18-6579

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

Addressed To:
Honorable Justice Neil M. Gorsuch,
Ex Parte, in chambers, in camera.

Patricia Ann McQuarry, Petitioner

v

UNITED STATES OF AMERICA

USDC MND Case No: 0:13-CR-00164-PJS-LIB-2
8th Circuit Court of Appeals No.14-3605
USDC AZD Case No: CR 18-50019 TUC-CKJ(JR)

ON PETITION FOR A WRIT OF HABEAS CORPUS
TO THE UNITED STATES SUPREME COURT
FOR THE EIGHTH CIRCUIT

PETITION FOR THE WRIT OF HABEAS CORPUS

28 U.S.C. § § 1651(a), 2241(a),(c), FRCivP 81(a)(4)
Constitution for the United States of America, Article I. Sec. 9, Cl 2. and 3,
Article VI, Clause 2 and 3, Supremacy Clause/Stare Decisis

Respondents,

United States Courts Probation
District of Arizona, Tucson
Judge Cindy K. Jorgenson
405 West Congress Street, Suite 5180
Tucson, AZ 85701-5052

Kimberly A. Svendsen, AUSA
U.S. Courthouse
300 S 4th Street, Suite 600
Minneapolis, MN 55415

Solicitor General of the United States
Room 5616
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.,
Washington, D.C. 20530-0001

Petitioner,

Patricia Ann McQuarry
c/o 1334 West Mohawk Drive
Tucson, Arizona [85705]
patriciamcquarry@gmail.com
(320) 209-3390

Respectfully submitted this 31st day of October, 2018 A.D.,

Explicitly Reserving All Rights,
Without Prejudice,

By: Patricia Ann McQuarry
Patricia Ann McQuarry, Petitioner

QUESTION(S) PRESENTED

Petitioner challenges jurisdiction of the district court in this instant case. When a person challenges jurisdiction, the burden of proof shifts to the other party (the government) to prove jurisdiction.

1. Can an unconstitutional action by the government bring about a constitutional result?
2. Can a wrong be committed without a remedy?
3. Can the USDC open the door to its limited jurisdiction with an "unsigned" Indictment in which the attorney for the government refuses to sign?
4. Is an indictment void for vagueness when it uses vague statutes with no authorizing regulations and no Title 26 statute defendant actually violated leaving her to guess at what law she could possibly have violated?
5. Can an indictment criminally charge the defendant with an ex post facto law?
6. Can a "secret" grand jury be used against a Private Citizen, distinctly not a government employee?
7. Can a USDC take subject matter jurisdiction in a criminal case without an Act of Congress to confer criminal subject matter jurisdiction to it?
8. Does a federal judge have the authority to preside over a criminal case and give orders and judgments when he is using a SF-61 counterfeit credential in place of the valid OPM Form 61 APPOINTMENT AFFIDAVIT mandated by the federal statute at 5 U.S.C. 3331?
9. Can the federal USDC maintain its limited jurisdiction when all officers of the court involved themselves in a commission of felonies against the defendant?

10. Does the defendant have the right to an effective assistance of counsel in the trial court and on direct appeal?

11. On direct appeal can the court refuse to address the petitioners pro se supplemental brief outlining the lower courts deprivation of her rights guaranteed by the constitution in which the appointed ineffective assistance of counsel refused to address?

LIST OF PARTIES

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

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF HABEAS CORPUS
28 U.S.C. § § 1651(a), 2241(a),(c), FRCivP 81(a)(4)
Constitution for the United States of America, Article I. Sec. 9, Cl 2. and 3,
Article VI, Clause 2 and 3, Supremacy Clause/Stare Decisis

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

PRAYER FOR EXTRAORDINARY RELIEF

In the Interest of Justice and in preservation of her rights guaranteed and protected by the "written" organic "Constitution for the United States of America" of 1787 and the "Bill of Rights" of 1891 Petitioner respectfully prays this court issue a writ of habeas corpus for extraordinary relief from criminal charges for violations of her due process of law, fraud upon the court, jurisdictional and structural error, and the commission of felonious crimes committed by all officers of the district and appellate courts who conspired under "color of law" to deprive Petitioner of the free exercise of her rights and equal protection of the law guaranteed by the constitution. Petitioner prays this Court grant this petition for writ of *habeas corpus* in the Interest of Justice and issue a judgment for Petitioner ordering the Indictment against Petitioner dismissed with prejudice, declare that Petitioner is actually innocent of any crimes charged, order her record expunged, and for all other relief at law and in equity which this Court deems just and proper under the circumstances. The Supreme Court is the Court of last resort and Petitioner has no other court for relief and there is no other adequate remedy at law in which relieve may be granted.

OPINIONS BELOW

The opinion and orders of the United States court of appeals appears at Appendix A, pages 2a-9a.

The judgment, orders, and opinions of the United States district court appears at Appendix 25a – 37a.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 22, 2016.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 10, 2016, and a copy of order denying rehearing appears at Appendix A, page 1a.

The jurisdiction of this Court is invoked under the authority of the Constitution for the United States of America, Article I. Sec. 9, Cl 2. "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."; Article I. Sec. 9, Cl 3. "No . . . ex post facto Law shall be passed."; Article VI, Clause 2 and 3, Supremacy Clause/Stare Decisis; 28 U.S.C. §§ 1651(a), 2241(a),(c), and FRCivP 81(a)(4). The United States district court and court of appeals in this instant case has sanctioned such a departure from its jurisdiction, the Constitution and laws of the United States as to call for an exercise of this Court's supervisory power in the interest of justice.

EXCEPTIONAL CIRCUMSTANCES FOR NOT MAKING APPLICATION TO THE RESPECTIVE DISTRICT COURT

Pursuant to 28 U.S.C. § 2242, the Supreme Court asks that Petitioner explain why this petition or application did not go to the District Court. For good cause, Petitioner did not make application for a writ, because the issues as raised involved

subject matter jurisdiction of the District Court, fraud upon the court, and the commission of crimes against Petitioner conspired by all officers of the lower courts. The district and appellate courts have prejudiced and biased themselves against Petitioner and the judges have a potential conflict of interest precluding them from hearing the claims presented by 28 U.S.C. § 455 and Due Process of Law. "[A]rgu[ably] ... a [district] judge will feel the motivation to vindicate a prior conclusion," Liteky, 510 U.S. at 562, thereby creating an appearance of impropriety due to partiality. The "integrity of a fellow member," 486 U.S. at 865-866 n. 12, of a district court hearing these claims "is unlikely to quell the concerns of the public," id., and such "suspicions and doubts" shadow these proceedings. Liljeberg, 486 U.S. 865-866 & n. 12. "People ... are too often all too willing to indulge suspicions and doubts concerning the integrity of judges." Id. That conflict of interest has now been proven by the lower court's rulings and attempts to protect the Department of Justice's known cover-up of their own investigation of Title 18 (by far, the biggest cover-up, effecting the largest number of people, in history), and by abdicating their oaths of office. This case ruled on by Judge Patrick J. Schiltz corum nom judice with bias and prejudice toward Petitioner without jurisdiction or authority of his office has constituted a wrongful and great injustice to Petitioner and her family. Petitioner has no other court for relief and there is no other adequate remedy at law in which relieve may be granted.

That commission of felonies were committed against Petitioner by all officers of the District and Appellate Courts, DOJ, IRS, BOP, U.S. Marshals and other known and unknown "federal and state actors" involved in this instant case who have conspired

under "color of law" to deprive Petitioner of the free exercise of her rights and equal protection of the law guaranteed by the constitution. Petitioner is under duress and is in constant fear for her life, liberty, and property and other reasons, as fully explained in this petition and appendixes. For Petitioner to make application to the District Court in this instant case would be like putting the fox in charge of the hen house. The Supreme Court is the Court of last resort and Petitioner has no other court for relief and there is no other adequate remedy at law in which relief may be granted.

This honorable Court will please take formal judicial Notice of the fact that Petitioner is not a bar-licensed attorney, and has not had the advantage(s) of formal education in an accredited law school. For this reason, Petitioner must learn and digest the particulars of law and procedure independently, as time permits.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner takes Judicial Notice of the "written" organic "Declaration of Independence of 1776" incorporated as fully set forth herein, Appendix F, pages 1f-7f, especially these words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." which is the thought and the spirit of the letter of the law the Constitution for the United States of America of 1787 and the Bill of Rights of 1791.

Petitioner takes Judicial Notice of the "written" organic "Constitution for the United States of America of 1787" and the "Bill of Rights of 1791", incorporated as fully set forth herein, Appendix F, pages 8f-16f, now placed on the record of this case as the

Supreme law of this case. "No provision of the Constitution is designed to be without effect," "Anything that is in conflict is null and void of law", "Clearly, for a secondary law to come in conflict with the supreme Law was illogical, for certainly, the supreme Law would prevail over all other laws and certainly our forefathers had intended that the supreme Law would be the bases of all law and for any law to come in conflict would be null and void of law, it would bare no power to enforce, in would bare no obligation to obey, it would purport to settle as if it had never existed, for unconstitutionality would date from the enactment of such a law, not from the date so branded in an open court of law, no courts are bound to uphold it, and no Citizens are bound to obey it. It operates as a near nullity or a fiction of law." Marbury v. Madison: 5 US 137 (1803). If any statement, within any law, which is passed, is unconstitutional, the whole law is unconstitutional. Petitioner takes Judicial Notice especially of the following:

Article I, § 1, commands and declares that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I, § 5, Cl. 1, commands, in relevant part, that "a Majority of each [House of Congress] shall constitute a Quorum to do Business," excepting therefrom permission to "adjourn from day to day" and "to compel Attendance of its Members, in such Manner, and under such Penalties as each House may provide."

Article I, § 7, Cl. 2, commands, in relevant part, that "[e]very Bill which shall have passed both Houses, shall, before it becomes a Law, be presented to the President of the United States."

Article I, § 7, Cl. 3, commands, in relevant part, that "[e]very ... Resolution ... to which the Concurrence of the Senate and House of Representatives may be necessary ... shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be re-passed

by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the case of a Bill."

Article I, § 9, Cl. 3, "No Bill of Attainder or **ex post facto Law shall be passed."**

Article II, § 2: 2, Appointments Clause, U.S. Constitution, "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

Article VI, Cl. 2, Supremacy Clause, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article VI, Cl. 3, "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

BILL OF RIGHTS

Article [I] (Amendment 1 - Freedom of expression and religion)
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article [IV] (Amendment 4 - Search and Seizure)
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article [V] (Amendment 5 - Rights of Persons)
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or

naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article [VI] (Amendment 6 - Rights of Accused in Criminal Prosecutions)
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article [VIII] (Amendment 8 - Further Guarantees in Criminal Cases)
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article [IX] (Amendment 9 - Unenumerated Rights)
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article [X] (Amendment 10 - Reserved Powers)
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(End of Bill of Rights)

Article XIII (Amendment 13 - Slavery and Involuntary Servitude)
Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
Congress shall have power to enforce this article by appropriate legislation.

Notice of Beneficiary: I, Patricia Ann McQuarry, Petitioner, was born on the land as a Private Citizen as one of the "People" of the County of Saint Louis of the union state of Minnesota Republic of the Sovereign "We the People" of these united states of America. Through my paternal grandmother Lucy Jane Chenault, of the Commonwealth of the Virginia Republic I am a direct descendant of Claire Chenault of the

Commonwealth of the Virginia Republic, who served under General George Washington during the American Revolutionary War (1775-1783). Through the blood of my ancestors I have jura summi imperii and I am the living heir, beneficiary, and posterity to the "written" organic "Declaration of Independence of 1776", the "written" organic "Constitution for the United States of America of 1787" and specifically the "written" organic "Bill of Rights of 1791". Hceres est eadem persona cum antecessore. (The heir and his ancestor are one and the same person.) That is, one in right, the heir succeeding to the rights of his ancestor. My rights are unalienable, meaning I could not give them away if I wanted too. Petitioner never knowingly or willfully contracted, waived, granted, delegated, or volunteered her rights away, Impossible! Petitioner distinctly Objects to being construed as a second class 14th Amendment citizen of the United States, a creation of the federal government and rebuts the governments presumption. Petitioners "rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the constitution." *Hale v. Henkel*, supra, page 74. Petitioner stands on the "Bill of Rights of 1791" especially Article IX "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

STATUTORY PROVISIONS INVOLVED

Because of the limited space herein the Statutory Provisions Involved appear in chronological order in Appendix E incorporated herein as fully set forth herein.

STATEMENT OF THE CASE

Petitioner incorporates her prior filings by reference, as is fully set forth, herein.

Petitioner incorporates Appendixes A, B, C, D, E and F as fully set forth herein.

Petitioner incorporates her Verified Affidavit of Truth and Fact, Appendix C, specifically Statements number 1-122, pages 1c-14c as fully set forth herein.

Petitioner's 4th and 5th Amendment guaranteed rights were violated when she was falsely arrested by gun point on her private property by trespasser who identified himself as CID special agent Marcus Lane with an unsigned warrant, kidnapped from her home in Pine County Minnesota to the federal courthouse in Minneapolis, Minnesota, allegedly indicted by an unconstitutional "secret" grand jury and charged with federal crimes 18 U.S.C. 286 and 287 on June 19, 2013 for allegedly conspiring with her husband and co-defendant to defraud the United States and allegedly filing fraudulent tax returns for the 2007 and 2008 tax years. Petitioner was presented an "unsigned" Indictment/True Bill, see Appendix A, pages 38a -43a. The Power of Grand Jury is Limited by the Prosecutor. Fed. R. Crim. P. 7(c)(1) provides:

> "*In General.* The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and **must be signed by an attorney for the government.**" [Emphasis added]

The grand jury cannot indict without the signature of the prosecutor. As stated in United States v. Cox, 342 F.2d 167, 171 (5th Cir.), cert. denied, 381 U.S. 935 (1965):

> "The role of the grand jury is restricted to a finding as to whether or not there is probable cause to believe that an offense has been committed. The discretionary power of the attorney for the United States in determining whether a prosecution shall be commenced or maintained may well depend upon matters of policy wholly apart from any question of probable cause. . . . It follows, as an incident of the constitutional separation of powers, that the courts are not to

> interfere with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions. The provision of Rule 7, requiring the signing of the indictment by the attorney for the government, is a recognition of the power of government counsel to permit or not to permit the bringing of an indictment. If the attorney refuses to sign, as he has the discretionary power of doing, we conclude that there is no valid indictment. . . ."

The grand jury foreman and the attorney for the government did not sign the alleged indictment in this instant case. An "unsigned" Indictment has **NO AUTHORITY** in law. Furthermore, the "unsigned" indictment is "void for vagueness" as there were no Title 26 U.S.C. statutes or regulations cited on the alleged indictment depriving Petitioner of her 6th Amendment right to be informed of the nature and cause of the accusation, leaving her to only guess as to what she could have possible done wrong. The court allegedly claimed that it obtained its jurisdiction pursuant to 18 U.S.C. § 3231.

ACTUAL AND CONSTRUCTIVE NOTICE

This is Actual and Constructive Notice to this Court and All Respondents that a different bill passed the House than passed the Senate for Public Law 80-772, a violation of Article I, Section 7 of the Constitution and **No Law Exists granting jurisdiction to the United States District Courts under 18 USC § 3231 to prosecute any federal crime and issue a judgment in a criminal case.** Petitioner incorporates her MEMORANDUM OF LAW OF PUBLIC LAW 80-772, TITLE 18 UNITED STATES CODE, ACT OF JUNE 25, 1948 Appendix B pages 1b - 28b as fully set forth herein. Petitioner incorporates the CERTIFIED EVIDENCE PACKAGE PURSUANT TO PUBLIC LAW 80-772, Appendix B, pages 29b – 59b, as fully set forth herein. Petitioner incorporates her offer of proof and judicial notice in

her Rule 60(b)(4) Motion as fully set forth herein, see Appendix A, pages 71a-97a. Petitioner incorporates her other Rule 60(b)(4) Motions as fully set forth herein, see district court Docket numbers 285, and 291.

Petitioner incorporates her Verified Affidavit of Truth and Fact, Appendix C, specifically Statements number 123-142, pages 14c-16c as fully set forth herein.

On January 21, 2014, while representing herself, Petitioner was taken by surprise by the Assistant US Attorney Kimberly Svendsen and Judge Patrick J. Schiltz, together they conspired under "color of law" depriving Petitioner of the free exercise of her 1st, 4th, 5th, 6th, 8th, 9th and 13th Amendment guaranteed rights and equal protection of the law guaranteed by the constitution. Petitioner was again falsely arrested, her appearance bond was revoked by the court, an incompetent assistance of counsel Daniel Gerdts was appointed to her by the court, a false identity was assigned to her and false identification documents were created and issued by the court through its officers in which the conspiracy continues to this day, see Appendix C, pages 36c - 39c. Without jurisdiction, or authority of his office, Judge Patrick J. Schiltz ordered Petitioner to a competency exam. Under the false identity and false identification documents Petitioner was human trafficked across the state border to the federal Oklahoma Transfer station where she was processed into the BOP prior to ever going to trial and prior to any conviction; then again human trafficked to FMC Carswell Texas.

Petitioner incorporates her Verified Affidavit of Truth and Fact, Appendix C, specifically Statements numbered 143–168, pages 16c-19c as fully set forth herein.

On 05/12/2014 at the Pretrial Conference, Judge Patrick Schiltz acting as prosecutor suppressed and denied exculpatory evidence favorable to accused that might negate willfulness depriving Petitioner of her 6th Amendment guaranteed right. Defense Attorney Daniel Gerdts displayed his incompetence and ineffective assistance of counsel when he failed to object at a crucial part of the trial when Judge Schiltz displayed partiality to the prosecutor and claimed the case as his "own", showing a stated interest in the outcome of the case.

Petitioner incorporates her Memorandum of Oath of Office, Appendix D as fully set forth herein. Petitioner incorporates the Quo Warranto in her Rule 60(b)(4) Motion as fully set forth herein, Appendix A, page 80a.

Judge Patrick J. Schiltz, corum nom judice, acting under "color of law" moved forward to trial in this instant case on 05/13/2014 without jurisdiction and without the proper credentials for the authority of his office as required by 5 U.S.C. sections 2104 and 2902, 5 U.S.C. sections 3331 and 2906, 28 U.S.C. section 453, and the Appointments Clause in the Constitution for the United States of America, Article VI, Clause 2 and 3. Petitioner was falsely convicted on 05/20/2014.

Judge Patrick J. Schiltz knew that he was estopped pursuant to *Carmine v. Bowen*, on January 4, 2008 from impersonating a judicial officer, a federal actor, when he returned a SF-61 counterfeit credential, see Appendix D, page 22d incorporated as fully set forth herein, in place of the valid OPM Form 61 APPOINTMENT AFFIDAVIT mandated by the federal statute at 5 U.S.C. 3331 in response to a proper SUBPOENA IN A CIVIL CASE, executed by Paul Andrew Mitchell, B.A., M.S., Private Attorney

General, 18 U.S.C. 1964(a), *Rotella v. Wood*, and Federal Witness, DEMANDING his proper OATH OF OFFICE and proper OPM Form 61 APPOINTMENT AFFIDAVIT mandated by the federal statute at 5 U.S.C. 3331. Judge Patrick J. Schiltz acted without authority in this instant case and constitutes fraud pursuant to *U.S. v. Tweel*. There is no evidence to the contrary that Patrick J. Schiltz has not corrected his SF-61 counterfeit credential.

The Paperwork Reduction Act ("PRA") (see Appendix E, page 34e) effectively created a "Right to Inspect" all U.S. OPM Standard Form 61 ("SF-61") APPOINTMENT AFFIDAVITS for the required display of a valid OMB control number, and for compliance with all Regulations implementing that PRA. The Public Protection Clause at 44 U.S.C. 3512 (see Appendix E, page 35e), reads in pertinent part: "The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto" [emphasis added]

Petitioner incorporates her Verified Affidavit of Truth and Fact, Appendix C, specifically Statements numbered 169 – 203, pages 19c - 23c as fully set forth herein.

On 09/16/2014 Judge Patrick Schiltz, corum nom judice, under "color of law" again deprived Petitioner of the free exercise of her 4th, 5th, 6th, 8th, 9th, and 13th Amendment rights and equal protection of the law guaranteed by the constitution and ordered her arrested and falsely imprisoned at Sherburne County Jail under false identification documents. Petitioner was unlawfully sentence on 11/12/2014 by Judge Patrick J. Schiltz, corum nom judice, who stated at the sentencing that he was making

an example of Petitioner. Petitioner has witnesses who will testify to this. Defense Attorney Daniel Gerdts stated to Petitioner at sentencing that he would visit her at county jail to discuss her direct appeal. Although Mr. Gerdts filed the Notice of Appeal timely he never visited Petitioner to discuss her appeal despite numerous calls from her daughters urging him to visit.

Petitioner incorporates her Verified Affidavit of Truth and Fact, Appendix C, specifically Statements numbered 204 - 252, pages 23c – 29c as fully set forth herein. Petitioner incorporates the emails between her and Appellate Attorney Daniel Gerdts, Appendix C, pages 60c – 85c as fully set forth herein.

Article I. Sec. 9, Cl 3. "No . . . ex post facto Law shall be passed." On or about 07/09/2015 while in direct appeal and incarcerated at FMC Lexington, over a year after being falsely convicted for being accused of filing fraudulent taxes for the 2007 and 2008 tax years, Petitioner received a copy of United States Treasury Refund check for the tax year 2008 in the amount of $22,954.27 dated June 26, 2015 through her power of attorney Diane Phillips, who delivered the original Treasury Refund check with an Affidavit of Truth and Fact reporting commissions of a felony to the Court of Appeals Judge Jane Kelly, see Appendix C, pages 40c-46c, incorporated as fully set forth herein. Judge Jane Kelly immediately recused herself from Petitioner's Appeal and is a firsthand witness and custodial trustee to the material evidence of Petitioner's innocence. Judge Jane Kelly to this day has not come forward with the truth and has allowed Petitioner to continue to be falsely imprisoned and held in peonage.

Public Law 114-27 section 806 passed on June 29, 2015 closing the tax loop-hole on informational filing aka 1099 series. Coincidence?

Point of Contention – If Petitioner filed a fraudulent tax return for the tax year 2008 why did the United States Treasury through the IRS give her a refund over 6 years after she filed said claim and over a year after she was convicted for filing a fraudulent claim while she was imprisoned for the alleged crime? Why did the United States Treasury pay Petitioner $ 4,456.27 in interest if it was a fraudulent claim?

The Justices of the United States Court of Appeals violated Petitioner's fundamental right of association and effective assistance of counsel guaranteed and secured by the 1st and 6th Amendments when they compelled Petitioner into an unholy association with ineffective assistance of counsel Daniel Gerdts after being duly motioned twice by Petitioner and each time denied. Furthermore they violated 42 U.S.C. 1986 and committed misprison of felony, 18 U.S.C. § 4 when material evidence of Petitioner's innocence and the commission of the crimes being committed against her by the "federal actors" under "color of law" unavailable at trial was delivered and reported to judges and they did nothing.

Petitioner incorporates the facts and law in her Rule 60(b)(4) Motion for Relief from Judgment of November 12, 2014, Appendix A, pages 71a - 97a as fully set forth herein. Petitioner incorporates her offer of proof presented in her Rule 60(b)(4) Motion Appendix A, pages 71a - 72a fully set forth herein, because a lack of jurisdiction, fraud upon the court, and violations of due process, referenced herein which render the judgment void, *ab initio*.

Petitioner incorporates her MEMORANDUM OF LAW OF PUBLIC LAW 80-772, TITLE 18 UNITED STATES CODE, ACT OF JUNE 25, 1948 Appendix B pages 1b–28b, and the CERTIFIED EVIDENCE PACKAGE PURSUANT TO PUBLIC LAW 80-772, Appendix B, pages 29b–59b, as each fully set forth herein. Petitioner has witnesses, evidence, and testimony to come forward and prove that Petitioner was falsely imprisoned and continues to be wrongfully held in peonage with her liberties restricted in an offer of proof. See *Haines v. Kerner*, 404 US 519 (1972).

Petitioner filed a Rule 60(b)(4) Motion for Relief from Judgment of November 12, 2014, Appendix A, pages 71a-97a, with Memorandum in Support with the trial court, Appendix A, pages 98a–117a, district court Docket numbers 280 and 281. The prosecution did not respond nor did Judge Patrick J. Schiltz issue an order for the prosecution to respond. Judge Patrick J. Schiltz responded himself with an Order and a written Opinion, Appendix A, pages 31a -33a, stating in part, "The Federal Rules of Civil Procedure do not apply in criminal proceedings, however, and Fed. R. Civ. P. 60 is not an appropriate vehicle to attack a criminal judgment. See United States v. Campbell, 96 F. App' 966, 968 (6th Cir. 2004)." Judge Patrick J. Schiltz denied Petitioner's Motion.

In Gonzales v. 545 U.S. 524 (2005), the Supreme Court determined that 60(b)(4) is applicable in criminal cases. It does not attack the sentence; it attacks whether a case could even exist due to lack of jurisdiction.

On 12/15/2016, Petitioner filed a Motion for Reconsideration of her Rule 60(b)(4) Motion for Relief, district court Docket numbers 285. Again, the prosecution did not

respond, nor did Judge Patrick J. Schiltz issue an order for the prosecution to respond. On 12/16/2016 Judge Patrick J. Schiltz responded himself with an Order denying Petitioner's Motion for Reconsideration, Appendix A, pages 34a–35a stating in part, "McQuarry's current motion largely consists of irrelevant matter and legal gibberish, none of which convinces the Court that Fed. R. Civ. P. 60 is an appropriate vehicle to attack a criminal judgment. Citing Gonzales v. 545 U.S. 524 (2005), McQuarry alludes to the role that Rule 60 may play in seeking relief from judgment on a motion filed under 28 U.S.C. § 2255. Gonzales is irrelevant in this case, however, because McQuarry has not filed, and the Court has not ruled on, a motion under § 2255. Instead, her Rule 60 motion was directed at the original criminal judgment. . ." "Further, to the extent that McQuarry seeks the undersigned's recusal, her request is denied. McQuarry's only argument to support recusal is that the Court interprets the law differently than she does. This is not a proper basis for recusal. See Liteky v. United States, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion").

On 02/01/2017 Petitioner filed a third Motion F.R. Civ. P. 60(b)(4) requesting a "three panel tribunal judicial review", district court Docket number 291. The prosecution did not respond and on 03/10/2017 a Request for Judgment Nihil Dicit On 60b4 Motion was filed by Petitioner, district court Docket number 300. Again the prosecution did not respond nor did Judge Patrick J. Schiltz issue an order for the prosecution to respond. On 03/14/2017 Judge Patrick J. Schiltz responded himself with an Order denying Petitioner's third Motion F.R. Civ. P. 60(b)(4) requesting a three

panel tribunal judicial review and Request For Judgment Nihil Dicit, Appendix A, pages 36a - 37a, stating in part, "As the Court has already informed McQuarry several times, however, Rule 60 may not be used to attack a criminal judgment."

The F.R.Civ.P. 60(b) Motion is a continuation of a criminal case, not a new case under a new civil docket number (i.e., 28 U.S.C. § 2255). The Supreme Court in Gonzalez v. Crosby, 545 U.S. 524, 534 (2005) held:

> "Rule 60(b) has an unquestionably valid role to play in habeas cases. The Rule is often used to relieve parties from the effect of a default judgment mistakenly entered against them, e.g., Klapprott, 335 U.S. at 615 (1949) [opinion of Black, J., a function as legitimate in habeas cases as in run-of-the mill civil cases. The Rule also preserves parties' opportunity to obtain vacatur of a judgment that is void for lack of subject matter jurisdiction – a consideration just as valid in habeas cases as in any other, since the absence of jurisdiction altogether deprives a federal court of the power to adjudicate the rights of the parties." Steel Co. v. Citizens, 523 U.S. 83, 94 (1998). "In some instances, it is the State, not the habeas petitioner, that seeks to use Rule 60(b), to reopen a habeas judgment granting the writ. See, e.g., Ritter v. Smith, 811 F. 2d 1398, 1400 (11th Cir. 1987)."

As stated in the dissent to Gonzales by Justice Stevens, joined by Justice Souter, 545 U.S. at 539: "The most significant aspect of today's decision is the Court's UNANIMOUS REJECTION OF THE VIEW THAT ALL POST JUDGMENT MOTIONS UNDER F.R.Civ.P. 60(b) except those alleging fraud under Rule 60(b)(3) should be treated as second or successive habeas corpus petitions."

The Supreme Court in Gonzalez v. Crosby, 545 U.S. 524, 534 (2005) stated: "The court must use Supreme Court precedent, not inferior court precedent. Such an action would violate the Rule of Stare Decisis and establish bias as a matter of law on any judgment and order."

A F.R.Civ.P. 60(b)(4) motion – "Judgment is Void" is an attack, not on the judgment on the merits, but instead on the jurisdiction of the court to address those merits. Such a motion is a "true 60(b) motion" within the meaning of Gonzales, not a second or successive" 2255 filing.

Petitioner did not receive timely the courts Order denying her Motion for Reconsideration until 01/23/2017 due to her transfer from prison to the halfway house. Petitioner filed a Notice of Appeal on the judgment filed by the court on December 16, 2016 denying her Motion for Reconsideration on 02/06/2017. A Judgment from the 8th Circuit Court of Appeal case no. 17-1541 was filed on 03/27/2017, Appendix A, page 120a, which dismissed Petitioner's Appeal as untimely.

REASONS FOR GRANTING THE PETITION

The U.S. Attorneys committed structural error. The DOJ knew from their own study that no jurisdiction existed to prosecute Petitioner. The judge was without jurisdiction and the proper credentials to sit on the bench, try this instant case, give orders, sentence and imprison defendant. Both the judge and prosecutors knew they were in violation of the Constitution and laws of the United States.

Former Acting U.S. Attorney John Marti and Assistant U.S. Attorney's Kimberly Svendsen, Timothy Rank, and Michael Cheever are in violation of their oath of office and the Constitution by concealing evidence, and by misstating the facts and law, which facts are proven by the Congressional record and which law is proven by the Supreme Court and the Constitution.

The prosecutions prime witnesses IRS Revenue Officer Richard Wallin and IRS

CID Agent Marcus Lane conspired together to obstruct justice, intimidate witness for the defense in order to hide or destroy material evidence of Petitioner's innocence.

All officers of the court were also in violation of the Clean Hands Doctrine, rendering the judgment void.

The judge in the case, Judge Patrick J. Schiltz, obstructed justice in the case, prosecuted this case from the bench, and committed fraud upon the court by continuing to act without jurisdiction and the proper credentials of his office, when all facts and evidence established by verified filings of Petitioner that the district judge never had subject matter or personal jurisdiction over Petitioner to prosecute, convict, or imprison Petitioner. *Infra.* Judge Patrick J. Schiltz also established judicial bias in the case by refusing Petitioner's offer of proof as required by *Haines v. Kerner*. 404 U.S. 519, 522 (1972).

The Prosecutor(s) Violated the Clean Hands Doctrine

Clean hands, sometimes called the clean hands doctrine or the dirty hands doctrine, is an equitable defense in which the defendant argues that the plaintiff is not entitled to obtain an equitable remedy because the plaintiff is acting unethically or has acted in bad faith with respect to the subject of the complaint, *"dirty hands doctrine definition". Businessdictionary.com. Retrieved 2009-06-19,* that is, with "unclean hands". *"Unclean Hands definition". Legal-explanations.com. Retrieved 2009-06-19.* The defendant has the burden of proof to show the plaintiff is not acting in good faith. The doctrine is often stated as "those seeking equity must do equity" or "equity must

come with clean hands". This is a matter of protocol, characterized by saying, "A dirty dog will not have justice by the court".

"A defendant's unclean hands can also be claimed and proven by the plaintiff to claim other equitable remedies and to prevent that defendant from asserting equitable affirmative defenses." In other words, 'unclean hands' can be used offensively by the plaintiff as well as defensively by the defendant. See, e.g., *Morton Salt Co. v. G.S. Suppiger Co.*

Despite challenges to jurisdiction of the court, Petitioner was illegally sentenced on November 12, 2014. Petitioner has obtained evidence which shows that the prosecutor concealed evidence from Defendant; the prosecutor committed prosecutorial misconduct and structural error and violated the Clean Hands Doctrine, by covering up evidence which establishes that the court has no jurisdiction over the case. Those points were judicially noticed in the Supreme Court in No. 15-806, Moleski v. United States.

Defense counsel Daniel Gerdts further committed structural error by failing to investigate the case.

That 5th and 6th Amendment violations were created by the court itself, by denying Petitioner's fundamental rights to be informed of the nature and cause of the accusation, to be confronted with the witnesses against her, and to have compulsory process for obtaining witnesses in her favor and compelled her to be a witness against herself in order to get evidence for her defense into the record of the case.

Indictment Void for Vagueness

Pursuant to the alleged "unsigned" Indictment/True Bill Petitioner was allegedly charged with criminal statutes 18 U.S.C. §§ 286 and 287 for allegedly filing fraudulent taxes for the 2007 and 2008 tax years, yet the alleged indictment cites no 26 U.S.C. or authoritative regulation in which Petitioner has violated and was subject to, leaving Petition to guess at what she did wrong, a blatant deprivation of her 6th Amendment right to due process of law.

Documents to be published in the Federal Register include:

* proclamations and executive orders
* documents having general applicability and legal effect
* documents required to be published by Congress

For purposes of this chapter (44 U.S.C. 1501 et seq.) every document or order which prescribes a penalty has general applicability and legal effect. [44 U.S.C. 1505].

A document required to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection. [44 U.S.C. 1507]

The Code of Federal Regulations is the "... complete codifications of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register, or by filing with the Administrative Committee, and are relied upon by the agency as authority for, or are invoked or used by it in the discharge of its activities or functions, and are in effect ..." [44 U.S.C. 1510].

Pursuant to the alleged "unsigned" Indictment/True Bill the Court allegedly assumed its jurisdiction pursuant to 18 U.S.C. § 3231. Title 18 U.S.C. § 3231, cannot be found in the Code of Federal Regulations Index nor can Public Law 80-772 and 62 Stat. 826 be found. With no regulating authority the alleged Title 18 U.S.C. § 3231 statute is vacant. Congress did NOT grant authority of subject matter jurisdiction under Title 18 U.S.C. § 3231 to any United States District Court. Furthermore, as Noticed above, a different bill passed the House than passed the Senate for Public Law 80-772, a violation of Article I, Section 7 of the Constitution and No Law Exists granting jurisdiction to the United States District Courts under 18 USC § 3231 to prosecute any federal crime and issue a judgment in a criminal case.

Pursuant to the alleged "unsigned" Indictment/True Bill the defendants were allegedly charged with criminal statutes 18 U.S.C. §§ 286 and 287. Title 18 U.S.C. §§ 286 and 287, cannot be found in the Code of Federal Regulations Index nor can 62 Stat. 698; Pub. L. 99–562, and 100 Stat. 3169 be found, see CFR Parallel Table of Authorities, Appendix E pages 54e - 73e. With no regulating authority the alleged Title 18 U.S.C. §§ 286 and 287 statutes are vacant granting NO criminal duty by Congress.

Furthermore, Petitioner then diligently searched the 2007 thru 2015 Government Publishing Office (GPO) CFR Annual Editions in Title 31 for Title 18 U.S.C. §§ 286 and 287 and found in each edition at Title 31 CFR § 5.4(a)(11)(vi) which states: "That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18

U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;" Petitioner is not a Federal employee and never has been therefore 31 CFR 5.4(a)(11)(vi) does not apply to her and she is not subject to it.

In the 2015 GPO CFR Annual Edition in Title 31 18 U.S.C. § 287 is found two times, 1) at 31 CFR 5.4(a)(11)(vi) as cited above and 2) at 31 CFR 100.9 which states: "Notices (c) Whoever intentionally files a false claim seeking reimbursement for mutilated currency may be held criminally liable under a number of statutes including 18 U.S.C. 287 and 18 U.S.C. 1341 and may be held civilly liable under 31 U.S.C. 3729. et seq." Title 31 U.S.C. § 3729(d) states "**This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.**" Pursuant to 31 U.S.C. § 3729(d) 31 CFR 5.4(a)(11)(vi) and Title 31 CFR § 100.9 do not apply to Petitioner's 2007 and 2008 tax filings. Furthermore, if Title 31 CFR § 100.9 is the controlling regulation, Petitioner can only guess, in which the prosecution and court used to indict, prosecute, convict, sentence, and imprison Petitioner, Notice was not published in the Federal Register / Vol. 79, No. 103 until Thursday, May 29, 2014, Appendix E pages 114c-116c, and is an ex post facto law in this instant case and violates Article I, Section 9, Clause 3 of the Constitution which states, "No Bill of Attainder or **ex post facto Law shall be passed." Ex post facto laws are a violation of the U.S. Constitution. "**They take away a person's right to know in advance the type of conduct that, if performed, will violate a state or federal criminal law." (Three Features of a Kangaroo Court, Written by Christi Hayes and Fact

Checked by The Law Dictionary Staff, at: https://thelawdictionary.org/article/three-features-kangaroo-court/)

Petitioner then searched the OMB Number 1545-0117 listed on the 1099 OID form which can be found in the C.F.R. part 602.101 OMB Control Numbers which cites C.F.R. 26 part 1.6049-1, 1.6049-2, 1.6049-3, 1.6049-5, 1.6049-7T. 26 C.F.R. part 1.60 states "§ 1.60 [Reserved]. **There is NO Controlling Regulations for the 1099 OID form.** Perhaps this point is more strongly made in *California Banker's Assoc. v Schultz, 416 US 21; 38 L.Ed. 2d 820,* where the government argued;

> "We think it important to note that the Act's civil and criminal penalties attached only violation of regulations promulgated by the Secretary: if the **Secretary were to do nothing, the Act itself would impose no penalties on anyone.** And at **830 L.ED. 2d**: "... the actual implementation of the statute by the Treasury Regulation. The Government urges that since **only those who violate these regulations may incur civil or criminal penalties**. It is the actual regulations issued by the Secretary of Treasuly, and not the broad authorizing language of the statute, which are to be tested against the Fourth Amendment; and that when so tested they are valid". And further at 831; "The Internal Revenue code, for example, contains general records to be kept by both business and individual taxpayers, 26 USC §6001, which have been implemented by the .Secretary in various regulations".

In United States v. Mersky, 361 US 431, 80 S.Ct. 459, 4 L.Ed. 2d 423, at Page 429-430, the court ruled; "An administrative regulation, of course, is not a "statute." While in practical effect regulations may be called "little laws," they are at most but offspring of statutes. Congress alone may pass a statute, and the Criminal Appeals Act calls for direct appeals if the District Court's dismissal is based upon the invalidity or construction of a statute. See *United States v. Jones*, 345 US 377, 97 L.Ed. 1086, 73 S.Ct. 759 (1953). This Court has always construed the Criminal Appeals Act narrowly,

limiting it strictly "to the instances specified." *United States v. Borden Co.*, 308 US 188, 84 L.Ed. 181, 187, 60 S.Ct. 182 (1939). See also *United States v. Swift & Co.*, 318 US 442, 87 L.Ed. 889, 63 S.Ct. 684 (1943). Here the statute is not complete by itself, since it merely declares the range of its operation and leaves to its progeny the means to be utilized in the effectuation of its command. But it is the statute which creates the offense of the willful removal of the labels of origin and provides the punishment for violations. The regulations, on the other hand, prescribe the identifying language of the label itself, and assign the resulting tags to their respective geographical areas. Once promulgated, these regulations, called for by the statute itself, have the force of law, and violations thereof incur criminal prosecutions, just as if all the details had been incorporated into the congressional language. The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other. The charges in the information are founded on Sec. 1304 and its accompanying regulations, and the information was dismissed solely because its allegations did not state an offense under Sec. 1304, as amplified by the regulations. When the statute and regulations are so inextricably intertwined, the dismissal must be held to involve the construction of the statute.

In the context of criminal prosecution, we must apply the rule of strict construction when interpreting this regulation and statute. *United States v. Halseth*, 342 US 277, 280, 936 L.Ed. 308, 311, 72 S.Ct. 275 (1952); *United States v. Wiltberger* (US) 5 Wheat 76, 95, 96, 5 L.Ed 42, 43 (1820). A reading of the regulation leaves the

distinct impression that it was intended to protect and expedite the collection of customs duties. Certainly its emphasis on duties and its silence on the protection of the public from deceit support the conclusion that the old provisions were to continue insofar as markings after importation are concerned. If the intent were otherwise, it should not have been left to implication. There must be more to support criminal sanctions: businessmen must not be left to guess the meaning of regulations. The appellees insist that they changed the labels in good faith, believing their actions to be permissible under the law. There is nothing in the record to the contrary. A United States district judge concurred in their reading of the regulation. In the framework of criminal prosecution, unclarity alone is enough to resolve the doubts in favor of defendants." (emphases added)

Fair warning doctrine invokes due process rights and requires that criminal statute at issue be sufficiently definite to notify persons of reasonable intelligence that their planned conduct is criminal. *United States v. Nevers*, 7 F.3d 59 (5th Cir. 1993). *See United States ex. Rel. Clark v. Anderson*, 502 F.2d 1080(3d Cir. 1974)(The notice requirements of Due Process would not permit a state, after ruling one of its criminal statutes was overly vague, to apply that statute's superseding predecessor statute in the very case which ruled the successor statute unconstitutional).

Grand Jury – No Procedural Due Process of Law

Petitioner incorporates her Memorandum of Grand Jury, Appendix A, pages 98a – 117a, as fully set forth herein. Petitioner incorporates her Verified Affidavit of

Facts: 28 U.S.C.1746(1), 1867(d), Appendix A, pages 118a- 119a, as fully set forth herein.

Petitioner was deprived of her 5th Amendment right and alleges that there was no grand jury and the US Attorney did not have the legal authority or the required credentials to impanel a grand jury and therefore would not perjure themselves to sign the alleged Indictment. Evidence of this is the "unsigned" indictment itself, Appendix A, pages 38a–43a, F.R.Crim.P. 7 (c) (1) which states: "*In General.* The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and **must be signed by an attorney for the government.**" and the docket, Appendix A pages 44a-69a, which evidences the record of the case in which there was no record of delegation of authority, no record of an affidavit of complaint, no record of an examining trial, and no record of a quorum. FOIA requests are pending for U.S. Attorney's valid credentials to impanel a grand jury in this instant case.

Structural Error

Law Related to Structural Error

In conducting harmless error analysis of constitutional violations in direct appeal and habeas corpus cases, the Court repeatedly has reaffirmed that "[s]ome constitutional violations ....by their very nature cast so much doubt on the fairness of the trial process that, as a matter of law, they can never be considered harmless." *Satterwhite v. Texas*, 486 U.S. 249, 256 (1988); accord *Neder v. United States*, 527 U.S. 1, 7 (1999) ("[W]e have recognized a limited class of fundamental constitutional errors

that 'defy analysis by "harmless error" standards'...Errors of this type are so intrinsically harmful as to require automatic reversal (i.e., 'affect substantial rights') without regard to their effect on the outcome."); *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993) ("Although most constitutional errors have been held to harmless-error analysis, some will always invalidate the conviction." (citations omitted)); id at 283 (Rehnquist, C.J., concurring); *United States v. Olano*, 507 U.S. 725, 735 (1993); *Rose v. Clark*, 478 U.S. 570, 577-78 (1986) ("some constitutional errors require reversal without regard to the evidence in the particular case...[because they] render a trial fundamentally unfair"); *Vasquez v. Hillary*, 474 U.S. 254, 263-264 (1986); *Chapman v. California*, 386 U.S. 18, 23 (1967) ("there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error").

Law Related to Structural Error for Ineffective Assistance of Counsel

The Right to Effective Assistance of Counsel. See *Kyles v. Whitley*, 514 U.S. at 435-436; *United States v. Cronic*, 466 U.S. 648, 654-57 (1984); *Hill v. Lockhart*, 28 F.2d 832, 839 (8th Circuit (1994) ("it is unnecessary to add a separate layer of harmless-error analysis to an evaluation of whether a petitioner in a habeas case has presented a constitutionally significant claim for ineffective significant claim for ineffective assistance of counsel").

Law Related to Structural Error for Concealment of Evidence

Included in those rights is the protection against prosecutorial suppression of exculpatory evidence and other prosecutorial and judicial failures to make "material" evidence or witnesses available to the defense at trial, when "materiality" is defined as

at least a "'reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles v. Whitley*, 514 U.S. at 435 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985) (plurality opinion); id at 685 (White, J., concurring in judgment)). In addition to *Bagley*, which addresses claims of prosecutorial suppression of evidence, the decisions listed below – all arising in "what might loosely be called the area of constitutionally guaranteed access to evidence,'" *Arizona v. Youngblood*, 488 U.S. 51, 55 (1988) (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)) – require proof of "materiality" or prejudice. The standard of materiality adopted in each case is not always clear. But if that standard requires at least a "reasonable probability" of a different outcome, its satisfaction also automatically satisfies the Brecht harmless error rule. See, e.g., *Arizona v. Youngblood*, supra at 55 (recognizing due process violation based on state's loss or destruction before trial of material evidence); *Pennsylvania v. Ritchie*, 480 U.S. 39, 57-58 (1987) (recognizing due process violation based on state agency's refusal to turn over material social services records; "information is "material" if it "probably would have changed the outcome of his trial" (citing *United States v. Bagley*, supra at 682 (plurality opinion); id at 685 (White, J., concurring in judgment)); *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985) (denial of access by indigent defendant to expert psychiatrist violates Due Process clause when defendant's mental condition is 'significant factor' at guilt-innocence or capital sentencing phase of trial); *California v. Trombetta*, 467 U.S. 479, 489-90 (1984) (destruction of breath samples might violate Due Process Clause if there were more than slim chance that evidence would effect

outcome of trial and if there were no alternative means of demonstrating innocence); *United States v. Valenzuela-Bernal*, supra at 873-874 ("As in other cases concerning the loss [by state or government] of material evidence, sanctions will be warranted for deportation of alien witnesses only if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact."); *Chambers v. Mississippi*, 40 U.S. 284, 302 (1973) (evidentiary rulings depriving defendant of access to evidence "critical to [his] defense" violates "traditional and fundamental standards of due process"); *Washington v. Texas*, 388 U.S. 14, 16 (1967) (violation of Compulsory Process Clause when court arbitrarily deprived defendant of "testimony [that] would have been relevant and material, and .... vital to the defense").

Law Related to Structural Error for Judicial Bias

Included in the definition of structural errors, is the right to an impartial judge, i.e., the right to a judge who follows the Constitution and Supreme Court precedent and upholds the oath of office. See, e.g., *Neder v. United States*, supra, 527 U.S. at 8 ("biased trial judge" is 'structural [error],' and thus [is] subject to automatic reversal"); *Edwards v. Balisok*, 520 U.S. 641, 647 (1997) ("A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him."); *Johnson v. United States*, 520 U.S. 461,469 (1997); *Sullivan v. Louisiana*, 508 U.S. at 279; *Rose v. Clark*, 478 U.S. 570, 577-78 (1986); *Tunney v. Ohio*, 273 U.S. 510, 523 (1927).

Facts Related to Structural Error

Petitioner was charged with crimes according to alleged federal law.

Petitioner has judicially noticed the facts and law establishing that the Judge has no jurisdiction in this case.

Petitioner has also established that the government violated the Clean Hands Doctrine by knowingly pursuing a case without jurisdiction, concealing the cover-up by the Department of Justice, presenting a case without authority, committing identity theft against Petitioner and creating false identification documents for her.

Counsel was ineffective as a matter of law by the court failing to produce a dead bang winner, A dead-bang winner is defined as "an issue which was obvious from the trial record and would have resulted in a reversal on appeal." *James v. McKee*, 2009 U.S. Dist. LEXIS 102380 (E.D. Mich. Nov. 3, 2009).

Counsel failed to investigate the jurisdiction of the court, a threshold issue; second; the court committed structural error when it acted when it knew or should have known it lacked jurisdiction; third, the prosecutor committed structural error when it failed to notify the court it had no jurisdiction to prosecute. Fourth the government violated the Clean Hands Doctrine, rendering any possible conviction invalid.

The government's conduct violates the Clean Hands doctrine and bars the government from relief in these proceedings as a matter of law. *New York Football Giants, Inc. v. Los Angeles Chargers* Football Club, Inc., 291 F.2d 471 (5th Cir. 1961); *Johnson v. Yellow Cab Transit Co*, 321 U.S. 383, 387 (1944) ("We may assume that because of the clean hands doctrine, a federal court should not, in the ordinary case, lend its judicial power to a plaintiff who seeks to invoke that power for the purpose of

consummating a transaction in clear violation of the law"); *McKennon v. Nashville Publishing Co.*, 513 U.S. 352 (1995). An order or judgment obtained in violation of Due Process, without jurisdiction, or by fraud is void. *Government Financial Services v. Peyton Place*, 63 F.3d 767, 772-773 (5th Cir. 1995); *New York Life Insurance Co. v. Brown*, 84 F.3d 137, 143 (5th Cir. 1996). The undisputed fact exists that a fraud, plainly designed to corrupt the legitimacy of the truth-seeking process, was perpetrated on the court by the prosecution team in this case. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 247 (1944). Overruled on other grounds by *Standard Oil v. United States*, 429 U.S. 17, 18 (1976); *Dixon v. Commissioner of Internal Revenue*, No. 00-70858 (9th Cir. 1/17/04). See also *Chambers v. Nasco, Inc.*, 501 U.S. 37, 44 (1991); *Fierro v. Johnson*, 197 F.3d 147, 12 (5th Cir. 1999); *In re Murchison*, 349 U.S. 133, 136 (1955). "Whenever an allegation is made that an attorney has violated his moral and ethical responsibility, an important question of professional ethics is raised. It is the duty of the district court to examine the charge, since it is that court which is authorized to supervise the conduct of the members of its bar." *Gas-A-Tron v. Union*, 34 F.2d 1322 (9th Cir. 1976).

Violation of *Brady v. Maryland*

In *Brady v. Maryland*, 373 U.S. at 87, the Supreme Court held "that the suppression by the prosecution of evidence ... violates due process ... irrespective of the good faith or bad faith of the prosecution." Subsequent to *Brady,* Supreme Court decisions have held that the government has a constitutionally mandated, affirmative duty to disclose exculpatory evidence to the defendant to help ensure the defendant's

right to a fair trial under the Fifth and Fourteenth Amendments' Due Process. *See United States v. Bagley*, 473 U.S. 667, 675 (1985) ("The Brady rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur.").

The Court cited as justification for the disclosure obligation of prosecutors: "the special role played by the American prosecutor in the search for truth in criminal trials. The prosecutor serves as "'the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done.'" *Kyles v. Whitley*, 514 U.S. 419, 439 (1995) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

And most importantly that Petitioner is innocent of the charges against her and Justice can be served no other way then for this court to grant this Petition for Habeas Corpus.

CONCLUSION

- The simple fact that No law exists to indict, prosecute, or confine Petitioner pursuant to Title 18.
- The simple fact is that Due Process violations were committed by the prosecutor and defense counsel and the judges in this case.
- That 4th, 5th and 6th Amendment Due Process of Law violations occurred.
- That the prosecutor concealed Brady records.
- That all "federal actors" with SF-61 counterfeit credential are acting with NO

authority of office.

• That a major cover-up occurred by the prosecutor's office;

• That the judge committed structural error by acting without jurisdiction.

• That the judge acted with NO valid credentials and NO authority with a SF-61 counterfeit credential.

• That the prosecutors violated the Clean Hands Doctrine.

• That the district and appellant courts and ALL officers of these courts committed fraud upon the court.

• The simple fact that the judges, U.S. Attorneys, defense Attorney, U.S. Marshall, Internal Revenue Service, Department of Justice, Sherburne County Jail, Bureau of Prisons, Warden Francisco Quintana, and Doe's 1-200 known and unknown, each and severely, are each in violation of their oaths of office and conspired together under "color of law" and deprived Petitioner of her life, liberty, and property, and the free exercise of her most basic fundamental rights under the 1st,4th,5th,6th,8th,9th, and 13th Amendments and equal protection of the law guaranteed by the Constitution for the United States of America, 18 U.S.C. § 241 - Conspiracy against rights, 18 U.S.C. § 242 - Deprivation of rights under color of law, when they knowingly and willfully conspired to commit identity theft and assigned and accepted false identification documents for Petitioner, see Appendix C, pages 36c-39c as is fully set forth herein, with the intent of holding her in involuntary servitude, slavery and peonage when they each knew their acts were criminal under the Constitution and the United States Laws, Anti-Peonage Act, March 2, 1867, ch. 187, 14 Stat. 546, now codified at 42 U.S.C. § 1994, 18 U.S.C. §

1028 - Fraud and related activity in connection with identification documents, authentication features, and information, 18 U.S.C. § 1028A - Aggravated identity theft, 18 U.S.C. § 1201 – Kidnapping, 18 U.S.C. § 1581 - Peonage; obstructing enforcement, 18 U.S.C. § 1583 - Enticement into slavery, 18 U.S.C. § 1584 - Sale into involuntary servitude, 18 U.S.C. § 1585 - Seizure, detention, transportation or sale of slaves, 18 U.S.C. §1589 - Forced labor , 18 U.S.C. § 1590 - Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor , 18 U.S.C. § 1592 - Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor , 18 U.S.C. § 1593A - Benefiting financially from peonage, slavery, and trafficking in persons , and 18 U.S.C. § 1594 - General provisions.

Fundamental Rights. Those rights which have their source, and are explicitly or implicitly guaranteed, in the federal constitution.

The rights enumerated in the Bill of Rights did not have their source in the federal Constitution. If this were the case, then our unalienable rights would not have existed before that Constitution was written. Of course, this is nonsense. The Declaration of Independence existed long before the Constitution for the United States of America. One has only to read that Declaration carefully to appreciate the source of our fundamental, unalienable rights. We are endowed "by our Creator with certain unalienable rights". These rights are not endowed by the Constitution. They are inherent rights which exist quite independently of any form of government we might invent to secure those rights. We relinquish our rights if and only if we waive those

rights knowingly, intentionally, and voluntarily, or act in such a way as to infringe on the rights of others. Petitioner avers that she never waived those rights knowingly, intentionally or voluntarily, nor acted in such a way to infringe on the rights of others. As the Supreme Court has said:

... [A]cquiescence in loss of fundamental rights will not be presumed. Ohio Bell v. Public Utilities Commission, 301 U.S. 292.

Petitioner has proven on information and material evidence that she was unlawfully and maliciously prosecuted, convicted, sentenced and falsely imprisoned by the USDC that has no lawful criminal jurisdiction granted by congress, a judge who has proven his biased against Petitioner and who does not have the proper credentials required by law for his office, U.S. Attorney's with no delegation of authority, who fabricated a false indictment and crimes against Petitioner in which she was not subject to and had no duty to. The district and appellate courts and all of its officers, the IRS, US Marshals, BOP and Doe's 1-199 who touched this case went to the extremes acting under "color of law" to commission a conspiracy of felonious crimes against Petitioner to deprive her of her life, liberty, property, and the free exercise of her rights and equal protection of the law guaranteed by the constitution.

Power corrupts and in this instant case power corrupts absolutely. In the words of Justice Gorsuch: "Conspiracy itself contains the substantial risk of physical force being used because conspiracy is an agreement to commit the very crime that will - - that will result in physical force, conspiracy to commit- " Sessions v. Dimaya, 15-1498, oral argument on 10/02/2017. "The commission of the crime is the culmination of the

conspiracy." In this instant case false imprisonment, slavery, and peonage is not over until Petitioner is declared innocent, freed and made whole again, yet Petitioner has no choice but to live with Post Traumatic Stress of the night terrors, loss of health, and loss of friends and family for the rest of her life caused by the wrongful culmination of the conspiracy committed against her by these "federal actors" who had no right and granted no authority of office to do what they did to Petitioner and they will continue to do so if this Honorable Court does not step into this instant case and exercise its authority in the Interest of Justice and end the wrongful commission of this conspiracy against Petitioner's rights.

The standing decision of the U.S. Supreme Court in Miranda v. Arizona, 384 U.S. 436 (1966), held: "Where rights secured by [that] Constitution are involved, there can be no rule making or legislation which would abrogate them" [underlined emphasis added].

"Nothing can destroy a government more quickly than its own failure to observe its own laws or worse, its disregard of the charter of its own existence." Mapp v Ohio, 367 US 643, 659 (1961).

2nd PRAYER FOR EXTRAORDINARY RELIEF

Petitioner prays that this Court grant this petition for writ of habeas corpus in the "Interest of Justice" and:

- Declare that judicial misconduct has occurred in this case;
- Declare that prosecutorial misconduct has occurred in this case;
- Declare that Petitioner's counsel was ineffective as a matter of law;
- Declare that all federal actors with SF-61 counterfeit credentials impostors are

acting with no authority of office;

- Declare that the judge had no jurisdiction pursuant to 18 U.S.C. § 3231;
- Declare that the government violated the Clean Hands Doctrine;
- Declare Petitioner a "victim" of aggravated identity theft, human trafficking, involuntary servitude, slavery, peonage and extortion;
- Issue an order to expunge Petitioner's record;
- Issue an immediate order dismissing the alleged criminal indictment with prejudice declaring that Petitioner is actually innocent as a matter of law of any federal charges;
- Issue an immediate order for Petitioner's release from confinement / supervised release / probation;
- And for such other and further relief at law and in equity as this court deems just and proper under the circumstances.

The Supreme Court is the Court of last resort and Petitioner has no other court for relief and there is no other adequate remedy at law in which relieve may be granted. This petition for a writ of habeas corpus should be granted in the interest of justice.

Respectfully submitted,

Date: October 31, 2018

Explicitly Reserving All Rights, Without Prejudice,

By: Patricia Ann McQuarry

Patricia Ann McQuarry, Petitioner, pro per,
Private Citizen of the state of Minnesota

VERIFICATION

I, Patricia Ann McQuarry hereby verifies, under penalty of perjury, under the laws of the United States of America, without the "United States", that the above statement of facts is true and correct, and all matters of law addressed herein are accurate and true, to the best of my current information, knowledge, and belief, so help Me God, pursuant to 28 U.S.C. 1746(1).

Explicitly Reserving All Rights, Without Prejudice,

Date: October 31, 2018

By: Patricia Ann McQuarry

Patricia Ann McQuarry, Petitioner, pro per,
Private Citizen of the state of Minnesota
c/o 1334 West Mohawk Drive
Tucson, Arizona [85705]