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IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN ASIR THOMAS, PETITIONER

vs.

THE UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE NINTH CIRCUIT COURT OF APPEALS DENIAL OF A CERTIFICATE OF
APPEALABILITY IN SUPPORT OF THE WESTERN DISTRICT COURT OF
WASHINGTON'S DISMISSAL OF MY 2255 MOTION

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In denial of a certificate of appealability; did the Ninth Circuit Court of Appeals properly determine that my 2255 claims of ineffective assistance of counsel and the Government's use of false testimony at my trial were meritless, undebatable and procedurally barred, in support of the District Court's decision to dismiss my motion?
2. Did the District Court properly dismiss my 2255 motion without appointing me counsel or affording me an evidentiary hearing to determine the merits of my claims?
3. Did the District Court properly dismiss all the 2255 evidence as cumulative, therefore unable to demonstrate ineffective assistance of counsel, without also assessing the effect the impeaching evidence would have had on Government witness testimony and the claims of prosecutors under the Strickland standard?
4. Was my attorney ineffective for failing to impeach Government witness testimony that the prosecution relied upon to prove I was predisposed to commit the alleged crimes or not induced by Government agents?
5. Was my jury instructed properly to determine predisposition and government inducement as it relates to my entrapment defense?
6. Did the concerted efforts of Government agents to create crimes that I would not otherwise committed, through the use of a criminal informant, in a prolonged and expensive sting operation, constitute outrageous government conduct and violate my constitutional rights?
7. Since an entrapment instruction was given to my jury to decide the quantity and type of drugs I was not entrapped to; and the Government asked the jury to determine I was guilty of only 50 grams or more of methamphetamine, which they complied with; how can the Court determine at sentencing vastly greater amounts without making factual findings?
8. In receiving an entrapment instruction should not the jury have determined the specific amount and type of drugs that I was to be held responsible to, not just the quantity necessary to surpass the mandatory minimum guidelines threshold?
9. Was my attorney ineffective for not asking District Court for a post trial hearing to determine sentencing entrapment regarding the specific drug types and amounts?

10. Did the District Court apply the correct sentencing entrapment procedure?
11. Did the District Court rule properly that I was procedurally barred from raising my Napue claims in my 2255 motion, because I failed to raise them at trial and on direct appeal?
12. Was it procedural error for the District Court not to address, in his ruling, his own actions in staying my 2255 motion until my direct appeal concluded and my trial and appellate counsels failures to raise the claims previously, as constituting the cause necessary to overcome a procedural bar?
13. What constitutes the cause and prejudice necessary for me to overcome a procedural bar to my Napue claims?
14. At what post convictions stage should I have raised my Napue claims that required expansion of the trial record to demonstrate conclusively?

LIST OF PARTIES

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3-4
STATEMENT OF THE CASE.....	5-8
REASONS FOR GRANTING THE WRIT.....	9-16
CONCLUSION.....	17
PROOF OF SERVICE.....	18

GUIDE TO DOCKET ABBREVIATIONS

2255 MOTION CASE NO. 2:16-CV-01147-JCC.....	(CV)
CRIMINAL CASE NO. 2:14-CR-00096-JCC.....	(CR)
CRIMINAL APPELLATE CASE NO. 15-30235.....	(AP)

INDEX TO APPENDICES

APPENDIX A

09/06/17 THE NINTH CIRCUIT COURT OF APPEALS-DENIAL OF A COA (CV36).....	1 pg
04/04/17 REQUEST FOR A CERTIFICATE OF APPEALABILTY(CV34).....	15 pp

APPENDIX B

03/02/17 WESTERN WASHINGTON DISTRICT COURT-ORDER DENYING PETITIONER'S 2255 MOTION (CV32)	10 pp
02/02/17 SEALED REPLY IN SUPPORT OF 2255 MOTION (CV31).....	37 pp
01/06/17 GOVERNMENT'S ANSWER IN OPPOSITION TO 2255 MOTION (CV26).....	47 pp
11/16/16 ORDER DENYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL AND WRIT TO STAY IN SEATTLE (CV21).....	3 pp
11/14/16 GOVERNMENT TAKES NO POSITION ON PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL AND WRIT TO STAY IN SEATTLE (CV20).....	3 pp
11/08/16 ORDER LIFTING STAY ON 2255 MOTION AND GOVERNMENT'S RESPONSE (CV19).....	2 pp
11/04/16 PETITIONER'S REQUEST TO REINSTATE 2255 MOTION (CV16).....	2 pp
10/28/16 PETITIONER'S REQUEST FOR A WRIT TO STAY IN SEATTLE (CV14).....	3 pp
08/31/16 ORDER STAYING CONSIDERATION OF 2255 MOTION UNTIL CONCLUSION OF PETITIONER'S DIRECT APPEAL (CV12).....	3 pp

08/16/16 GOVERNMENT'S REPLY IN SUPPORT OF MOTION TO STAY 2255 PROCEEDING (CV10)	4 pp
08/11/16 PETITIONER'S RESPONSE IN OPPOSITION TO MOTION TO STAY 2255 PROCEEDING (CV9).....	3 pp
08/03/16 GOVERNMENT'S MOTION TO STAY 2255 PROCEEDING UNTIL CONCLUSION OF PETITIONER'S DIRECT APPEAL (CV8).....	7,2 pp
07/29/16 ORDER FOR SERVICE AND ANSWER OF 2255 MOTION (CV6).....	2 pp
07/21/16 PETITIONER'S REQUEST FOR APPOINTMENT OF COUNSEL AND WRIT TO STAY IN SEATTLE (CV2).....	2 pp
07/21/16 SEALED PETITIONER'S 2255 MOTION TO VACATE, SET ASIDE, AND CORRECT SENTENCE (CV1).....	482 pp

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
-------	-------------

STATUTES AND RULES

FRCP 32(b)2

28 USC 2255(b)

FRCP 12(b)(3)(4)

1
2
3 IN THE
4 SUPREME COURT OF THE UNITED STATES
5 PETITION FOR WRIT OF CERTIORARI
6

7 Petitioner respectfully prays that writ of certiorari issue to review the judgments
8 below.
9
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11 OPINIONS BELOW

12 The opinion of the United States Court of Appeals for the Ninth Circuit appearing
13 at Appendix A. The opinion is unpublished.

14 The opinion of the United States District Court for Western Washington appearing
15 at Appendix B. The opinion is unpublished.
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2 JURISDICTION

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4 The date on which the Ninth Circuit Court of Appeals declined my Certificate
5 Of Appealability was September 6th, 2017. No petition for rehearing was filed and I
6 made my Request For Certiorari within ninety days. Hohn v. US 524 S Ct (1998)
7 and S Ct R 13.1. The jurisdiction of this Court in invoked under 28 USC 1254(1).

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1 CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

2
3 CONSTITUTIONAL

4 FIFTH AMENDMENT- No person shall be held to answer for a capital, or otherwise
5 infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising
6 in the land or naval forces, or in the Militia, when in actual service in time of War or public
7 danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life
8 or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be
9 deprived of life, liberty, or property, without due process of law; nor shall private property be
10 taken for public use, without just compensation.
11

12 SIXTH AMENDMENT- In all criminal prosecutions, the accused shall enjoy the right to a
13 speedy and public trial, by an impartial jury of the State and district wherein the crime shall have
14 been committed, which district shall have been previously ascertained by law, and to be
15 informed of the nature and cause of the accusation; to be confronted with the witnesses against
16 him; to have compulsory process for obtaining witnesses in his favor, and to have the
17 Assistance of Counsel for his defence.

18 FOURTEENTH AMENDMENT- All persons born or naturalized in the United States and
19 subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they
20 reside. No State shall make or enforce any law which shall abridge the privileges or immunities
21 of citizens of the United States; nor shall any State deprive any person of life, liberty, or
22 property, without due process of law; nor deny to any person within its jurisdiction the equal
23 protection of the laws.

24 CONTINUED

25
26 STATUTORY

27 SECTION 28 USC 2255

28 (a) A prisoner in custody under sentence of a court established by Act of Congress
29 claiming the right to be released upon the ground that the sentence was imposed in
30 violation of the Constitution or the laws of the United States, or that the court was
31 without jurisdiction to impose such sentence, or that the sentence was in excess of
32 the maximum authorized by law, or is otherwise subject to collateral attack, may
33 move the court which imposed the sentence to vacate, set aside or correct the
34 sentence.
35

1 (b) Unless the motion and the files and records of the case conclusively show that
2 the prisoner is entitled to no relief, the court shall cause notice thereof to be served
3 upon the United States attorney, grant prompt hearing thereon, determine the
4 issues and make findings of fact and conclusions of law with respect thereto. If the
5 court finds that the judgment was rendered without jurisdiction, or that the
6 sentence imposed was not authorized by law or otherwise open to collateral attack,
7 or that there has been such a denial or infringement of the constitutional rights of
8 the prisoner as render the judgment vulnerable to attack, the court shall vacate and
9 set the judgment aside and shall discharge the prisoner or resentence him or grant
10 a new trial or correct the sentence as may appear appropriate.

11 CONTINUED

STATEMENT OF CASE

First, I would like to thank the Court for taking the time to review my pro se request for certiorari. I am not an attorney and I request the Court to hold my briefing to a less stringent standard than that of individuals represented by counsel and liberally construe my pleading. *Erickson v. Pardus* 127 S Ct 2197, 2200, 167 L Ed 2d 1081 (2007)

CASE HISTORY

On April 7 2015, I was convicted after a seven day trial, that included over two days of jury deliberation, of conspiracy to distribute controlled substances, money laundering, conspiracy to possess firearms in furtherance of a drug trafficking crime, felon in possession and was acquitted of possession of a firearm in furtherance of a crime.(CR168) I immediately asked my trial attorney to file a Request For New Trial based on the Government's misrepresentation during my trial. My attorney advised me that he could not file my request because it would constitute him making an ineffective assistance claim against himself; and advised me to submit the request pro se. Under FRCP 32(b)(2) within fourteen days I mailed to the Trial Court a Request For New Trial(CR172) based on my attorney's failure to introduce evidence that could refute government witnesses' false testimony and notified the Court that a more complete motion would follow when I could assemble the evidence. The Trial Court filed my request and made no response. Approximately a month and a half later, I filed my full Request For New Trial with attached evidence.(CR186) After receiving my complete motion the Trial Court denied(CR188) my initial motion claiming it did not come from my attorney, even though he refused to file it; and because it was untimely, even though the motion was post marked from the Seattle FDC within the fourteen day time period and should have been accepted under the Prisoner Mail Box Rule. *Stillman v. Lamarque* 319 F3d 1199, 9th Cir (2003) The Trial Court subsequently denied(CR194) my full motion without addressing my claims of government misrepresentation.

Prior to sentencing, my trial counsel submitted sentencing memorandums (CR201,201-4) disputing in detail the false claims contained within my PSR, but did not address the Government's misrepresentation or false testimony by introducing evidence available from the discovery. On July 28th, the Trial Court sentenced (CR211) me to twelve years imprisonment by adopting the PSR without changes, including a level 44 offense score, but determining that my personal characteristics

1 warranted a downward variance. The Court concluded I deserved the mandatory
2 minimum plus two additional years because of the amount of drugs and my
3 egregious reaction to the fake lawyer violence, both claims I later disputed in my
4 2255 Motion. The Court made no factual findings to the information in my PSR
5 that my attorney had disputed.

6 After sentencing, my trial attorney filed a Notice Of Appeal(CR218) and a
7 Motion To Withdraw(CR219) because of the ineffective assistance claims contained
8 within my Request For New Trial. I was appointed appellate counsel(CR233) and he
9 advised me "...that both claims [Government misrepresentation and ineffective
10 assistance of counsel] required expansion of the trial record to be demonstrated
11 conclusively and would need to be made in a collateral proceeding."(CV35p15)

12 In January 2016, my appellate counsel filed my direct appeal opening brief to
13 request the Ninth Circuit to determine, as matter of law, whether the evidence at
14 trial was sufficient for a jury to determine I was not entrapped by government
15 informant Jonathon Armstrong(JT) and his agent handlers.(AP17) Counsel also
16 noted I had additional claims to be made in a collateral proceeding that required
17 expansion of the trial record. The government subsequently filed an Answer
18 Brief(AP26) to my appeal. After reviewing the Government's Answer Brief and its
19 heavy reliance on evidence and testimony that could be demonstrated as false, if the
20 trial record was expanded, I notified my appellate attorney of my intention to file
21 my 2255 Motion as soon as it was completed. I thought it was unfair for the
22 Government to seek an affirmation of my conviction based on false evidence. My
23 appellate attorney filed a response(AP35) to the Government's answer, but was
24 limited by the trial record.

25 On July 2016, I filed my pro se 2255 Motion(CV1) with the Trial Court and
26 made a pro se request to the Ninth Circuit Court of Appeals(AP42) to stay my direct
27 appeal. Eight days after I filed my 2255 Motion, the Trial Court Ordered(CV6) the
28 Government to answer it. On August 8th, the Government made a Motion To
29 Stay(CV8) my 2255 Motion until after my direct appeal concluded. I filed a
30 Response Opposing the Government's Stay because "...the veracity of the record
31 being used in the direct appeal is attacked in the claims of the 2255 Motion"(CV9p2)
32 and therefore should be dealt with first. US v. Taylor 9th Cir. (1981)

33 On August 31st, the Trial court stayed my 2255 proceeding until after the
34 completion of my direct appeal. Stating, "Petitioner's claims in his section 2255
35 Motion essentially address the same issues as his appeal and do not prejudice a
36 pivotal aspect of the appeal. Further, Petitioner's appeal may provide him with the

1 same relief he requests in his section 2255 Motion."(CV12p2) After my trial Court
2 stayed my 2255 proceeding, my appellate counsel withdrew(AP49) my request to
3 stay my direct appeal with the Court of Appeals. On October 6th, the Ninth Circuit
4 affirmed my conviction(AP52) and based its opinion on evidence and testimony
5 demonstrated to be false in my 2255 Motion.(CV31p16-17) On November 4th, I
6 requested the Trial Court to Reinstate the 2255 Motion(CV16) and the Trial Court
7 Ordered(CV19) the Government to answer the motion. On January 6 2017, the
8 Government filed their Answer Brief(CV26) and on February 2nd, I submitted my
9 Reply Brief.(CV31) On March 2nd, the Trial Court denied my 2255 Motion in full
10 and refused to issue a COA.(CV32) On March 30th, I filed a Request For A
11 Certificate of Appealability with the Ninth Circuit Court of Appeals.(CV35) On
12 September 6th, the Appellate Court denied my COA.(CV36) On December 4th, I
13 submitted a request to this Court for a writ of certiorari. On December 12th, the
14 Clerk of the Supreme Court asked me to change the format of my request, according
15 to Supreme Court rules, and resubmit it within 60 days.

16 I SHOULD HAVE RECEIVED A CERTIFICATE OF APPEALABILITY

17 "Obtaining a certificate of appealability does not require a showing that the
18 appeal will succeed and the court of appeal should not decline the application
19 merely because it believes the applicant will not demonstrate an entitlement to
20 relief" Welch v. US, S Ct 194 L Ed 2d 387 (2016) In denial of a certificate of
21 appealability the reviewing court must determine that the claim is meritless. Slack
22 v. McDaniel 529 US 473, 784, 220 S Ct 1595, 146 L Ed 2d 542 (2000) The Ninth
23 Circuit made no such determination, but accepted the procedural ruling and the
24 conclusory findings that the District Court made without holding an evidentiary
25 hearing to properly evaluate the claims.

26 DISTRICT COURT ERRED IN NOT HOLDING AN EVIDENTIARY HEARING

27 By denying my right to an evidentiary hearing, the Court had to rule the
28 files and record of the case conclusively showed that I was not entitled to relief. 28
29 USC 2255(b) The District Court erred in determining all the evidence submitted in
30 the 2255 Motion was cumulative, by simply adopting the Government's cherry
31 picked interpretations. The District Court's ruling misconstrues the 2255 brief and
32 evidence; and does not relate the omission of the evidence to the Government's
33 requirement at trial to prove that I was either pre-disposed or not induced to
34 commit the crimes. Contrary to the Court's statement, most of the 2255 evidence

1 was not introduced at trial. While many of the topics and situations were broached
2 at trial, the 2255 evidence would have critically supported defense witness
3 testimony and demonstrated government witnesses lied under oath and or changed
4 critical details of their testimony from statements they had previously made. The
5 Court never addressed the impeaching effect of the evidence. Even if my Napue
6 claims were procedurally barred, they needed to be evaluated properly to determine
7 whether counsel's inability to expose the false testimony of Government witnesses
8 demonstrated ineffective assistance.

1 REASONS FOR GRANTING THE WRIT

2
3 INEFFECTIVE ASSISTANCE OF COUNSEL AND MY ENTRAPMENT DEFENSE

4 The Sixth Amendment to the U.S. Constitution, guarantees my right to
5 effective assistance of counsel at trial. To demonstrate ineffective assistance of
6 counsel I must show "...in light of all the circumstances, the identified acts or
7 omission were outside the wide range of professionally competent assistance." Trial
8 counsel's failure to introduce the 2255 evidence in support of my entrapment
9 defense was both "deficient" and "prejudicial" and created a reasonable "probability
10 sufficient to undermine the confidence in the outcome [of the trial]." Strickland v.
11 Washington 466 US 687 688 690 694 104 S Ct 2052 L Ed 2d (1984) There is no
12 strategic reason for counsel not to introduce evidence to impeach Government
13 witness testimony and claims.

14 Key to my entrapment defense was the credibility of my version of events. I
15 testified that I was induced to commit the criminal acts by the Government
16 informant and undercover agents. This was contradicted by government witnesses
17 who claimed that I was engaged in prior and non-induced criminal acts. The
18 conflict in testimony over the beginning of the conspiracy and the other criminal
19 acts was material to my defense. For example, the lead investigator, SA Becker
20 testified falsely that the investigation began with an informant, JT, investigating
21 the activity of the Sinaloa Cartel hanging around my brother's car dealership.
22 (CV1p49-51) Becker's own HSI reports establish he was originally investigating
23 unrelated Michoacan Cartel members. JT was the source of most of SA Becker's
24 HSI reports and he was fabricating claims that I was engaged in all sorts of illegal
25 activity. If these reports were accurate they would be cumulative evidence, but I
26 introduced them to demonstrate the difference between the lies JT told to agents at
27 the time, compared to the lies he told at trial. The HSI reports that predate JT
28 becoming an informant(CV1EX2,3) describe JT as a key suspect in the activity at
29 the dealership and I was never around, but busy running my nightclubs. Evidence
30 demonstrates JT falsely testified that he became an informant because he was
31 being forced to engage in drug dealing out of fear of the cartel form the
32 dealership.(CV1p50) This is factually impossible because this conspiracy, instigated
33 under the protection of his aunt who worked for Homeland Security, involved a
34 different cartel with completely different people; Ivan Maldonado and Santiago
35 Bernal.

1 The Government further relied on my counsel's omissions to make many
2 more false claims at trial. For example, Prosecutor Patterson falsely claimed that I
3 needed my girlfriend's gun, purchased legally three weeks before my arrest, to
4 protect the marijuana grow in my house.(CV1p49) SA Becker testified government
5 exhibit 99, was picture of my marijuana grow taken on the same day my girlfriend
6 purchased her gun.(CV1p49) The evidence in the 2255,(CV1EX29,55) along with SA
7 Becker's post trial statement verifying the computer forensics, supported my trial
8 testimony that the medically licensed grow had not been active for many years.
9 Prosecutor Patterson also falsely claimed that the methamphetamine seized from
10 codefendant Ivan Maldonado on the bus to Portland "had nothing to do with Govern
11 agents;" claiming it was just a "typical shipment to the defendant." (CV1p56)
12 Recordings in the 2255(CV1EX113-117) demonstrate that JT had ordered the meth
13 on behalf of federal agents pretending to be bikers in Portland, further supporting
14 my claim that all the transactions were induced.

15 The main undercover agent, ATF SA Hunt, gave false testimony. "When [JT]
16 was arrested down in Portland, Oregon he lost some narcotics belonging to Steven
17 Thomas." (CV1p27) Recordings and reports of JT's own statements, given to agents
18 at the time, demonstrate that I had nothing to do with JT's arrest by the DEA. SA
19 Hunt continues to falsely testify, "[ATF] were brought into it because the case
20 involved shipments of firearms and firearms trafficking, but we steered our way out
21 of that deal." "We want to dissuade [Thomas] from doing the firearms deal in Los
22 Angeles...[because] we're not going put firearms out on the street." (CV1p34-5) The
23 2255 recordings of SA Hunt speaking with his supervisor impeach his
24 testimony.(CV1p55-6) "[E]ither we need to figure a take down on our end or bow out
25 UC wise because we're not getting an ATF case out of it. So if I got to, you know
26 split, maybe [HSI] can work their case, but we're not seeing stuff on our
27 end." (CV1EX138) "I hate spinning my wheels, you know what I mean? I'm more
28 than happy to work a money laundering case for someone else." "Steve Thomas, our
29 guy, is not really excited about dealing with guns." (CV1EX139) "[I]f we're looking
30 for a different guy, you know, I don't want to spend my time dealing with this
31 guy." (CV1EX140) This evidence undermines his entire testimony and the credibility
32 of the Government's case.

33 "Where...the defense of entrapment is at issue...the prosecution must prove
34 beyond reasonable doubt, that the defendant was disposed to commit the criminal
35 act prior to first being approached by government agents." US v. Jacobsen, 503 US
36 548 US S Ct (1992) To establish predisposition the Government relied on recordings
37 of me made after I was already entrapped. The 2255 evidence(CV1EX42-45)

1 demonstrates all those recordings were staged and selectively recorded by JT; in
2 most cases after he plied me with alcohol and illegal narcotics. As result there are
3 hours of recordings of inebriated boasting and bravado about fictitious
4 events.(CV1p29-30) This was material because after a year and half long HSI
5 investigation with dozens of agents, that cost the Government millions of dollars,
6 there was no evidence I was involved in any drug deals other than what was
7 instigated by agents of the Government. The Government had all of our phone and
8 text history showing that JT was involved in a massive amount of criminal activity
9 and I was not involved at all.

10 At trial SA Becker falsely testified in 2006 I was convicted of possessing over
11 a hundred pounds of marijuana.(CV1p9,48) When in fact it was conspiracy
12 conviction, where I allowed a friend to use my rental car to transport marijuana. I
13 received five years of probation that I completed without a single violation. That
14 was my only previous drug conviction and at trial my counsel failed to introduce the
15 actual circumstances and allow the jury to decide whether it demonstrated
16 predisposition.

17 I testified that I used and shared with friends a small amount of marijuana
18 and cocaine. That was a disposition toward some criminal acts, but they did not
19 predispose me to sell kilos of cocaine, methamphetamine, guns and launder
20 hundreds of thousands of dollars without the Government's inducement. Those
21 were things I had never done and had much difficulty trying to do, even after I was
22 entrapped, regardless of whether I boasted of my capabilities in the recordings. For
23 example, 2255 evidence documents the informant's attempt to solicit my help in
24 conducting a stash house robbery for kilos of cocaine. When I refused JT's request,
25 he claimed to have committed the robbery with his biker (undercover federal agent)
26 friends and offered me the cocaine at half the price. I could not help him distribute
27 any of the cocaine because I had never dealt with those quantities before.(CV1p42)
28 This scenario if introduced at trial would have discredited both JT and Ivan
29 Maldonado's testimony that I was actively involved in the distribution of cocaine.
30 This evidence would have supported my testimony that after I introduced JT to
31 Ivan initially, I was not involved in the continued cocaine conspiracy between JT,
32 Ivan Maldonado and his supplier Santiago Bernal.

33 "An improper inducement goes beyond providing an ordinary opportunity to
34 commit crime. An inducement consists of an opportunity plus something else...the
35 Government's taking advantage of an alternative, non-criminal motive." US v.
36 Poehlman 217 F 3d 692, 701 9th Cir Ct (2000) To establish lack of inducement the
37 Government argued that the money they give me should be considered criminal

1 profit; therefore not inducement because money is the standard motivation for
2 criminal behavior. The Appellate Court restates that doctrine in the denial of my
3 direct appeal and the District Court quotes them in his order denying my 2255
4 Motion. But money is also the motivation of legitimate business and the 2255
5 evidence (CV1EX66-67,95-98) demonstrates that I was desperately looking for an
6 investment in my new nightclub because my primary investor had become gravely
7 ill and the Government took advantage of this non-criminal motive.

8 From the beginning of this conspiracy the informant had promised me a
9 \$87,000 investment, going as far as getting it approved by the Washington State
10 Liquor Control Board. At trial he falsely testified that he made the investment.
11 (CV1p19,52) Later undercover agents, pretending to be bikers, gave me \$50,000 to
12 get the club open. This occurred before any transactions of meth or money
13 laundering. In the recordings I did state I did not care where the investment came
14 from, but in the same recording I stated that I did not want be involved in
15 drugs.(CV1p72EX70) When the club did not open, the Government pressured me to
16 fabricate a scheme to launder their money and gave me an additional \$75,000 to
17 produce events at concerts for Justin Timberlake, Imagine Dragons and Sting; the
18 latter SA Hunt attended with me. SA Hunt further promised me hundreds of
19 thousands of dollars to produce my own concerts if I continued to cooperate with his
20 "organization's" illicit requests.(CV1p53) My increasing debt to agents forced me to
21 desperate measures. I agreed to the lawyer violence and to do the big meth deal in
22 LA just to get out of debt. I will not reiterate all the evidence previously briefed,
23 but argue that the District Court was improper to dispose of it as cumulative,
24 without an evidentiary hearing to discuss the probability it would have affected the
25 judgment of the jury.

26 SENTENCING ENTRAPMENT

27 At trial my jury received a sentencing entrapment instruction and was asked
28 to determine the type and amount of drugs I was not entrapped to. The
29 Government only asked the jury to find me guilty of fifty grams of meth or more.
30 This was to establish the ten year mandatory minimum statutory range under
31 Apprendi v. NJ, S Ct. (2000) What was the point of an entrapment instruction if the
32 bar was set so low for the jury to decide my guilt? The jury may have determined I
33 was entrapped to a larger amount. The Trial Court later adopted vastly greater
34 amounts in determining my offense score at sentencing without addressing my
35

1 claim of sentencing entrapment. The Ninth Circuit stated this was procedural
2 error, but did not review it because my appellate attorney failed to raise the claim;
3 even though I attempted to raise it myself in the 2255 filed before their decision.

4 OUTRAGEOUS GOVERNMENT CONDUCT

5 The District Court misconstrued my claim of outrageous government conduct.
6 It is improbable that JT was acting independently of his HSI family member when
7 he first contacted me looking for a drug connection. JT orchestrated the first drug
8 purchase in this conspiracy a few days after signing his HSI informant agreement.
9 While working as an informant for HSI, the Government was aware JT committed:
10 armed robberies, one which ended in a five mile shootout down the interstate;
11 dozens of large drug deals, resulting in his independent arrest by the DEA; used
12 drugs and solicited prostitutes while accompanied by federal agents; physically
13 assaulted me and others; engaged in drunk driving and hit run; and stole
14 government sting money. JT was a criminal and it was not outrageous for him to
15 act like a criminal. What was outrageous was for federal agents with US Attorney
16 oversight to aid, protect, finance, and pay him to setup new crimes while accepting
17 his confirmed lies and illegal behavior. When JT's egregious behavior occurred in
18 the presence of federal agents, HSI reports document recording devices "failing" or
19 "lost" or "removed." (CV1p60-3) The complicity of the Government in JT's crimes
20 and his effort to entrap me was outrageous and should have been addressed in a
21 hearing.

22 MY NAPUE CLAIMS SHOULD NOT HAVE BEEN PROCEDURALLY BARRED

23 "The [Supreme] Court has consistently held that a conviction obtained by the
24 knowing use of perjured testimony is fundamentally unfair and must be set aside if
25 there is any likelihood that the false testimony could have affected the judgment of
26 the jury." US v. Agurs 103, 49 L Ed 2d 342, 96, S Ct 2392 (1992) Many of my Napue
27 claims are incontrovertible and undoubtedly would have affected the judgment of
28 the jury. Under the Agurs standard, I should receive a new trial.

29 The District Court ruled that my Napue claims were procedurally defaulted
30 for not being raised at trial and on direct appeal. (CV32p8-9) However, the Court
31 did not determine if my ineffective assistance claims and its own action in staying
32 my 2255 Motion during the pendency of my direct appeal, established the cause
33 necessary to overcome the procedural bar. My Napue claims existed because my
34 trial attorney failed to introduce the impeaching evidence. My appellate attorney
35 believed that the trial record needed to be expanded to prove the claims and
36 withdrew my pro se request to the Appellate Court. These conditions demonstrate

1 objective factors out of my control to establish cause; and I was prejudiced from the
2 Government's use of false testimony and claims during my trial. These satisfy the
3 necessary requirements to overcome a procedural bar. *Murray v. Carrier*, 477 US
4 478, 488, 1065 S Ct 2639, 91 L Ed 2d 397 (1986) Furthermore, the Government's
5 Answer Brief(CV26) contained ten pages of responses to my Napue claims,
6 demonstrating the Government thought it was debatable as to whether the claims
7 should have been procedurally barred.

8 UNDERLYING ISSUES OF LAW

9 Beyond this Court's supervisory role in reviewing the errors from the Ninth
10 Circuit and District Court's rulings, this Court may decide to grant certiorari to
11 clarify the underlying issues of law regarding entrapment, sentencing entrapment,
12 outrageous government conduct, and or the procedural requirements for Napue
13 claims.

14 The grounds for relief in my 2255 Motion have to be related to the
15 Government's responsibility at trial to prove I was not entrapped. Different districts
16 have held different standards to determine predisposition, government inducement,
17 and sentencing entrapment. In *US v. Mayfield* the Seventh Circuit described these
18 differences and attempted to clarify the requirements of an entrapment defense.
19 "[I]nducement means government solicitation of the crime plus some other
20 government conduct that creates a risk that a person who would not commit the
21 crime if left to his own devices will do so in response to the Government's efforts."
22 "A defendant is predisposed to commit the charged crime if he was ready and
23 willing to do so and likely would have committed it without the Government's
24 intervention." *US v. Mayfield* 771 F 3d 7th Cir 417 420 434 (2013) I believe the
25 basis for determining predisposition should be simple. Would the individual
26 defendant, not necessarily an unwary innocent, have committed the specific crime if
27 not for the inducement of the Government? The Government is not protecting the
28 public from real criminal intent when it fabricates crimes to prosecute; by throwing
29 vast amounts of money and resources at an individual disposed to lesser crimes, in
30 an attempt to involve them in much greater criminal acts. "The ranks of the unwary
31 innocent are not limited to those whose lives are the crime free." *US v. McGill* 754 F
32 3d 452 458 7th Cir (2014) Especially in this time of government fiscal responsibility
33 it does not make sense for law enforcement to induce more crime, creating greater
34 loads on the courts and prisons, instead of going after actual criminal acts. In
35 granting certiorari this Court could define what constitutes predisposition and
36 government inducement.

1 In the 2255, I argued that the jury should have received a wherewithal
2 instruction to determine my capacity to commit the crimes without the assistance of
3 the Government. "The defendant's willingness to commit the offense prior to being
4 contacted by government agents, coupled with the wherewithal to do so." US v.
5 Poehlman 217 F 3d 692 68 9th Cir (2000) I believe capacity must be a predicate to
6 determine predisposition, otherwise any boast would allow the Government to
7 entrap someone. District Court ruled the wherewithal instruction was not required,
8 but this Court could define standard jury instructions for entrapment cases.

9 The 2255 Motion references the procedures for a Court to determine
10 sentencing entrapment by the Ninth Circuit. "A jury may reject a defendant's
11 defense of entrapment, yet the defendant may be entitled to a sentence reduction on
12 the basis of sentencing entrapment." This seems to conflict with making the jury
13 determine the type and amounts of drugs a defendant is not entrapped to. "A
14 defendant's sentence should reflect his disposition, his capacity to commit the crime
15 on his own, and the extent of his culpability." "The defendant bears the burden of
16 demonstrating that prior to any persuasion on the part of the Government, he was
17 only disposed to commit lesser crimes." My attorney failed to present the 2255
18 evidence to establish this. "The district court must then make express findings as to
19 whether a defendant has met his burden." US v. Vierra 2009 US App Lexis 10685
20 (2009) The District Court did not follow this procedure and make the appropriate
21 findings, possibly out of confusion of the applicable case law. "Establishing either
22 outrageous government conduct or a lack of predisposition might show sentencing
23 entrapment, but it did not require both." "The act of inducing a defendant to commit
24 a crime he is not predisposed to commit is necessarily outrageous." US v. Yuman-
25 Hernandez 712 F 3d 471 9th Cir (2013) This Court could define the correct
26 procedures in defining sentencing entrapment.

27 Is outrageous government conduct a real defense? "We do not believe the
28 Government may involve itself so directly and continuously over such a long period
29 of time in the creation and maintenance of criminal operations, and yet prosecute
30 its collaborators." US v. Green 454 F 2d 783 9th Cir (1971) In granting certiorari
31 this Court could clearly define what actions by law enforcement in creating crime,
32 constitute a procedural block to the prosecution of a defendant under FRCP
33 12(b)(3)(4).

34 How does a defendant raise a Napue claim that cannot be established by the
35 trial record? In what postconviction remedy should it be brought? Should Napue
36 claims be treated like ineffective assistance of counsel claims? This Court said
37 ineffective assistance claims should be made in collateral proceedings. "Applying

1 the usual procedural-default rule to ineffective assistance claims would have the
2 opposite effect, creating the risk that defendants would feel compelled to raise the
3 issue before there has been an opportunity fully to develop the factual predicate for
4 the claim." Massaro v. US 155 L Ed 2d 714 538 US 500 504 (2003) In granting
5 certiorari this Court would be able to determine what is the appropriate procedure
6 and time to raise Napue claims that require expansion of the trial record.

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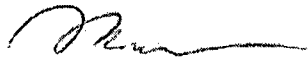
3 CONCLUSION

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5 For the foregoing reasons the petition for a writ of certiorari should be
6 granted. Respectfully submitted this 9th day of February 2018.

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9 Steven Asir Thomas
10 Petitioner
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