the pervasive pattern of unconstitutional investigative practices by the NYPD, specifically against Black individuals, but also neglected to recognize that Officer Sisco himself lacked reasonable suspicion to conduct the frisk in question. The decision fails to align with foundation tenets of due process and the right to effective legal representation as guaranteed by the Sixth Amendment.

WHETHER THE SECOND CIRCUIT'S AFFIRMATION OF MR. GREEN'S CONVICTION, DESPITE OVERWHELMING EVIDENCE OF PROSECUTORIAL MISCONDUCT INVOLVING THE USE OF FALSIFIED DOCUMENTS, UNRELIABLE TESTIMONY FROM OFFICER SISCO, AND THE FAILURE TO CONSIDER THE CREDIBILITY OF THE EVIDENCE PRESENTED AS ESTABLISHED IN BRADY V. MARYLAND AND NAPUE V. ILLINOIS, WHERE THE PROSECUTION MUST REFRAIN FROM MISLEADING THE JURY AND MUST ENSURE THAT THE EVIDENCE PRESENTED IS NOT ONLY TRUTHFUL BUT ALSO RELIABLE?

The Second Circuit's decision conflicts with the Supreme Court's mandates in both Brady and Napue. In Brady, the Court held that the suppression of evidence favorable to an accused, upon request, violates due process when the evidence is material to either guilt or punishment. *Id.* at 87. In this case, the government withheld critical evidence that was both material and exculpatory, while also presenting misleading and false evidence in violation of Brady and Napue regarding the testimony of Officer Sisco and key government witnesses, including Daly, Adams, and Jones (See Doc. Nos. 491, 502, 521-22, and App. Ct. Doc. No. 150: Appx. 63).

The principal evidence against Mr. Green was the testimony of Officer Sisco. The Government claimed at Mr. Green's trial that Officer Sisco was a credible witness and that he arrested Mr. Green in August 2010 for possession of 32 grams of cocaine. However, the government misled the jury by failing to disclose that Officer Sisco's August 3, 2010, traffic stop and arrest were subsequently dismissed by the Bronx Supreme Court on unconstitutional grounds. Additionally, the government withheld from both Mr. Green and the jury vital documentation revealing that, in August 2012, Mr. Green successfully sued Officer Sisco and the New York Police Department ("NYPD") for the illegal arrest in 2010, based on Officer Sisco's and the NYPD's wrongful allegation that Mr. Green possessed cocaine (See Doc. Nos. 491, 502, 521-22, App. Ct. Doc. No. 150: Appx. 63). In fact, Mr. Green's attorney in the civil proceedings explicitly refuted

the claim that any drugs were recovered during the traffic stop, disclosing that Officer Sisco had previously manufactured evidence in this case.⁵

More prejudicial is the fact that the government was aware of Officer Sisco's unreliability and dishonesty yet insisted on using him as a key witness while concealing this information from the jury. Another instance of this misconduct is evident in the government's attempt to link Mr. Green to a group known as the BHB whose alleged territory included the Honeywell Projects. Officer Sisco's 302 notes from 2010 indicated that he responded to a 9-11 call and arrived at the intersection of Monterey Avenue and East 180th Street in the Bronx, New York. However, the government suborned the perjured testimony from Officer Sisco, when the prosecution presented fabricated maps of the vicinity of the Honeywell Projects and asked Officer Sisco to indicate the location of the projects and where the arrest occurred, they improperly circled two buildings alleged to be the Honeywell Projects and marked a location at the intersection of 180th Street and Mohegan Avenue, placing a dot and circle where the Honeywell Projects were supposed to be located (See App. Ct. Doc. No. 150: Appx: 1-8, 3-8, 3516, GX 227-28. 236).⁶

In this case, it is inconceivable that the government relied on Officer Sisco as their primary witness, given that he had a history of lying and fabricating stories in prior proceedings to justify his otherwise unlawful arrest of innocent civilians. This conduct violated Brady by failing to disclose the lawsuits to the jury, even though the government was aware of it. The suppressed lawsuit(s) was material, and Mr. Green was prejudiced by his inability to cross-examine Officer

⁵ Please take judicial notice that the district court inadvertently compromised the trial and the record on appeal by incorrectly assessing the facts surrounding the dismissal of the August 3, 2010, traffic stop. It mistakenly ruled that the location of the arrest during the traffic stop was the Honeywell Projects. This error later enabled both the prosecution and Mr. Green's trial attorney to artificially stipulate these incorrect facts (Stipulation Exhibit 1016).

⁶ Please refer to fn3.

Sisco regarding instances of misconduct. (See Brady, 373 U.S. at 87, also see District Court docket numbers 491,492,501 of trial counsel Eric Breslin letters.)

An important question that deserves national attention is whether the government has an obligation to disclose to the jury that a testifying officer has had a civil lawsuit filed against them alleging that they previously falsified evidence and testimony. Specifically, can a lawsuit be considered "exculpatory or impeaching?" Mr. Green believes the answer is clearly affirmative.

The Supreme Court established in *Giglio v. United States*, 405 U.S. 150, 92, S. Ct. 763, 21 L.Ed. 2d 104 (1972), that when "the Government's case depend[s] almost entirely on [an individual's] testimony; without [which] there could have been no indictment and no evidence to carry the case to the jury, [the individual's] credibility as a witness [is] therefore an important issue in the case... and the jury [is] entitled to know of it." *Id.* at 154-55.

If the police officer is the key witness for the prosecution, as in the case here, the credibility of that officer is undoubtedly "an important issue in the case." *Id.* at 155. Furthermore, there is no doubt that allegations against Officer Sisco, indicating that he falsified evidence [e.g., maps, cocaine evidence, and photographs], or testified falsely in other criminal cases, would significantly impact that officer's "credibility as a witness." *Ibid.* See also *Milke v. Ryan*, 711 F.3d 998, 1012 (9th Cir. 2013)(holding that a testifying officer's personal file, which detailed a suspension for misconduct and lies, contained impeaching evidence that needed to be disclosed); *Cf. United States v. Bland*, 517 F.3d 930, 934 (7th Cir. 2008)(noting that materials relating to an officer's misconduct investigation were favorable to the defense, however, there was no Brady violation due to overwhelming evidence of guilt).

Simply put, a prosecutor meets their obligations under Brady by disclosing exculpatory evidence that pertains to the credibility of testifying officers, if those officers are key witnesses,

constitutes exculpatory evidence under Giglio.^[6] Furthermore, Napue established that a conviction obtained through false evidence, or where the government knowingly allowed false testimony to remain uncorrected, is fundamentally unfair and constitutes a violation of the defendant's rights. The Second Circuit's failure to address the substantial implication of Officer Sisco's credibility and the falsified evidence presented at trial demonstrates a potential miscarriage of justice. By neglecting to acknowledge and evaluate key issues of prosecutorial misconduct in its decision, the Second Circuit effectively disregarded the constitutional protections afforded by Mr. Green. This oversight concerns the adequacy of appellate review and the integrity of the judicial process, warranting the Supreme Court's intervention to ensure that the principles of due process are upheld and that the integrity of the criminal justice system is maintained.

DOES THE FAILURE OF TRIAL COUNSEL TO MOVE FOR SUPPRESSION OF EVIDENCE OBTAINED DURING AN CONSTITUTIONAL STOP-AND-FRISK, WHERE THE STATE DID NOT PRESENT SUFFICIENT EVIDENCE TO ESTABLISH REASONABLE SUSPICION AND WHERE THE BRONX COUNTY SUPREME COURT ACKNOWLEDGED A PATTERN OF UNCONSTITUTIONAL PRACTICES BY LAW ENFORCEMENT, CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, AS ESTABLISHED IN STRICKLAND V. WASHINGTON, 466 U.S. 688 (1984), WARRANTING REVIEW BY THE SUPREME COURT TO RESOLVE A CONFLICT IN THE INTERPRETATION OF INEFFECTIVE ASSISTANCE STANDARDS?

Mr. Green also seeks a writ of certiorari to address a significant issue of ineffective assistance of counsel arising from his trial counsel's failure to suppress evidence obtained during an unconstitutional traffic stop. The Second Circuit's ruling not only disregarded the pervasive pattern of unconstitutional investigative practices by the NYPD specifically against Black individuals but also neglected to recognize that Officer Sisco himself lacked reasonable suspicion to conduct the frisk in question. The decision fails to align with foundational tenets of due process and the right to effective legal representation as guaranteed by the Sixth Amendment.

In this case, it is undisputed that the NYPD had engaged in widespread unconstitutional stop-and-frisk procedures targeting Black individuals. The government did not inform the jury of this systemic issue during trial. Furthermore, Officer Sisco's disposition corroborates that he lacked reasonable suspicion to justify the traffic stop of Mr. Green. Notably, the case against Mr. Green was dismissed in state court due to its unconstitutional nature, resulting in a substantial settlement against Officer Sisco and the NYPD by Mr. Green (See Doc. Nos. 491, 501, 521-24 and App. Ct. Doc. O. 150: Appx. 63).

Despite these compelling facts, trial counsel inexplicably failed to move to suppress the evidence obtained during this unlawful stop, which constituted the only physical evidence against Mr. Green regarding the alleged possession of drugs. This failure to act undermined Mr. Green's defense and amounted to ineffective assistance of counsel, violating the established standards set forth in *Strickland*, 466 U.S. at 691.⁷

The seminal case in *Strickland* provides the framework for assessing ineffective assistance claims. To establish ineffective assistance, a defendant must show that (1) the counsel's performance was deficient and (2) the deficient performance prejudiced the defense. 466 U.S. at 695. The actions of Mr. Green's trial counsel squarely meet these criteria. First, counsel's failure to file a suppression motion concerning evidence obtained from an unconstitutional stop constitutes a significant oversight. Courts have consistently held that failing to challenge the admissibility of evidence from an unlawful search is a clear failing of professional performance. See *Kimmelman v. Morrison*, 477 U.S. 365, 91, L.Ed. 2d 305 (1986)(failure to move for suppression of [drug]

⁷ Most of the records regarding the August 2010 incident were difficult to obtain due to, inter alia, the sealing of the criminal matter. (See App. Ct. Doc. No. 154: Appx. 1000). Trial counsel was "not yet sure" what action they would take regarding the available records, was "still investigating" and was in the process of gathering information that should have been produced by the government months earlier. (See App. Ct. Doc. No. 150: Appx. 100-01). Trial counsel stated, "we have not made a motion because we do not know if there is one, what it should be." Furthermore, trial counsel stated that they "lost complete track of the traffic stop issues" (See TT.1162) .Id.

evidence recovered during illegal seizure was deficient performance, counsel did not conduct any meaningful pretrial discovery and there was no strategic reason, other than incompetence, for his actions) remanding for a determination of prejudice); *United States v. Hines*, 142 F.3d 1446, 1450 (11th Cir. 1998)("Counsel's failure to move to suppress evidence obtained in violation of the Fourth Amendment is a classic example of ineffective assistance.")⁸

Prejudice is clearly presumed in this case. Specifically, the evidence in question was central to the prosecution's case. Had the evidence derived from the unlawful traffic stop been suppressed, the government's case would have been severely weakened, thereby prejudicing Mr. Green's defense. The Second Circuit's dismissal of the ineffectiveness claim neglects the significant implications of this omission (See App. Ct. Doc. No. 279). See also *United States v. Cronin*, 466 U.S. 648, 658-59, L.Ed. 2d 657 (1984) (Presumption of prejudice applies when counsel "entirely fails to subject the prosecution's case to a meaningful adversarial testing," where counsel is actually or constructively denied during a critical stage of the proceeding, or where there are "various kind of state interference with counsel's assistance").

In its ruling, the Second Circuit dismissed Mr. Green's claim of ineffective assistance, stating that further fact findings were required.[⁹] However, the court failed to appreciate the clear constitutional and procedural violations that existed in Mr. Green's case, which are straightforward and do not require further factual development. The absence of a suppression motion when the grounds for suppression were evident constitutes a fundamental error that requires review.

⁸ *Nell v. James*, 811 F.3d 100, 106 (2d Cir.) (remanding for a hearing to determine whether counsel was ineffective for failing to investigate the facts related to a search prior to moving for suppression); *Northrop v. Trippett*, 266 F. 3d 372 (6th Cir. 2001) (failure to move for suppression of evidence found during illegal stop of defendant ineffective assistance).

Pursuant to Supreme Court Rule 10(c), Mr. Green's case presents a compelling reason for review as it embodies an important federal question regarding the right to effective assistance of counsel. The Second Circuit's ruling conflicts with the precedent established in *Strickland* and its progeny, which safeguards the right to counsel that acts as a vigilant protector of constitutional rights. The failure to move for suppression of evidence obtained via unlawful means contravenes not only the principles of *Strickland* but aligns with the broader concerns about the erosion of constitutional protections against unreasonable searches and seizures, thus warranting the Supreme Court's intervention.

IMPLICATIONS FOR A FAIR TRIAL NATIONWIDE

The lower court's decision poses a broader threat to the integrity of criminal proceedings across the country. By ignoring clear evidence of prosecutorial misconduct and ineffective assistance of counsel, the Second Circuit has authorized a dangerous precedent that allows for a trial burdened by deceitful practices to be upheld. This fundamentally conflicts with the rights of defendants as outlined in established Supreme Court jurisprudence and threatens to undermine public confidence in the fairness of the judicial process.

The case in question originated from a sealed indictment signed by Preet Bharara in 2016, which alleged the use of a firearm in a drug dealing conspiracy in the Bronx. While Bharara has since moved on, the lack of transparency in the prosecution raises serious concerns. As reported, "The public has spent much money on this prosecution, the government called it a proceeding of interest. But where are the exhibits? Where is the commitment to notice. Request to be informed when the jury came back were unavailable, despite talk of general deterrence." This lack of accountability exemplifies a troubling trend in which procedural integrity is sacrificed,

highlighting the need for a thorough and fair examination of prosecutorial practices. (See Inner City Press article: <https://www.innercitypress.com/sdny5latiquetrial1032810.html>).

Moreover, during Mr. Green's sentencing, there were claims of a last-minute protest that went unaddressed, pointing to potential rights violations; the letter expressed concerns regarding the denial of self-representation and request for a new trial, issues fundamental to a defendant's right to a fair hearing. (See <https://www.innercitypress.com/sdny7latiquetrial072221.html>). Federal appellate courts must be vigilant stewards of justice, upholding the standards set forth by the Supreme Court to prevent the erosion of constitutional rights. The implications extend beyond this case, as observed by legal experts, "For the defendant and their families, their hopes now rest in the appeals process that could take years. "The trial, [was] fueled by decades old tactics designed for the mafia and testimony from cops with a record of alleged abuse..." Indeed, trials based on outdated practices and questionable testimony from cops with a record of misconduct not only condemn the accused but also reflect poorly on the judicial system as a whole, leaving a "bitter taste in their mouths." Truthout.org: <https://www.truthout.org/articles/how-prosecutors-use-conspiracy-and-questionable-testimony-in-gang-cases/>.

Renowned law professor Babe Howell from CUNY School of Law has voiced her concerns, stating that she has read the trial transcripts "with great concern," particularly focusing on the alleged corruption within the NYPD and the government's reliance on compromised testimony. This signals an urgent need for reform and scrutiny to preserve justice in the courtroom (See App. Ct. Doc. No. 150: Appx. 79). Attorney Isaac Wright succinctly remarked, "It is clear to me that you were not treated within the proper and lawful administration of justice." His statement about Mr. Green's trial encapsulates the essence of the systematic issues that plague this case and similar proceedings nationwide (Id at Appx. 80).

This case presents an undeniable opportunity for the Supreme Court to clarify the parameters of prosecutorial conduct and ineffectiveness of counsel, ensuring that the principles of justice are uniformly applied and that the rights protected under the Constitution are not merely theoretical, but actionable. The integrity of our judicial system relies on the unwavering commitment to fairness and accountability at every level.

The Second Circuit's affirmation of Mr. Green's conviction, despite the significant concerns of prosecutorial misconduct and ineffective assistance of counsel, raises vital federal questions that merit the Supreme Court's consideration. The ruling not only contradicts established case law but also threatens the foundational principles of due process and the right to a fair trial that are essential to the integrity of our justice system. This case presents an urgent opportunity for the Court to reinforce these fundamental protections, ensuring that the government upholds its duty to administer justice without compromising the rights of the accused.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

Brandon Green 56400054
FCI Butner Medium II
PO BOX 1500
Butner, NC 27509