No. 18-9317 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Lena Lasher — PETITIONER
(Your Name)

vs.

Judge Naomi Reice Buchwald — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lena Lasher
(Your Name)
16 Patton St.
(Address)
High Bridge NJ 08829
(City, State, Zip Code)
908-447-4484
(Phone Number)

QUESTIONS PRESENTED

1. Should an injuctive relief be granted to address a federal appeals court's violation of the Code of Federal Regulations of Reconsideration Panel, 38 CFR 19.11?

In this specific case, the Second Circuit's reconsideration panel included the same members who participated in the decision that was supposed to be under reconsideration, which is a direct violation of 38 CFR 19.11 which states in pertinent part that the reconsideration panel may not include any member who participated in the decision that is being reconsidered.

2. Should an injunctive relief be granted when a judge's rulings can be shown to be in conflict with the law itself, including definitions of terms within the law, and where her rulings can be shown to be a usurpation of powers reserved for the Attorney General under the law, and where her rulings are in conflict with rulings of other federal jurisdictions and her rulings can be shown to have had a negative impact on national industry where regulatory bodies and licensed professionals have to adapt in the absence of clear federal guidance correcting these conflicts?

3. Should a judge be required to recuse from matters where her rulings have been repeated shown to be in conflict with other federal courts, state regulatory agencies and with the law itself, where other courts have acquitted defendants over the same issues?

4. When a judge can be shown to have usurped administrative and legislative powers during a criminal proceeding to create subject matter jurisdiction where none would otherwise exist, and where other courts ruled there is no jurisdiction and state regulatory bodies have recognized the lack of jurisdiction, must she disqualify herself?

5. Should a judge be made to recuse herself from matters where she can be shown to have applied legal standards that clearly not applicable to the case matter, and when the charges did not claim violations of those inapplicable standards, where other jurisdictions have acquitted similarly charged defendants?

6. Must a Judge disqualify herself under 28 U.S.C. Sec 455(b)(1) when the judge has a demonstrable personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts (exculpatory evidence) concerning the judicial proceeding, and where the judge can be clearly shown in her own writings to not understand the law in question?

LIST OF PARTIES

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

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

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

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

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

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

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

[ ] For cases from **state courts**:

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

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

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

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

JURISDICTION

[√] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 26, 2018.

[ ] No petition for rehearing was timely filed in my case.

[√] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 27, 2018, and a copy of the order denying rehearing appears at Appendix B.

[√] An ~~extension of time~~ to ~~file~~ the petition for a writ of certiorari was granted to and including May 11, 2019 (date) on 3/12/19 (date) in Application No. USCA 2 No. 18-981 See Appendix C

letter connect

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

[ ] For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Code of Federal Regulations of Reconsideration panel, 38 CFR 19.11, states:
"(a)Assignment of Members. When a motion for reconsideration is allowed, the Chairman will assign a panel of three or more Members of the Board, which may include the Chairman, to conduct the reconsideration.
(b)Number of Members constituting a reconsideration panel. In the case of a matter originally heard by a single Member of the Board, the case shall be referred to a panel of three Members of the Board. In the case of a matter originally heard by a panel of Members of the Board, the case shall be referred to an enlarged panel, consisting of three or more Members than the original panel. In order to obtain a majority opinion, the number of Members assigned to a reconsideration panel may be increased in successive increments of three.
(c)Members included in the reconsideration panel. The reconsideration panel may not include any Member who participated in the decision that is being reconsidered. Additional Members will be assigned in accordance with paragraph (b) of this section."

The federal conspiracy to misbrand drugs statute, **18 U.S.C. Sec. 371**, states in pertinent part that whoever conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more such persons do any act to effect the object of the conspiracy, each shall be fined.

The federal introduction of misbranded drugs into interstate commerce in violation of **21 U.S.C. Sec. 331(a) and 333(a)(2) and 18 U.S.C. Sec 2**, states in pertinent part that the delivery for introduction into interstate commerce of any article that is adultered or misbranded and the causing thereof are hereby prohibited, such a violation after a conviction under this section has become final, or commits such a violation with the intent to defraud or mislead, shall be imprisoned for not more than three years or fined, whoever commits an offense against the United States or aids is punishable as a principal, respectively.

The Federal conspiracy to commit mail and wire fraud in violation of **18 U.S.C. Sec. 1349**, states in pertinent part that any person who attempts or conspires to commit any offense shall be subject to the same penalties as these prescribed for the offense.

The federal mail fraud statute, **18 U.S.C. Sec. 1341**, states in pertinent part that whoever uses the mail "for obtaining money or property by means of false or fraudulent pretenses: is guilty of mail fraud. The wire fraud statute, **18 U.S.C. Sec. 1343**, similarly state that whoever use means of interstate communication" for obtaining money or property by means of false or fraudulent "pretenses" is guilty of wire fraud. However, the Petitioner did NOT receive any money from this "alleged" crime.

The federal authority to control; standards and schedules statutes **21 U.S.C. Sec. 811 and 812**, state in pertinent part the rules and regulations of Attorney General, evaluation of drugs and other substances, factors determinative of control or removal from schedules, abuse potential, temporary scheduling to avoid imminent hazards to public safety, scheduling of newly approved drugs, schedules of controlled substances, placement on schedules; finding required, initial schedules of controlled substance.

The federal exemptions and consideration for certain drugs, devices, and biological products state **21 U.S.C. Sec. 353**, state in pertinent part the exemption from labeling and prescription requirements; misbranded drugs.

STANDARDS FOR DISQUALIFICATION

Judge Buchwald violated, and her presiding over this civil case violates, the following standards, and to satisfy these legal standards, she must recuse herself.

28 U.S.C. § 455. Disqualification of justice, judge, or magistrate judge
(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. 455(b)(1)
He shall also disqualify himself in the following circumstances: Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Code of Conduct for United States Judges

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities
(A) Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently
The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:
(A) Adjudicative Responsibilities.
(1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.

STATEMENT OF THE CASE

A. BACKGROUND on the 'Controlled Substances Act' (CSA)

§ 801. Congressional findings and declarations: **controlled substances.**
The Congress makes the following findings and declarations:
(1) Many of the drugs included within this sub chapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.
In determining into which schedule a drug or other substance should be placed, or whether a substance should be decontrolled or rescheduled, certain factors are required to be considered. These factors are listed in Section 201 (c), [21 U.S.C. § 811 (c)] of the CSA as follows: **Its actual or relative potential for abuse.**

21 U.S.C. 811 (4)(f) clarifies the *Abuse potential*

If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.
Within the CSA there are five schedules (I-V) that are used to classify drugs based upon their abuse potential, medical applications, and safety. Individuals who order, handle, store, and distribute controlled substances must be registered with the DEA to perform these functions. They must maintain accurate inventories, records and security of the controlled substances.

B. The Controlled Substances Act states plainly that only controlled substances required the dispensing of valid (face to face) prescriptions, which is between a doctor and its patient; this relationship does NOT involve a pharmacist, as stated in 21 U.S.C. **§829. Prescriptions:**

(e) Controlled substances dispensed by means of the Internet

(1) No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.
(2) As used in this subsection:
(A) The term "**valid prescription**" means a prescription that is issued for a

legitimate medical purpose in the usual course of professional practice by-
(i) a practitioner who has conducted at least 1 in-person medical evaluation of the patient; or
(ii) a covering practitioner.
(B)(i) The term "in-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

C. Federal law 21 USC 353 does not say that a face-to-face is required for NON controlled substances. In fact, the **Online Pharmacy Safety Act (S2002) legislation** which would have required valid(face to face)prescription for NON controlled substances prescription drugs ordered online introduced to US Senate did NOT pass.

D. The governing pharmacy law (PA27.12(b)(2) and the criminal statute 21 U.S.C. 321 (g)(1), 352 (a), 352(c), 353(b)(1), and 353(b)(4)(A), and 21 USC 331(a) and 333(a)(2) require for the accused to be present at the pharmacy at the time the specific prescriptions in question were filled. Because of potential biases and to avoid any shifting of blame, the pharmacy law eliminates any double standard or shifting of blame; each pharmacist is accountable for his actions and can NOT shift blame to someone else.

> It is the job of any pharmacist while on duty to ensure they themselves follow all laws, regulations, and policies; any misdeeds or mistakes are the responsibility of whoever made the misdeeds or mistakes. Further, any pharmacist on duty also serves as a "supervisor" of themselves and their technicians and is accountable for his shift. Pharmacists do not supervise each other with regard to the practice of pharmacy. Furthermore, the governing pharmacy law states that pharmacy technicians to "assist" pharmacists; the technicians can only work under the supervision of the pharmacist on duty (PA27.12(d)(1)).
>
> Pharmacists are state licensed and are responsible for their own licenses. A hearing is required in front of the State Board of Pharmacy in an event of a dispute over who is responsible for a misdeed or mistake; the Federal Court neither has jurisdiction nor is there any federal law governing the conduct in a pharmacy or that creates a federal oversight of the way a pharmacist performs his work. This is left to the states Board of Pharmacy. Only the State Board of Pharmacy can penalize the pharmacist on duty and pharmacy owner for non-compliance of regulations; such are not federal issues, whereas in this case the District Court INVENTED its own law to create a jurisdiction.

E. To cover up for the District Court's judicial misconduct, the Second Circuit, headed by Chief Robert A. Katzmann, violated the **Code of Federal Regulations of Reconsideration panel, 38 CFR 19.11** by being a part of the same panel, Judge Jose A. Cabranes and Judge Rosemary S. Pooler, who hear her appeal (See Appendix A) as well as her motion for reconsideration (See Appendix B), thus behaved as a **kangaroo court**.

PROCEDURAL HISTORY

1. Because the Plaintiff's trial was rigged by the District Court, On September 2, 2016, the Circuit Court wrongfully affirmed her conviction of May 15, 2015 in violation of:

18 U.S.C. 371 (Count I); introducing misbranded drugs into interstate commerce in violation of 21 U.S.C. 331(a) and 333(a)(2) (Count II); conspiracy to commit mail and wire fraud in violation of 18 U.S.C.1349(Count III); and mail and wire fraud in violation of 18 U.S.C.1341 and 1343 (Counts IV and V). She was sentenced to 36 months' imprisonment, for:

a. dispensing "butalbital" (See Exh C) which **NEVER** existed in the pharmacies,

b. the dispensing of tramadol which was **NOT a controlled substances at the time of dispensing** but the only misbranding alleged about Tramadol is only applicable to controlled substances (Valid Prescription standard),

c. the dispensing of "highly addictive pain meds" which is a term that **does not exist** in law nor in the health care industries and used only to deceive the jury by creating standards that do not exist under the law, which both the District and Appellate Court failed to mention ONE name of the "highly addictive pain meds" that was dispensed, because there were NONE. In fact, the Plaintiff has filed motion(s) requesting the District AND Circuit Courts for an EVIDENTIARY HEARING.

1). for an **inventory and bill of laden** of all **butalbital** tablets that allegedly existed in the three Riccio's pharmacies, based on the filing of the Plaintiff's 2255 Motion.

2) **name ONE "addictive pain med" that was dispensed by the Plaintiff**; and to date, both the District AND Circuit Courts failed to name one "addictive pain med". Instead, the District Court denied "each of the supplementary motions" (Page 2 of 8/20/18 Memorandum and Order") by NOT answering them, because **the Plaintiff NEVER dispensed One "butalbital tablet" nor an "addictive pain med" NOR a "pain med" via the "internet"** (This will be further discussed below) **If trial and appellate counsels had done their due diligence, they would know that the aforementioned statement was flawed and is NOT found in the law.**

Plaintiff now moves for a writ of certiorari, to affirm her actual innocence. In addition to her actual innocence, the Plaintiff will point out the following:

1. The conviction came about through a deliberate deceit of the jury by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew it was perjured testimonies, except for the jury. Without these deceptions, they have no actual physical evidence that would have even associated the Plaintiff with any crime. Morse v. Fusto, No. 13-4074 (2d Cir. 2015)

2. the District Court and the Government violated the Plaintiff's right to due process as well as judicial and prosecutorial misconduct via suppression/withholding of exculpatory evidence, a Brady's violation, including to but not limited to the suppressed video recording, which she viewed for the first time on August 31, 2017.

3. Ineffective assistance from both trial and appellate counsel, which is detailed in other motions.

The District Court created a jurisdiction when none exists by treating drugs that are not Federally

controlled as controlled substances, and **applying the food drug cosmetics act onto the Plaintiff as if it were the "controlled substances act"**. This is an **usurpation of administrative power the District Court does not have, and it is proof her recusal is necessary**.

As has been detailed in previous filings over these matters, and as will be detailed below, Fioricet is not a federally controlled substance, **only the Attorney General** has the power to make drugs controlled substances, judges to not have the power nor expertise to assess or schedule drugs, a drug is an entity under the law not an assemblage of components for a judge to dissect and assess as if it were one of its components, and the law itself is clear on all of this both in the way "**drug**" and "**fixed-combination drug**" is **defined under the law** and in how the Controlled Substances Act is written. Further evidence of just how wrong this trial court is on this matter can be found in West Virginia Board of Pharmacy News from September 2014, where they state on page one: "**Fioricet is not federally scheduled**" (W V Vol 34, No. 1, see exhibit D). This evidence came into existence prior to the Plaintiff's trial and after her indictment, and it clearly adds to proof of the **incompetence of Plaintiff's trial lawyers**. More importantly it adds to the proof that the Plaintiff's constitutional right was violated by the District Court, as evidenced in this motion and as in many other previous motions filed against the District Court. The injustice suffered by the Plaintiff at the hands of the trial Court's judge that this complaint must proceed, as indicated below.

GROUND FOR RELIEF

Judge Buchwald and Judge Katzmann, have numerous conflicts of interest in the form of pending motions and litigations. Many of these address Judge Buchwald's bias and prejudicial behavior towards the Plaintiff as well as addressing her usurpation of legislative and administrative powers to create the appearance of crimes where none occurred.

a. **Judicial Misconduct complaint** of Judge Buchwald was submitted on June 23, 2018 in regard to her usurpation of administrative and legislative powers which she does not have, specifically her treating Fioricet as a controlled substance, her treating Tramadol as a controlled substance for prescriptions dispensed 21 months before the Attorney General made it a controlled substance, her lying about her position on those tramadol prescriptions as evidenced by her shifting statements on it, and her holding the Plaintiff to standards to do not exist under the law and contrary to the standards that do exist. This Judicial Misconduct was ruled by Chief Judge Robert A. Katzmann.
b. And here, **Injunctive Relief** against Judge Buchwald was submitted on 2/23/2018 to stop Judge Buchwald's judgment of conviction against the Plaintiff, **again ruled by Chief Judge Robert A Katzmann**.

The **panel that ruled on the injunctive relief appeal was the exact same panel that ruled on**

the reconsideration of that same matter. This is a violation of **38 CFR 19.11**

PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The District Court's decision conflicts with decisions of the United States Supreme Court and of the United States Court of Appeals for the Second Circuit to which the petition is addressed.

> Stirone, 361 U.S. at 213; Ex parte Bain, 121 U.S. At 12-13, Bacon v. Sullivan,969 F.2d 1517 (3d Cir. 1992), Mireles, 502 U.S. At 11-12. See Stump, 435 U.S. at 360; Tucker, 118 F.3d at 933, Huminski v. Corsones, 396 F.3d 53 (2d Cir., 2003), Maestri v. Jutkofsky 860 F.2d 50 (2d Cir., 1988), US v. Martinez-Zayas 857 F.2d. 122 (3d Cir. 7/13/88), Miller v. US 79 LEd 977 294 US 435 (1935),Run Coal v. Baltimore & Ohio R. Co. 66 LEd 671, 258 US 377 (1922), Commonwealth of PA v Herman J-124-2016

This Court has consistently held that deliberate deception of the jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice."

> Pyle v. Kansas, 317 US 213, 87 L Ed 214, Napue v. Illinois, 360 US 264, 3 L Ed 2d 1217 and Brady v. Maryland, 373 United States 83, 10 L Ed 2d 215.

In the District Court's recent 8/20/18 memorandum and order, again deceiving to the entire public via the internet, and to give reasons for her denial of the Plaintiff's 2255 Motion, she now perjured by stating that the Plaintiff dispensed OPIOIDS (and barbiturates) via the internet (8/20/18 Memorandum and Order page 2 and 4). However, the Plaintiff **NEVER dispensed OPIOIDS nor controlled substances barbiturates via the internet** of "her pharmacies" (page 5). The **pharmacies were not "hers" and the District Court knows this**, and the district court knows that there was no allegation nor any evidence that the Plaintiff dispensed OPIOIDS nor controlled substances via the internet. The **district court judge is lying to slander and smear the Plaintiff, to prejudice anyone reviewing the Plaintiff's filings that expose the misdeeds of the District Court Judge, the Prosecutors, and their witnesses**. The **District Court must be prosecuted for FRAUD**.

18 U.S. Code § 1343 - Fraud by wire, radio, or television

The District Court did this to maintain her usurpation of legislative and administrative powers that she used against the Plaintiff both when **she held the Plaintiff responsible for others self – confessed crimes** in the absence of any actual evidence or laws cited that would hold the Plaintiff responsible for those crimes, and for treating Tramadol and Fioricet as controlled substances and holding the Plaintiff to legal standards that are not applicable, and for making up **fake legal standards such as "highly addictive pain meds"** in order to avoid the

actual legal standards and **to deceive the jury**. She is also protecting her place as a judge which she has proven **she is not fit for** because:

> 1) She can't accept the fact that the law is quite clear in giving the Attorney General and nobody else the ability to make a drug a controlled substance;
> 2) She can't accept that the law is quite clear in that it requires the Attorney General to make controlled substances on the record;
> 3) and that she violated the governing pharmacy laws which is not in conflict with any federal law that prevents pharmacists from blaming their own crimes on others.

To reiterate, the Plaintiff's conviction was directly due to misconduct, bias and fraud by Judge Buchwald that:

started early in the pretrial phase, persists through today, and is self-evident. Her motivation was to intimidate the Plaintiff into a plea deal or secure a guilty verdict to protect nine guilty pleas to false charges alleging a "narcotics conspiracy" which could become invalid if the Plaintiff had a fair trial. Some glaring examples are:

> 1. Using dismissable misleading and ambiguous indictments to ensure convictions;
> 2. Creating a jurisdiction for Tramadol under the Controlled Substance Act 21 (twenty-one) months before it became a federally controlled substance, long after the Plaintiff's indictment;
> 3. Changing the legal definition of "Drug" and ignoring laws that govern scheduling.
> 4. Exceeding her power by inventing and ignoring laws, usurping administrative and legislative power.
> 5 Allowing both the known use of perjured testimony and the suppression and withholding of multiple pieces of physical evidence directly contradicting that knowingly used perjured testimony;
> 6. Further withholding and allowing suppression of exculpatory evidence contradicting the Prosecutors, their witnesses, and the Judge's own handwriting analysis expert testimony.

Chief Judge McMahon failed to address these issues; the injunctive relief must proceed. The arguments made in McMahon's decision are flawed and will be addressed now.

> Judge McMahon claims the Judge has absolute immunity. She is wrong.
>
> "Judicial immunity does not apply when a judge takes action outside her judicial capacity, or when a judge takes action that, although judicial in nature, is taken in absence of all jurisdiction." Mireles, 502 U.S. At 11-12. See Stump, 435 U.S. at 360; Tucker, 118 F.3d at 933. "Administrative decisions, even though they may be essential to the very functioning of the Courts, have not...been regarded as judicial acts." Huminski v. Corsones, 396 F.3d 53 (2d Cir., 2003). "When a judge clearly lacks jurisdiction over the subject matter, any authority exercised is an usurped authority." Maestri v. Jutkofsky 860 F.2d 50 (2d Cir., 1988).

Judge Buchwald's extra-judicial actions, detailed below, by design impeded proper functioning of the court, subjecting the Plaintiff to harassment and intimidation:

> 1. Used misleading and ambiguous indictments, that should have been dismissed, to ensure convictions;
> 2. Created a jurisdiction for Tramadol under the Controlled Substance Act before it became a federally controlled substance, which was 21 (twenty-one) months after the Plaintiff's indictment;
> 3. Changed the legal definition of the word "Drug" and ignored laws governing how drugs become controlled substances;
> 4. Exceeded her authority by inventing and ignoring laws to usurp legislative and administrative power.

As shown below, Judge Buchwald acknowledged Tramadol was not a controlled substance pretrial, but chose not to address the matter. The only acceptable manner would be to dismiss the charge. Instead she claimed it was only there as background information. This was done to intimidate the Plaintiff into accepting a plea deal as the other defendants had done. However, Judge Buchwald showed herself to be duplicitous by claiming at trial that all the drugs dispensed were controlled substances.

Judge Buchwald shows more brazen duplicity with regard to defects in the indictments concerning Fioricet, which she chose to call Butalbital. She ignored significant portions of the law and common sense to deceive the Jury by calling Fioricet, which is not a federally controlled substance, by the name of only one of its components: Butalbital. That a drug is not merely its most salacious component is already decided by the law. **"Drug" is defined under 21 US Code Section 321 (g) (1).** The relevant portion is:

> (A) articles recognized in the official United States Pharmacopoeia, ... or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease ... (C) articles ... intended to affect the structure or any function of the body...(D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

A component of a drug may be another drug, but in such cases it is just a component and not the drug. Renaming a drug to make it appear to be a controlled substance is no innocent mistake, but an intentional deception meant to confuse anyone reading trial transcripts into thinking Butalbital, not Fioricet, was dispensed. It intentionally rendered the MURP Reports, one of the few exculpatory piece of evidence not suppressed, unintelligible.

Beyond the fact that immunity can not apply to judges usurping extra-judicial authority, Judge McMahon ignores that Judge Buchwald committed substantive due process violations against the Plaintiff. The Court can not dismiss a motion detailing such egregious violations on immunity grounds.

> "To establish a violation of substantive due process rights by an executive official, a plaintiff must show (1) that the official violated one or more fundamental constitutional rights and (2) that the conduct of the executive official was shocking to the contemporary conscience." Truong v. Hassan, 829 F.3d 627, 631 (8th City 2016) (internal quotations and citations omitted). "To be conscience shocking, the government action must be 'truly irrational, that is, something more than ... arbitrary, capricious, or in violation of state law." Draper v. City of Festus, 782 F.3d 948, 953 (8th Cir. 2015) (quoting Weiler v. Purkett 137 F.3d 1047, 105 (8th Cir. 1998) (en banc)).

Here, the Defendant's actions rise to the "conscience shocking" level as described both above and below.

Judge McMahon also makes an assumption that fails upon scrutiny: Judge Buchwald misconstrued the law, a polite way of calling Judge Buchwald incompetent. If Judge Buchwald misconstrued the law, she would

have corrected herself at any number of opportunities afforded her. The original indictment stood for years when it should have been dismissed. She could have corrected any mistakes at sentencing or at the opportunities given to her by the Plaintiff's many motions over her wrongful conviction. Instead Judge Buchwald still clings to the extra-judicial power, standing by all her misdeeds detailed below. Judge McMahon is not acting impartially because the way to find if this is misconstruing the law is to allow the motion to proceed. If Judge McMahon thinks Judge Buchwald acted incompetently, she should address it while allowing this motion to proceed.

To cover up for Judges Buchwald and McMahon's judicial misconduct, Chief Judge Katzmann conducted a kangaroo court in the Second Circuit by putting himself in the panel to rule on the Plaintiff's appeal (See Appendix A) and involved himself in the same panel to rule on the Plaintiff's motion for reconsideration (See Appendix B). According to Black Law Dictionary:

> "Court proceedings that lack the due process protections people associate with courts of law have earned the name "kangaroo court."...
> "As a general rule, a kangaroo court is any proceeding that attempts to imitate a fair trial or hearing without the usual due process safeguards including the right to call witnesses, the right to confront your accuser and a hearing before a fair and impartial judge. Kangaroo court proceedings are usually a sham carried out without legal authority in which the outcome has been predetermined without regard to the evidence or to the guilt or innocence of the accused."

Referring to something as a **kangaroo court** usually carries with it a negative inference because of the manner in which they are conducted. Here are three features of a kangaroo court that set it apart from normally accepted principles of fairness and justice.

Applying laws retroactively

Since the outcome of a kangaroo court is a foregone conclusion, one method of ensuring that a person will be found guilty is to create laws and apply them to past behavior. Ex post facto laws criminalize past conduct that was not illegal when it was performed. The benefit of ex post facto laws to those conducting a kangaroo court is that a conviction is assured.

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. Removal of this most basic due process right is a characteristic of a kangaroo court.

Lack of impartial judges

Because the outcome is predetermined before any evidence is presented, kangaroo court proceedings are presided over by a judge or panel of judges that is partial toward the prosecution. Judges during a trial in a kangaroo court usually limit or obstruct efforts by the accused to present evidence or witnesses favorable to the defense while placing almost no restrictions on the evidence prosecutors are allowed to present.

The fact that the judge in a kangaroo court is part of the sham process, the punishment inflicted upon the defendant generally exceeds what might normally be justified based upon the conduct of which the defendant was accused and convicted. Harsh and severe sentences are common in a kangaroo court.

Absence of the most basic constitutional rights

> The right against self-incrimination, the right to cross examine witnesses and the presumption of innocence are lacking in a typical kangaroo court. Constitutional safeguards would stand in the way of a kangaroo court reaching its predetermined result. In some instances, limited cross examination of witnesses and other fundamental due process rights might be allowed to the defendant to conceal the true nature of the kangaroo court."

This writ of certiorari shows that Judge Buchwald, along with Judge McMahon, Chief Judge Robert A. Katzmann and his panels, Judges Jose A. Cabranes and Rosemary S. Pooler, all conducted a kangaroo court to ensure the Plaintiff remain convicted.

FRAUD and PERJURIES are NEVER moot!

As for PERJURIES, the trial judge, the Government, and its witnesses committed PERJURIES at the Plaintiff's trial, as well as in opinions the District Court published on the internet to cover up her perjuries

> **Legislation lays down laws or rules. Administration carries those laws into effect.** The **judicial function** is "to carry out the purposes of the statute, not to AMEND it." Miller v. US 79 LEd 977 294 US 435 (1935)."It is not within the power of the Court to "amend the governing pharmacy laws" on the ground that the administrative power conferred on the" State Board of Pharmacy for all pharmacists to abide by. Lambert Run Coal v. Baltimore & Ohio R. Co. 66 LEd 671, 258 US 377 (1922).

Judge Buchwald's rulings are indefensible under both the Controlled Substances Act (CSA) and the Food Drug and Cosmetics Act (FDC Act); there is not even a colorable argument supporting Judge Buchwald's unlawful exercise of jurisdiction. The claims of misbranding were supported by no physical evidence, and were presented to the jury in intentionally confusing ways meant to create a conviction out of nothing. As discussed below, it is only becoming more and more obvious that the judge does not understand what "bonafide" or "valid" means when it comes to prescriptions, nor does the judge understand what those standards obligate pharmacists to do under the law. What is also clear from the trial transcripts that the two standards were conflated into a "bonafide face to face" standard and presented to the jury as such even though no such thing exists in the health care professions nor in the law. The Judge is also proving more conclusively that she has not read nor understood either the Controlled Substances Act nor the Food Drug and Cosmetics Act, nor did she bother to familiarize herself with the matters the criminal proceedings were about. When she says the Plaintiff dispensed "Opioids" via the fulfillment pharmacy she is lying to slander the plaintiff and prejudice anyone reading her words. She has not heard nor seen any evidence of that notion, no one at trial or otherwise made such an accusation, and it never happened. The fact remains that the Judge is applying a standard applicable only to controlled substances,

when no controlled substances were dispensed via the fulfillment pharmacy. The fact also remains that this standard was presented to the jury through a number of deceptions: calling Fioricet by the name of one of its components, calling the drugs "highly addictive pain meds" when such a phrase does not exist under the law nor in the health care professions in order to avoid the term "controlled substances", and the above mentioned conflation of bonafide and valid prescriptions. She also ignores the laws that make pharmacists responsible legal for their own actions when she holds the Plaintiff responsible for acts confessed to by prosecution witnesses, which is discussed below. Neither the Judge nor the prosecutors have explained how they are holding the Plaintiff responsible for the prescription standard for controlled substances for prescriptions dispensed for Tramadol 21 months before it became a controlled substance. How they got away with it is clear, the trial was all innuendo, lies, and fake standards not found in the law. "The scope of the indictment goes to the existence of the trial court's subject-matter jurisdiction". Stirone, 361 U.S. at 213; Ex parte Bain, 121 U.S. At 12-13.

The judge and the prosecutors want to have it both ways. They want to pretend they are not using the Controlled Substances Act against the Plaintiff but they also want to use the standards for valid prescriptions only found in the Controlled Substances Act and only applicable to Controlled Substances. What they are doing is holding the Plaintiff to the CSA's valid prescriptions standards for drugs that are not controlled substances; they did this by confusing the jury and conflating the valid prescriptions standards and the bonafide standards. The only applicable standards for any of the drugs dispensed through the fulfillment pharmacies is the bonafide standards, and this standards does not require the pharmacists to access or have any knowledge regarding the doctor-patient relationship. Quite simply: if a face to face relationship between a doctor and a patient is required for a prescription, then that prescription can only be for a controlled substances. But very importantly, if the Plaintiff violated this requirement, it would not be in violation of the FDC Act but the Plaintiff did not violate this requirement because NONE of the drugs dispensed via the fulfillment pharmacies were controlled substances. By hiding behind the weasel-words of saying they did not charge the Plaintiff under the Controlled Substances Act they are continuing their deception because that is the standard they applied, and they presented it in an intentionally confusing way to the Jury. They may have not charged the Plaintiff under the Controlled Substances Act in the superseding indictment, the original charges did cite alleged violations of the Controlled Substances Act, even though the drugs named were not controlled substances, Fioricet nor Tramadol.

The judge would have you believe that the Plaintiff violated the bonafide legal standards, but the judge obviously has not read the law because pharmacist are not required to ascertain anything regarding the doctor-patient relationship when the prescription is not for a controlled substances. It is important to note that no doctor testified at the trial claimed to have written for any controlled substances at all, so whether or not they have a face to face relationship with the patient or deceived the Plaintiff is totally moot; the Plaintiff did nothing wrong.

Because Judge Buchwald USURPED administrative and legislative powers in ruling on the Plaintiff's motions just as she did throughout these entire proceedings, thus denying the Plaintiff her constitutional right, it warrant that her decisions on all the Plaintiff's motions should be MOOT. The more Judge Buchwald writes, the clearer it is that she does not understand the applicable laws, the governing pharmacy laws, nor the bonafide legal standards for prescriptions, nor the Controlled Substances Act.

Also, the government does not even understand the Controlled Substances Act. Here are 2 examples:

1. the state of West Virginia, (See Exhibit D), stated Fioricet is NOT a federally controlled substance. It also stated that there is confusion about the matter. The confusion seems to be that people just do not bother to read the law. For a Drug to be made a controlled substance, there must be a reason such as potential for abuse, the findings for the potential must be ascertained through a process and it must all be done on the record, and it is all done and only done by the Attorney General. Drugs are not assessed by judges nor prosecutors, whether that assessment is done by looking at the components or anything else, because they do not have the expertise. If anything this trial has proved it is that they do not have the expertise. Drugs, under the law and in the health care community, are entities unto themselves, as further discussed below. No one regulates a drug simply because of its components, but only if the drug itself requires it. This is ascertained through findings made by the Attorney General, and it is all done on the record as required by the Controlled Substances Act itself. The confusion West Virginia speaks of is a polite way of saying that prosecutors and judges are treating a non-controlled substance as if it were a controlled substance, and innocent people are suffering from their obscene lust to fill prisons with the innocent.

2. U.S v TITILAYO AKINTOMIDE AKINYOYENU, Criminal Action No. 15-42 (JEB). While that judge is correct about Fioricet's exempted status, she also misses the more important point that the Attorney General has made no findings that Fioricet has a potential for abuse and thus has not made it a controlled substance. The

simple fact of the matter is that if this had happened, Fioricet would be listed on the Controlled Substances List (See Exh E) and the announcement scheduling it would be found in the Federal Register.

Fioricet was only available in tablet form, and it was not a controlled substance, that it is on the exempted prescription product list actually does not matter, and this seems to have caused "confusion" if we allow the imprisonment of innocent people to be characterized as confusion as opposed to vindictiveness. But, because one of Fioricet's components is a controlled substance, when a capsule form of Fioricet was introduced by manufactures, that form and only that form was made a controlled substance when it first came on to the market. This was done on the record and is easily found, and it only lasted for a brief period of time. Fioricet capsules were regulated as a schedule III controlled substances from July 29, 2013, and once it was realized to be as safe and free of potential for abuse as the original Fioricet TABLET, it was no longer regulated as a CIII product on September 16, 2013. To date, Fioricet is not listed as a controlled substance on the Controlled substance list of July 12, 2018 nor is it regulated as a controlled substances Schedule III. This new form of Fioricet came on the market around **7 months after the Plaintiff's arrest**, for charges that alleged violations of the Controlled Substances Act for dispensing Fioricet, which was deceptively misnamed butalbital in the indictment, and for dispensing Tramadol but that drug's inclusion in any of this was never explained but it remains true that it was treated as a controlled substance by the judge and the prosecutors not only in these criminal proceedings but also for all the original so-called co-conspirators in the original alleged narcotics conspiracy. The whole thing has been one gigantic usurpation of administrative and legislative power from day one.

The Plaintiff dispensed Fioricet TABLET (See Exh C), but it was never regulated as a controlled substance Schedule III. If it were, the judge and Prosecutors could cite something similar to the above reference to the brief amount of time when the Fioricet CAPSULE was first introduced on the market on July 29, 2013, where: that new formula of Fioricet was initially a controlled substance CIII product, but on September 16, 2013 received exempted prescription drug status and is no longer regulated as a CIII product. This event shows the flaws in the prosecution's and the judges arguments over the entire course of these criminal proceedings: it is not on the Controlled Substances list because it is not regulated as one, because it has no potential for abuse. If it did, it would be on the controlled substances list, and when those findings were made BY THE ATTORNEY

GENERAL, it would be found in the Federal Register. When Fioricet capsules was first introduced, the precaution was taken; but once it was established that Fioricet capsules had no potential for abuse, just like Fioricet tablets, it was NO LONGER REGULATED AS A CONTROLLED SUBSTANCE SCHEDULE III.

The only thing backing up the prosecutor's and the judge's argument is an authoritarian 'because I said so' type of argument. If they were so confident about their argument, they would not have lied about the name of the drug dispensed both throughout the trial and at sentencing. Instead of calling it Fioricet, they called it by the name of one of its components, "butalbital", because they want the jury to hear the name of a controlled substance, not the name of a fixed-combination drug whose formula is designed to eliminate the potential for abuse: Fioricet. Their lies point to the truth: they wanted to confuse the jury and anyone reading the transcripts.

The judge and the Prosecution do not understand the requirement in the law that a drug has to have and establishes a potential for abuse in order to be a controlled substance; they don't understand the difference between a drug, as defined by law (Fioricet) and a component (butalbital). They're arguments make it seem that they've never read the law. The law is actually very easy to understand. Fioricet is not a controlled substance, and this is spelled out very clearly below where large portions, where nothing relevant is left out, of sections 811 and 812 of the controlled substances act are quoted, along with important definitions that clarify the matter.

The Plaintiff will prove that she was framed by the trial judge, prosecution and its witnesses. There is no dispute that Butalbital, a drug the Plaintiff was indicted with, NEVER existed in the pharmacies and that Tramadol (See Exh F), the other drug named in the indictment, was not a controlled substance at the time of dispensing.

Rather than grant an evidentiary hearing where the Plaintiff can produce withheld/suppressed physical evidence to exonerate her, the trial Court unconstitutional deprived the Plaintiff's Rights under the Due Process and the Equal Protection Clauses to protect her misdeeds from scrutiny where she would be shown to have obviously conducted a rigged trial via FRAUD (perjuries, lying to the jury, known use of perjury) EXTORTION, and the USURPATION of administrative and legislative powers. Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002).

The writ is an essential element to show cause as to the **perjured testimony of the government and the government's witnesses.**

"Prosecutors who knowingly present perjured witness testimony or fail to correct it violate a defendant's right to a fair trail, the U.S. Court of Appeals for the Third Circuit ruled (Haskell v. Superintendent Greene SCI, 2017 BL 266640, 3d Cir., No. 15-3427, 8/1/17). "A root is how can a defendant possibly enjoy his right to a fair trial when the" government "is willing to present (or fails to correct) lies told by its own witness and then vouches for and relies on that witness's supposed honesty" in its closing argument? Circuit Judge Thomas L. Ambro asked in writing for the court that tossed a murder conviction Aug. 1 (2017). He answered that question by quoting the U.S. Supreme Court in Napue v. Illinois. "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth," he said. (T.1736, 1938-1941, 1951, 1953, 1861).

ARGUMENTS Showing EVIDENCE of Judicial BIAS and Statements of the Case

The Plaintiff's conviction came about through a deliberate deceit of the jury by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew was perjured testimonies except for the jury.

If Fioricet is a controlled substance, as the District Court **FALSELY** states (8/20/18 Memorandum and Order page 12) **all the Trial Judge and the Government would have to do and all they should do is point to the Federal Register to show where and when the Attorney General made it a controlled substance. The Judge does not make** an argument as to why Fioricet is, in her view, a controlled substance nor does she make an argument as how or when it became one. She just makes an unsupported and unsubstantiated statement that it is. As shown below, the prosecutors cherry-picked a few lines from section 812 of the Controlled Substances Act that show criteria for scheduling **IF** a drug is found to require scheduling, but they ignore the **requirements** specified within section 812 itself as well as section 811 that specify what findings are required for a drug to be made a controlled substance and the fact that those **findings must be made on the record**. They also ignored the definition of the "**Drug**" and "**Fixed-Combination Drug**" which prevent the misnaming of Fioricet that was engaged in in the indictments and during the trial and the sentencing, and that also prevent the kind of confusion between Fioricet and any of its components. The deception of the jury over the **drugs name** that the Judge and the prosecutors engaged in is a clear indication that the certainty the judge is expressing about Fioricet now is more about her getting away with the deception than about her confidence in her statements about Fioricet. The Judge's duplicity about Fioricet's name is rather brazen, but a review of these criminal proceedings will reveal more duplicity with regard to **Tramadol** and other deceptions.

Let start from the beginning:

1. The Plaintiff was arrested on November 29, 2012, indicted under the Controlled Substances Act as part of an alleged "narcotics conspiracy", but the indictment used was defective and intentionally misleading. The most obvious defect is that Tramadol, one of the two drugs named in this alleged conspiracy, was not a controlled substance at the time. The Judge violates Canon 2 (A) cited above by ignoring the law, and she usurps administrative power by treating Tramadol as a controlled substance. The indictment also named the drug Butalbital; but this was a deception committed by the prosecutors against the Grand Jury, the district court, and the Plaintiff because the drug in question that was dispensed was Fioricet, not Butalbital. There was never any Butalbital dispensed by any of the pharmacies in question. During the pretrial phase this fact was well established and all sides acknowledged that the drug in question was indeed Fioricet (08212014 Buchwald Memorandum and Order).

Judge Buchwald shows she either has not read the law or she is willing to rewrite it when she says: "Because Fioricet contains Butalbital, a derivative of barbituric acid, there is no dispute that Fioricet falls within the category of drugs controlled by 21 U.S.C. § 812. See Def. Mem. at 4-5; Def. Reply Mem. At 2." (08212014 Buchwald Memorandum and Order) Her statement is just not true. **The law does not regulate drugs based on their components**. The **definition of Drug and of Fixed Combination Drug in the law, and the itself prevents this**. The law empowers **only the Attorney General to make drugs a controlled substance and requires it to be done on the record**.

The Judge and Prosecutors skipped passed the criteria and procedures required for the Attorney General to make a drug a controlled substance, to the part of the law cite is deep inside the middle of the law that is meant as an initial guideline for scheduling that the Attorney General uses if the Attorney General determines a drug must be made a controlled substance. The part of the law the Judge and Prosecutors used, while ignoring its context and excluding the rest of the law, describes criteria that guides the Attorney General if and only if the decision was made to make a drug a controlled substance. The Judge ignores the fact that only the Attorney General determines if a drug should be a controlled substance. Instead the Judge just jumps right ahead and retroactively schedules Fioricet herself with no findings to indicate such an action is required, no fair warning required under the law, and no authority to act in this manner. When a drug is determined to be a controlled substance, the Attorney General is required by Title V Section 5, referred to directly in the Controlled Substances

Act, to give fair warning to the industry over the change. Judge Buchwald also ignores that. The Judge violates Canon 2 (A) cited above by ignoring the law, and she usurps administrative power by treating tramadol and Fioricet as controlled substances.

The distinction between Butalbital and Fioricet is far greater than just the fact that the law recognizes them as the two different drugs that they are by the way Drug and Fixed-Combination Drug are defined under the law, because Fioricet is not a controlled substance under federal law. Fioricet is not to be confused for Butalbital, nor the other way around, as defined by the law itself. Confusion over the two was Judge Buchwald's intention throughout the entire trial, where the wrong name for the drug was intentionally used by her and the Prosecutors and their witnesses.

Fioricet is not categorized by the law in anyway that Judge Buchwald states. One must ignore the vast majority of the law and read only a very deceptively chosen portion of the law to come away with the misconception that Judge Buchwald relies on. The controlled substances act requires that a drug be found to have a potential for abuse by the Attorney General before and on the record he may make it a controlled substance and then place it on a schedule. If this had happened, it would be on the Controlled Substances List, and fair notices would have been given as required by the law. This will be explained in more detail below.

Thus, the indictments that placed the Plaintiff and the alleged co-conspirators in front of Judge Buchwald that described a narcotics conspiracy was completely dismissible because the only two drugs involved were not controlled substances, and the indictment incorrectly named one of the drugs. The law does not give the court jurisdiction under the Controlled Substances Act over acts involving Tramadol or Fioricet in 2012. Judge Buchwald violated Canon 2 (A) cited above because rather than respect the law she ignores it in her statement about Fioricet and what category it might fall under.

2. Tramadol became a Controlled Substance under federal law on August 18th, 2014. Simply put, no dispensing or prescribing of Tramadol in 2012 was governed by the Controlled Substances Act cited in the original indictment, 21 months prior to it becoming a Controlled Substance. Prosecutors must have deceived the Grand Jury into indicted anyone for violating the Controlled Substances Act for any act involving Tramadol, because it was not a controlled substance. By claiming any dispensing or shipping of Tramadol violated the Controlled Substances Act, Prosecutors were attempting a fraud on the court and against the Plaintiff. The

District Court should have dealt with this defect in the indictments that charged as a crime something that was not a crime, but she did not. Instead she went along with it, as she had already accepted plea deals for these non-crimes from the alleged co-conspirators in this so-called narcotics conspiracy. The lying to the Grand Jury that produced these charges should also be dealt with, because that is illegal.

3. There is no reasonable excuse for a Judge to not dismiss a charge alleging violations of the Controlled Substances Act in 2012 for anything involving the drug Tramadol. The **Judges' unwillingness to dismiss charges that do not allege actual crimes under the law they cite is a shirking of her duties as a judge and a violation of Canon 2(A), where respect for the law would require dismissing the defective indictment if for no other reason the law cited does not give her jurisdiction over Tramadol (nor Fioricet, but in less obvious ways).** (See Exh K)

4. The Plaintiff's alleged co-conspirators had all accepted plea deals, pleading guilty to allegations that were not crimes. Asking the Judge to confront the matter of Tramadol in the charges, and her shirking that responsibility, must be seen in that light: that for her to admit the simple truth of the matter would call into question her accepting of plea deals over the same charge. Because of this, **any continued involvement of Judge Buchwald in the proceedings of this Plaintiff is a violation** of **28 U.S.C. 455(b)(1).**

5. The court's contention that the charges in the original indictment concerning Tramadol under the Controlled Substance Act is somehow "merely a function of the placement of **background information**" is not just untenable, but inconsistent with her actions. Her contention is untenable because charges are charges, not background information.

In both the original indictment and the superseding indictment, Tramadol and Butalbital are presented in exactly the same way. If Judge Buchwald's claim that Tramadol's inclusion in the charges is as background information, then she must also conclude that Butalbital's inclusion is equally just as background information and thus no drugs are actually named in charges in either indictments. Further, making Tramadol a controlled substance and lying about it, not dismissing the charge but pretending it is background information, is a **usurpation of Administrative power and dishonest.** It is a violation of Canon 2 cited above (See Exh K – Affidavit of Lena Lasher)

6. It is also a **violation of Canon 3**: "The duties of judicial office take precedence over all other activities." She was at a hearing to dismiss defective charges, and her duty was to deal with them in an unprejudiced way. There was no legal justification to put off the dismissal of the charges at that moment. It was her responsibility and she ignored it in favor of some future "point at which the concerns raised by Defendant regarding prejudice and jury confusion are more immediate." What is that point? Everyone involved and anyone reading this knows that simply means after the prosecutors get her licenses revoked, and they make threats over worse but also false charges as they did often, and the trial date rolls around and her lawyers essentially beg her to take a plea deal and even her lawyer's lawyer friends call begging her to take a plea deal, and with as much fear and intimidation they can possibly muster, the "point" the Judge refers to is the accepting of plea deal. She is shirking her judicial responsibility in violation of Canon 3, in favor of being the Prosecutor's anvil.

7. Judge Buchwald's non-decision over Tramadol was clearly a disingenuous way to hide her true intentions. At trial, and at sentencing, and in denying bail pending appeal, the Plaintiff was held responsible to the standard contained in the Controlled Substances Act for dispensing the fulfillment pharmacy prescriptions, even though none of the prescriptions dispensed were controlled substances. The Controlled Substances Act, violations of which were removed from the superseding indictment, did not apply to any of the drugs dispensed

via the fulfillment pharmacy. The jury was falsely told that Tramadol and the drugs dispensed via the fulfillment pharmacy required a pharmacist to confirm a face-to-face relationship between a doctor and patient, where only a bona fide relationship is required and the only confirmation required is the doctor's signature on the prescription. The Judge also created her own legal standard at trial and at sentencing she declared that "all the drugs" the Petitioner dispensed "were highly addictive pain meds". This is a false for a couple of reasons. None were. The Judge heard about three drugs dispensed via the fulfillment pharmacy: Carisoprodol, Tramadol, and Fioricet which was called "Butalbital" by witnesses who must be acknowledged as having perjured themselves because that is not the name of the drug they received nor was it the drug they were prescribed, in her court room. In fact, at trial, due to the fact the pharmacies never carried butalbital, the executive officials (AUSA Richenthal and Greenberg, DEA Agents Popowich, Germano, and Murphy) and the trial Judge, deceived the jury by calling Fioricet, the name of the drug that was dispensed, by the name of one of its components, butalbital. On its own Butalbital is a drug that is a controlled substance which required a valid prescription. But Butalbital is not Fioricet. Fioricet is a fixed-combination drug as described below in item # 12. Fioricet is a NON controlled substance under federal law, has no potential for abuse, and does not require a valid prescription. The combination is formulated such that the patient can not abuse the drug: doing so would hospitalize them for liver damage due to the addition of a demonstrably non-controlled substance that is available over the counter with out any prescription: Acetaminophen. This is no different than if a patient tried to abuse Tylenol, because the active ingredient in Tylenol is Acetaminophen. Because of this lack of a potential for abuse, Fioricet does not meet the criteria for a controlled substance under federal law as set forth under the Controlled Substances Act Subchapters 881 (a), 811 (b), 811 (c), 812 (b) (3) (A), or 812 (b) (3) (C). In particular, it does not meet the criteria that specifies that the findings that cause a drug to be a controlled substance under federal law must "be made on the record after opportunity for a hearing pursuant to the rule making procedures prescribed by subchapter II of Chapter 5 of Title 5."

This bait-and-switch of a drug's name for the name of one of its components causes the indictment to be a defective indictment. The changing of the drugs name was intentional and indicative of judicial bias. The administration officials, both prosecutors and agents, committed perjury and fraud on the Court and usurped legislative authority by trying to make Fioricet a controlled substance by calling it Butalbital, and the District

Court invented its own laws to create a jurisdiction for itself over Fioricet by blindly accepting this renaming of the drug. If Fioricet was called by its proper name, it would be obvious to the casual observer that the District Court lacked of subject matter jurisdiction over this case. The Plaintiff's lawyers completely ignored this.

DEA agents Popowich, Germano, and Murphy all lied when they stated: 1) that they ordered and received butalbital, and 2) that they had invoices for butalbital. However no such invoices nor the medicines they ordered were presented to the jury as physical evidence to back up their claims, because if they had presented it everyone would plainly see they received Fioricet which is not a controlled substance. There was no physical evidence of any prescription, receipts, nor invoices of "butalbital" nor controlled substance marking on any of it, because there were none as there are none for Fioricet. A competent attorney would address this matter.

Carisoprodol is not a "pain med". It is for spasms and it became a schedule IV controlled substance on January 11, 2012, and the petitioner made sure the fulfillment pharmacy stopped dispensing it on December 23, 2011. Tramadol became a controlled substance on August 18th, 2014, (See Exh F) 21 months after the original indictment; when it did, it became a Schedule IV Controlled Substance. It is not a pain med, but a "pain reliever" and the distinction is a real one as anyone suffering from severe pain and needs a pain med can attest to. Acetaminophen is a pain reliever. "Pain med" is a category of medicine, and those are Schedule II drugs, none of which were dispensed through the fulfillment pharmacy, as no controlled substances on any schedule were dispensed through the fulfillment pharmacy. A pain reliever is not the same as a pain med, and the typical potentials for abuse differ similarly for the two. Long after the Plaintiff's arrest, and long after the defects in the indictment where the alleged and ill-defined acts were not crimes at all should have lead to the charges being dismissed, it was found Tramadol "has a low potential for abuse relative to the drugs or other substances in schedule III" where "abuse of the drug... may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III." These quotes concerning schedule IV come from section 812 of the Controlled Substances Act, and they show the judge was more interested in hyperbole than the actual law or public safety. To call Tramadol highly addictive is false hyperbole meant to prejudice anyone hearing or reading the Judge's words against the Plaintiff, and in 2012 no potential for abuse was recognized for the drug and it was not a controlled substance. Even after it became a controlled substance it is still wrong to call it "highly addictive" or a "pain med". The Judge's phrase is not found under the law and purely meant to be

prejudicial and thus clearly a violation of Canon 2's demand for impartiality and Canon 3's prohibition against partisanship. The actual drug Butalbital can not be considered "highly addictive" either, not only because the phrase has no meaning under the law nor in any qualified discussion of addiction where the proper term "potential for abuse" is used, but because as a Schedule III controlled substance, its potential for abuse is only classified as falling below Schedule II drugs (which might colloquially be called highly addictive). But, that point is moot because Butalbital is not a drug ever dispensed by the fulfillment pharmacy. The Judge is lying when she calls the drug Butalbital. Her renaming of the drug for her own purposes can only be considered an intentional deception to conceal the fact that she did rename Fioricet by the name of one of its components and then treated Fioricet as if it were a controlled substance. The Judge violates Canon 2 by not respecting the law's definition of Drug that prevents renaming of drugs, and Canon 3 prohibition against partisanship by doing nothing more than parroting the Prosecutors misrepresentation of the law and its requirement for her to be competent in the law.

So, the Judge heard about three drugs dispensed via the fulfillment pharmacies. One became a controlled substance while they were in business, one long after, one never. When the government sent out their fair notice warning, the fulfillment pharmacies contacted their patients who were being treated by doctors with Carisoprodol to inform them that they would no longer dispense the drug for them. The government's fair warning, required under the parts of the Controlled Substances Act the Judge and Prosecutors ignored and under Title V Section 5 specifically refereed to in the Controlled Substances Act, allowed the pharmacy to give their patients enough fair warning, and they stopped dispensing the drug two weeks before the date it became a controlled substance. These are the actions of a responsible pharmacist and a business that is conducting itself legally. Judge Buchwald lie that all the drugs dispensed by the fulfillment pharmacy being "highly addictive pain meds" is clearly false and prejudicial. Regardless of what ever she thinks her made-up category means, it is not in nor of the law. She is using her time and power as a judge to hold the Plaintiff to a standard not found in the law. Also at sentencing Judge Buchwald lied by stating the Plaintiff dispensed Butalbital. She committed a fraud on her own court in service to her bias. The acts described here in point 7 are not a judicial acts and are violations of Canons 2 and 3.

8. On November 30, 2015 Judge Buchwald's bias remained on display but she sheds the faux-legal phrase she made up and ignores the fact that the Plaintiff was not convicted of any Controlled Substance

Act violations, in her denial of the Plaintiff's Motion for bail pending appeal, by lying in stating that "**all the drugs the Petitioner dispensed were controlled substances". The statement itself is a lie, a fraud on the court and a slandering of the Plaintiff**, and it shows her usurpation of Administrative power, because she is the only one making the these drugs controlled substances, not the Attorney General. **None of the drugs the Petitioner dispensed via the "fulfillment pharmacy" were controlled substances** and there was nothing illegal or unethical about dispensing them. Thus in her denial of bail pending appeal, Judge Buchwald's bias is on full display as well as her usurpation of Administrative power. These are additional violations of Canon 2 and 3.

9. Judge Buchwald clearly is treating Tramadol as a controlled substance even though the pharmacies in question were shut down because this wrongful prosecution 21 months before it became a controlled substance, and her ill-advised phrase "highly addictive pain meds" and her ridiculous statements about "background information" were only meant to conceal the fact that she was going to find the Plaintiff guilty of the original indictment even after it was withdrawn. This is not a Judicial act; it is a usurping of Administrative Power. Judges do not decide if a drug is a controlled substance or not. That task is the Attorney General's, and there is no side-stepping the fact that Judge Buchwald usurped that power in these criminal proceedings. These are violations of Canon 2 and 3.

10. To avoid responsibility for their own negligence, the Plaintiff's lawyers realizing they have common cause with Judge Buchwald, deceived **Judge Swain** as to the appropriateness of Judge Buchwald so that they could have their common cause protected. This in itself is a conflict of interest and is in **violation of Canons 2 and 3.**

11. As stated above, the other drug named in the indictment is "Butalbital"; but this was a deception committed by the prosecutors against the Grand Jury, the district court and the Plaintiff because the drug in question was Fioricet, not Butalbital. There was never any Butalbital dispensed by any of the pharmacies in question. During the pretrial phase this fact was well established and all sides acknowledged that the drug in question was indeed Fioricet (08212014 Buchwald Memorandum and Order). "Because Fioricet contains Butalbital, a derivative of barbituric acid, there is no dispute that Fioricet falls within the category of drugs controlled by 21 U.S.C. § 812. See Def. Mem. at 4-5; Def. Reply Mem. At 2." 08212014 Buchwald Memorandum and Order.

Fioricet containing Butalbital has NOTHING to do with how it is treated under the law, it really is as simple as that because the law is exceptionally clear. The law treats drugs as drugs, not as their components, because the properties of each drug are not the same as that of its components, including their potentials for

abuse. This is recognized in the real world and under the law as shown below. When Judge Buchwald declares that Fioricet is Butalbital because Butalbital is a component of it, she changes the legal definition of "Drug", as provided in 21 US Code Section 321 (g) (1). The relevant portions are as follows:

> The term "drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

A component of a drug may be another drug, but in such cases it is just a component and not the drug. Judge Buchwald's statement requires her to use a different definition. It is a usurpation of Legislative power. It was also her own justification for her usurpation of Administrative power by treating Fioricet like a controlled substance, as evidenced across the entire proceedings through to today. The Controlled Substance Act is clear that it regulates drugs as drugs, not drugs based on components. These are all usurpations of powers not given to Judges, and all violations of Canons 2 and 3. (See Exh K – Affidavit of Lena Lasher)

12. There is yet another definition provided by the Legislature that goes right to the heart of the matter of why Fioricet is formulated as it is, and why it can not be confused with Butalbital. A drug that is made up of multiple components, some of which may be drugs on their own in their raw state, may be considered a "fixed-combination drug" as described under Title 21 Chapter I Subchapter Part 300 Subpart B 300.50. The relevant section is as follows:

> "(a) Two or more drugs may be combined in a single dosage form when each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug. Special cases of this general rule are where a component is added:
> (1) To enhance the safety or effectiveness of the principle active components; and
> (2) To minimize the potential for abuse of the principal active component."

Fioricet is a fixed-combination drug. The definition for Fixed-Combination Drug also allows for a drug to be made up of other drugs, but it does not make the new drug subordinate in name nor law nor anything else to its components. A drug may be, and just is in the case of a Fixed-Combination Drug, a combination of multiple drugs, but that does not eliminate the distinction under the law, and in reality, between the drug and its components. For Judge Buchwald to declare that Fioricet is Butalbital because it contains Butalbital, she must

also amend or repeal this legal definition. This requires legislative acts, not judicial acts. These are also violations of Canons 2 and 3. Judge Buchwald is not respecting this legal definition found within the law, she is not respecting Title 21 Chapter I Subchapter Part 300 Subpart B 300.50, as required by Canon 2. Her judicial duties are not taking precedence because she is usurping legislative power by force-fitting Fioricet into a category based on its component and usurping administrative power because the task of scheduling drugs is reserved for the Attorney General: so she is also violating Canon 3, again.(See Exh K -Affidavit of Lena Lasher)

13. We cited two definitions above occurring in two places in Federal Law, and now we cite another place in the law where the first definition is presented. In renaming Fioricet for her own purposes, Judge Buchwald had to ignore not only the definitions above but also the definitions provided in the Controlled Substances Act in 21 U.S. Code § 802 (12), where "Drug" is defined by sending the reader back to the definition presented above. In a case that involved the controlled substances act, directly in the original charges and covertly by holding the Plaintiff to the face-to-face doctor-patient standard that is only applicable to controlled substances, none of which were dispensed via the fulfillment pharmacy, the judge ignored the definition above that is referred directly to within the Controlled Substances Act. This is a violation of Canon 2. By holding the Plaintiff to an inapplicable standard, requiring a face-to-face requirement where only a bona fide relationship is required, Judge Buchwald violates Canon 3.

14. How do these definitions impact Judge Buchwald's reliance on Section 812 of the Controlled Substances Act? It pulls the rug right out from under it. These definitions refute her within the law she cites. 21 U.S. Code § 812 - Schedules of controlled substances states:

> **(b) Placement on schedules; findings required** ... a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance.

Fioricet is a drug, and it "may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug." The findings required have nothing to do with just naming the drug's components, the law is also clear about that. The findings required are set forth the Controlled Substances Act 811(a), (b) and (c):

> **(a) Rules and regulations of Attorney General; hearing ...**The Attorney General may by rule—
> (1) add to such a schedule or transfer between such schedules any drug or other substance if he—
> (A) finds that such drug or other substance has a potential for abuse...

Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rule making procedures prescribed by subchapter II of chapter 5 of title 5.
(b) Evaluation of drugs and other substances...
(c) Factors determinative of control or removal from schedules In making any finding under subsection (a) of this section or under subsection (b) of section 812 of this title, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:
(1) Its actual or relative potential for abuse...(See Exh K - Affidavit of Lena Lasher)

The first thing worth noticing is that Federal Judges do not decide if a drug is a controlled substance, the Attorney General does, after a clearly delineated process that begins in writing from Secretary to the Attorney General. The second thing worth noting is that the first factor (1) under (c) is the **potential for abuse**, and these factors are to be considered for drugs proposed to be controlled. These factors are part of the recommendation that will include a recommendation as to which schedule the drug is proposed to be placed under.

The law is clear that this is all done in writing for the drug being proposed for control and scheduling--the drug, not component-- as per the definitions cited above. Ignoring this and taking the power of scheduling for herself, Judge Buchwald usurps administrative power and violates Canons 2 and 3 (See Exh K).

15. In none of Judge Buchwald's pre-trial writings or transcripts does she even care to bother to ask about the drug's potential for abuse. This is the first listed finding that must be made. She is disrespecting the law by making Fioricet a controlled substance because no finding of a potential for abuse has been made, not by the Attorney General and not even by herself. She is ignoring the law, and violating Canons 2 and 3.(See Exh K)

16. The law is clear that it is no one's job to figure out in a court room if a drug is a controlled substance. A drug is made a controlled substance, or it is not, by the Attorney General. Fioricet has not been made a controlled substance by the Attorney General. It can not remain something it has never been. When Judge Buchwald rename Fioricet by the name of one of its components, "butalbital", she is usurping Legislative power, and performing her own Legislative act. We know this because the matter was already decided by a proper legislative act. But Judge Buchwald does not only rename the drug in order to create jurisdiction over it in her court room, and then usurps Administrative power in placing it in the same category as drugs controlled by 812.She also addresses the drug head-on, using the right name for it, and in so doing she usurps more power to create jurisdiction for herself under the Controlled Substances Act, and violations of Canons 2 and 3(See Exh K

17. When Judge Buchwald cited a portion of the Controlled Substances Act, § 812 - Schedules of controlled substances, she was only repeating the section the Prosecutors provided her. She did not bother to check their source. She skipped right ahead to the scheduling without any findings, and did the scheduling herself based on bad and simplistic assumptions. Citing deceptively selectively portions of

the law is not a judicial act, but it is a kind of usurpation of legislative power that both Judge Katzmann and Judge McMahon give cover to in their rulings supporting Judge Buchwald. It also shows a very clear violation of Canon 3 (A) (1), because she is just not competent in the law (See Exh K)

18. The willful ignorance of the law engaged in by the prosecutors and Judge Buchwald, did not have to lead to this miscarriage of justice, if they wanted to follow the law and properly apply the law, because the Administration provides a resource. The Controlled Substance List created and maintained by the Attorney General of the United States does exactly what its name says it does: IT PROVIDES THE LIST OF CONTROLLED SUBSTANCES. It also indicates alternative names for drugs on it when such names exist. The list is maintained and published in accordance with the Controlled Substances Act and Title V section 5 specifically cited in the Controlled Substances Act, as cited above. To find the list of controlled substances promulgated by the Attorney General, one has to simply look to the Federal Register, and to find the list of controlled substances promulgated by the Attorney General that was in effect at the time of the Plaintiff's arrest or at the time the alleged acts were committed, one simply has to look at the Federal Register from the appropriate dates. That is where the scheduling and descheduling of drugs is announced, and fair warning to health care professionals is given, as required by law both in 811 of the Controlled Substances Act and in "the rule making procedures prescribed by subchapter II of chapter 5 of title 5" which 811 refers directly to. It shows Judge Buchwald and the Prosecutors are deceiving us all by simply pointing to the smallest portion of a statute and pretending that somehow that indicates Fioricet is a controlled substance. Its not just a violation of Canon 3, it is a violation of the trust Judge Buchwald was mistakenly given by her appointment as district judge.

19. Butalbital is on the Controlled Substances list. Fioricet is not on the Controlled Substances list nor on the Controlled Substances Act because the Attorney General has not made it a controlled substance. (See Exh K)

20. At the June 2014 oral arguments for the Motion to Dismiss the original indictment, Judge Buchwald also stated "**in my court room** Fioricet is a controlled substance." But as we have shown above, it is not. Fioricet has no known potential for abuse, nor any of the other criteria set forth under Federal law. Controlled Substances Act 811 (b) and (c). Her statement is a usurpation of administrative power, and a violation of Canon 2. (Exh K).

21. 3 weeks before trial, most likely realizing their indictments lack of merit was too obvious for them to get away with this sham, and realizing that the Plaintiff was not interested in a plea bargain because she is innocent, the Prosecutors withdrew the indictment are replaced it with a superseding indictment.

22. The Superseding Indictment charges are so unspecific that either the Plaintiff is the one committing the crime OR she is directing others to. Which is it? By merging the two very different, and very unspecific, allegations the Prosecutors avoid directly addressing what law is being violated when people claim the Plaintiff directed them to commit crimes, because that was the allegation, but no law

cited showed how the Plaintiff could be held responsible for other's alleged actions. And the actions were all only accusations at trial, no evidence of anything was presented.

By not taking a critical eye to the new charges, and just playing the anvil to the Prosecutor's hammer, the Judge is not acting as a Judge. She violates Canon 3 (See Exh K - Affidavit of Lena Lasher).

23. AUSA Richenthal does not say the Attorney General has placed Fioricet on the Controlled Substances list- the only thing that makes a drug a controlled substance. He instead says "this Court is not the only Court to take that view." There is no view to have, by a court or an AUSA, **there is only to look at the law**, look at the list published by the attorney general or to comb though the Federal Register; and the Judge and the Prosecutors ignored it as they were too busy usurping legislative and administrative power and ignoring the law. The conversation reveals the violations of Canons 2 and 3. (See Exh K – Affidavit of Lena Lasher)

24. It is important to note that even though the Prosecutors claim they do not need the "narcotics conspiracy" for the trial, at trial they nor the Judge, refer to the drug by its name, Fioricet. They and their witnesses and the Judge call it Butalbital. So, the alleged narcotics conspiracy nonsense might not have been needed for their trial, but deceiving the Jury was needed. By using the wrong name for the drug dispensed, Judge Buchwald fully intends to prejudice anyone hearing her or reading the transcript against the Plaintiff. She uses the wrong name out of a contempt for the **definitions** of the word Drug and the phrase Fixed-Combination Drug, as discussed above in violation of the law and Canons that should guide her conduct (See Exh K).

Her allowing of Fioricet to be called Butalbital allowed the Prosecutors to deceive the Jury about what the MURP reports said. The MURP report is a record of drugs that are returned and destroyed by the wholesaler. Returned medicines must be destroyed. When medicine is returned to a pharmacy, it is recorded, and it gets returned to the wholesaler who destroys it. The MURP report is made by the wholesaler. The Prosecutors alleged that people who claimed to re-dispense returned drugs instead of destroying them were directed to by the Plaintiff, absent of any proof and absent of any law that holds her responsible for their actions. If those individuals did as they claimed, it would be a kind of misbranding. It probably never happened. The prosecutors presented no evidence of dispensed drugs that were re-dispensed returned medicines, they presented no witness that claimed to have received such medicines. The accusation came from employees who claimed they did this under the Plaintiff's direction. So, a crime is confessed to, no evidence is presented for other than the confession, but the blame is shifted to the Plaintiff with no statute cited that states how the Plaintiff is responsible for others actions in this regard. Regardless, the Plaintiff is certain, in spite of how this was handled at trial, that this crime did not occur because the MURP reports disprove the allegation. The amount of returned drugs matches the amount that the wholesaler destroyed. For each drug returned to the pharmacy, the same

amount was destroyed by the wholesaler and the wholesaler's report shows that. After Steven Goloff failed the state's inspection of the pharmacy, the pharmacy recorded all drugs returned and destroyed all drugs by returning to the wholesaler. How the prosecutors pretended the MURP reports did not refute their knowing use of perjured testimony with regard to the destruction of returned medicines? They pointed out that "Butalbital" was not on the MURP report. It wouldn't be, because as stated above no retail pharmacy carries "Butalbital". The MURP report shows the Fioricet destroyed by the wholesaler, and that matches, as it does for all the other drugs on the MURP report, the amount returned to the pharmacy. The Prosecutor's deception over the MURP report was made possible only Judge Buchwald's name-change of the drug. Without the MURP report it would just be an empty allegation with absolutely no physical evidence and no person claiming to have received re-dispensed medicines. With the MURP report read intelligently, the allegation is completely disproved. But, due to the willful disregard for the law that defines a drug not as a component but as its own entity, Judge Buchwald's allowing of Fioricet to be called Butalbital actually prevented the Jury from understanding the report. She mislead the Jury; a violation of both Canon 2 and 3 as well as a violation of the trust mistakenly placed in her when she became a federal judge (See Exh K - Affidavit of Lena Lasher).

> 25. To reiterate item # 24, the Prosecution's witness Goloff lied to inspector Bat and on the stand concerning re-dispensing returned medicines. Goloff lied because he was written up for violating pharmacy law PRIOR to the PA BOP's inspection. Goloff resented the Plaintiff for holding him accountable for being a bad pharmacist. Unfortunately, the District Court withheld the unredacted evidence. (See Exh K - Affidavit of Lena Lasher)

26. The only misbranding claimed about Tramadol and Butalbital was that a face-to-face doctor-patient relationship standard was not met. So, it still was presented as if it were a CSA violation even though it could not be. The judge was a party to this deception of the Jury, fraud on the court, because she was not interested in justice, as detailed in #27 below. These violate Canons 2 and 3 (See Exh K – Affidavit of Lena Lasher).

27. In fact, Count 2, 3, 4, and 5 of the Superseding Indictment failed to allege that the Plaintiff sold misbranded drugs without valid prescriptions (face to face) because it failed to name any drugs or specific prescription. Counts 2, 3, 4, and 5 of the Indictment failed to charge any actual specific offense. Again the Trial Court, the prosecution and its witnesses, deceived the jury by not mentioning a drug name because only controlled substances, under the Controlled Substances Act, required valid prescriptions for dispensing. In fact,

the Online Pharmacy Safety Act (S2002) (exh G)introduced legislation which would have required valid face to face prescriptions for NON controlled substance prescriptions ordered online did NOT pass.

The Government also claimed these unnamed and unspecified prescriptions were not valid because there was "no bonafide face-to-face" relationship between a doctor and his patient; but there are two glaring problems with this. Firstly, a "bonafide" relationship is the standard for all prescriptions a doctor writes for a patient, and there a wide range of ways a doctor and patient can have a bonafide relationship. But, a "face-to-face" relationship is only required for Controlled Substances. In order to confuse the jury, the government made up this compound phrase. Secondly, to hold a pharmacist responsible for this without any physical evidence or any specific prescriptions named requires a number of leaps in logic. The Government's claim in this regard is an attempt to shift blame away from the doctors, if there is any genuine blame, shifting the supposed blame to the Plaintiff. There is no formal assessment for a pharmacist to determine whether there is a bonafide relationship between a doctor and his patient, that relationship is between them; there is no established criteria under federal law for a pharmacist to know if the doctor consulted their patients. The signatures on the prescriptions are the doctor's promise to the rest of the health care community and the patients, that the prescriptions are valid and that their job was done properly. A relationship could in fact exist and be denied at trial, as the doctors testifying at the criminal trial against the Plaintiff in this civil action were only testifying to avoid their own jail time for other crimes. On top of this, the Plaintiff, before filling these fulfillment pharmacy prescriptions, actually required doctors to fill out and submit forms stating that they did phone consult directly with the patients. Evidence of this requirement that went above and beyond the requirements under the law was withheld by the District Court because it was physical evidence that would directly contradict testimony of one of the prosecution's witnesses.

None of this changes the fact that the Prosecution's and the district court's applying of the face-to-face requirement to non-Controlled Substances is a deception, deceiving the jury that the Controlled Substances Act's requirements for valid prescriptions was meant to be applied to NON – Controlled Substances.

28. The Judge also presented to the Jury another completely made up standard that has no place in law and held the Plaintiff to this made up standard at trial and at sentencing. This is a wholesale usurpation of Legislative power. Judge Buchwald placed regular prescription drugs, drugs that we have shown above were not

controlled substances and had no known potential for abuse, into a "made-up" category that NO drug has ever been placed in, a category she called "highly addictive pain meds" sometimes calling it "addictive pain meds". This latter phrase was made up by the executive officials AUSA Richenthal and Greenberg, who were indulged in this by the District Court, without any facts to back up the invention of this phrase nor any references to scientific, medical, pharmaceutical or pharmacological literature (T.1768). This was done to prejudice and profile the Plaintiff; in fact, NONE of the drugs the Plaintiff dispensed via the "fulfillment" pharmacy were classified as "pain meds" (T.1768), or a controlled substance at the time of dispensing. The use of the word "addictive" itself is problematic. As the American Society of Regional Anesthesia and Pain Medicine provides great resources on the topic. No drugs, not even actual opioid pain meds, are called "addictive": they have a potential for abuse. The abuse of such drugs may lead to addiction. Addiction is considered a behavior with a wide range of causes and contributing factors. Abuse of medicines with potentials for abuse may lead to addictive behaviors and even addiction. It is this concept of potentials for abuse, and the range of those potentials that are a guiding force behind the Controlled Substances Act: it was never meant to be a playground for overzealous and immature prosecutors to create ways to lock up and shame conscientious professionals.

Shockingly, there was no physical evidence, prescription, invoice, inventory and bill of laden of Butalbital or a name of a "highly addictive pain meds" introduced at trial, because there were NONE. There were no controlled substances dispensed by the Plaintiff or anyone in the pharmacies via the "fulfillment pharmacies", as the District Court claimed in denying the Plaintiff's bail pending appeal. A motion requesting her to name ONE controlled substance or "highly addictive pain meds" that the Plaintiff dispensed, Judge Buchwald has not respond to this motion because there were NONE.

The Legislature created the Controlled Substances Act to regulate drugs that have the potential for abuse. There is no category called "highly addictive pain meds" and the legislature did not create a law governing them. Judge Buchwald usurped Legislative Power by using that made up term that has no basis in law, and presented it to the Jury as if meant something under the law. By usurping legislative power in this way, Judge Buchwald doesn't have to usurp Administrative power to place drugs in her made up category, because its highly likely that, in the law she wrote in her head, district Judges in the Southern District of NY are the parties responsible

for placing drugs on this made-up list, upon recommendation from Prosecutors more interested in padding their resume than justice.

29. Even though the "narcotics conspiracy" charges were dropped, and the superseding indictment didn't claim violation of the CSA, instead claiming violations of the Food Drug and Cosmetics Act, the standard cited only exists in the Controlled Substances Act and only exists for Controlled Substance prescriptions. These entire criminal proceedings have been an exploration of how many ways misguided prosecutors and judges can misapply the Controlled Substances Act to drugs that are not controlled substances. That much has been consistent throughout these proceedings as she used faulty reason after faulty reason to justify her usurpation of powers and her refusal to dismiss either of the flawed documents. Of course if a jury is told something is a crime, such as eating a salad with a salad fork, they would return a guilty verdict against all who know one fork from another and choose to follow etiquette. But this is not a misconstruing of etiquette, it is abuse of judicial power and fraud on the court and violations of Canons 2 and 3.

30. To complete this deception of the Jury, the Prosecutors did not present as evidence any of the prescriptions or medicines received. If the drugs dispensed or the prescriptions were presented as evidence, they would clearly not be Butalbital, but Fioricet. There are brand names and generic names for the drug, but it would never name just one component because that would create confusion. The confusion it would create is three-fold: 1) Butalbital is a controlled substance, Fioricet isn't; 2) Butalbital ships as a powder and is used in manufacturing or in compounding pharmacies, not retail pharmacies, Fioricet at the time only shipped as tablets; and 3) Butalbital, when it was prescribed, was for insomnia, Fioricet is for tension headaches. Fioricet is an old and reliable medicine, and it is common knowledge in the health care professions that it is not a federally controlled substance. Commonwealth of Pennsylvania v Herman J – 124-2016 Cert Granted

In fact, the pharmacies dispensed Fioricet, which ships from the manufacturers as a tablet, is a NON controlled substance which does not require a valid prescription, the pharmacies never dispensed Butalbital, not on the dates that the indictments claim the crimes were committed and not ever. The pharmacies never received Butalbital from any manufacturer, they had no use for it. The Plaintiff was not working nor present at the pharmacies where the alleged crimes supposedly took place on the days of the alleged criminal activity.

Butalbital is clearly not the same drug nor an analog, nor has the same strength, indication, or even in the

same drug category or classification as Fioricet. They are 2 different drugs for 2 different treatments and neither are in the pain med category. Fioricet and Butalbital are not interchangeable drug names. Fioricet is indicated for tension headache while butalbital is indicated for insomnia. Fioricet as a fixed combination drug is manufactured such that it has no potential for abuse, containing Butalbital 50mg, Acetaminophen 325mg, and caffeine 40mg. Butalbital is not the same drug as Fioricet because in its raw state, Butalbital has a potential for abuse. When incorporated in Fioricet that potential for abuse is eliminated. Long before a patient could be addictive to Fioricet, he would be hospitalized for liver toxicity from the acetaminophen in the same way he would if he abused over the counter Tylenol because Tylenol's active ingredient is acetaminophen.

In summation, the references to Butalbital in the indictment and at trial is false and misleading. It was NEVER in the possession of the pharmacies, never stocked by the pharmacies, and never distributed to the pharmacies by a distributor or manufacturer. Instead NON controlled substances were intentionally referred to by the wrong drug name and represented to the jury as controlled substances or "highly addictive pain meds". (See Exh K)

Judge Buchwald's personal knowledge of evidentiary facts, such as

Tramadol not being a controlled substances at the time of dispensing and

Fioricet not being a controlled substance and not being "butalbital" (See **Exh K- Affidavit of Lena Lasher)**

31. The Plaintiff was held to a false standard not found within the controlled substances act. The "other acts testimony" was highly prejudicial, but also now provable to be to completely false testimony. Through withheld and suppressed evidence, it can not be shown conclusively that there was no wrong-doing by the Plaintiff with regard to the Oxycodone and Opium prescriptions discussed as 'other acts' testimony at trial, prescriptions that were not dispensed via the fulfillment pharmacy but to local walk-in patients. Dr. Cochran's statements, detailed below, which were withheld from the Jury show how the judge protected perjured testimony and helped to manufacture a wrongful conviction. (See Exh K)

32. Judge Buchwald specifically withheld physical evidence that she should have recognized as superior to the testimony it refutes to protect questionable testimony, that can now be unequivocally be shown to be false, from being impeached. The Judge ignored the Best Evidence Rule in withholding these pieces of evidence. In a trial made up of nothing but accusations and claims without any physical evidence, made by the government and their witnesses, physical evidence that refuted those claims, by way of suppressed, withheld or redacted physical evidence, should have been given priority and not redacted or withheld. The judge made sure the physical evidence was stripped of all power to reveal the truth or just withheld it entirely.

As detailed below, It also must be stressed just how prejudicial Judge Buchwald acts of withholding physical evidence that contradicted witness testimony was: she decided prejudged that the witness testimony should be heard by the Jury and that physical evidence that makes that testimony questionable should not be considered by the Jury. She took the matter out of the hands of the Jury and made their decision for them. She did this with the Bates document, with faxes from the Doctors, with emails that showed the doctor did in fact approve changes to prescription in spite of his testifying otherwise and knowing that the doctors were only testifying to avoid their own jail time for other crimes. Her acts were prejudicial. She went so far as to make sure that the Jury did not hear the pharmacy

employees were reprimanded, by "striking" the Plaintiff's testimony on the stand and redacting physical evidence of the reprimands. There is only one reason to do and one result from doing this: **prejudice.**

33. Judge Buchwald helped attain a wrongful conviction, while ignoring the Best Evidence Rule, by withholding Bates Document 010085 that shows the prosecution and its witnesses knowingly made false accusations that the Plaintiff forged the opium tincture prescriptions.

Much of the trial focused on opium tincture prescriptions for Dr. Haytmanek written by Dr. Cochran. Dr. Haytmanek is a patient suffering from chronic diarrhea and the opium tincture is an appropriate medication indicated for that ailment. Prosecution's witnesses Steven Goloff actually filled 17 of the 20 of these prescriptions. At some point, Steven Goloff decided to frame Dr. Haytmanek by reporting him to the Pennsylvania Board of Medicine for being a "drug addict" who obtains his drugs illegally. At the Plaintiff's trial, the prosecution and 5 of their witnesses, Pharmacy Inspector THOMAS BAT (a Pennsylvania State Board executive official), pharmacists Steven Goloff and Daniel Geiger, technicians Albert Buck and James Barnes, framed the Plaintiff by falsely accusing her of forging these prescriptions and illegally dispensing to Dr. Haytmanek whom they called "an addict". Evidence confirming that the Plaintiff did not forge any Opium prescriptions for Dr. Haytmanek was withheld from the jury (Bates document 010085, T. 1939-1942 – See Exh H) . The trial judge knowingly allowed false testimonies of the Plaintiff forging those prescriptions (Goloff T.832). Even worse, AUSA Richenthal and Greenberg in their summation reiterated this false accusation of forgery telling the jury the Plaintiff forged Dr. Cochran's prescriptions(AUSA Greenberg's summation T.1815). These perjuries were made more effective by the District Court's decision to withhold the physical evidence that showed these lies for what they are. Further, the Trial Judge, presuming the role of a handwriting analysis expert witness from the bench, flatly declared the Plaintiff forged Dr. Cochran's prescriptions. More damagingly, the story they made up about these prescriptions were disproved at a hearing before the Pennsylvania Board of Medicine on October 8th, 2013, 19 months prior to the Plaintiff's trial (docket # 0335-49-B file no. 12-49-11424 Pg. 28 – See Exh J). It was a matter of record nineteen months prior to the Plaintiff's trial that there was nothing wrong with with any aspect regarding **Dr. Haytmanek's** and **Dr. Cochran** prescriptions, but the Prosecution and its witnesses insisted on putting on a show slandering her and the doctor.

The aforementioned indicate that everyone on the Prosecution team knew it was all lies meant to slander the Plaintiff and deceive the jury. Instead of correcting testimony she knew to be perjured, Judge Buchwald protected it from impeachment by withholding Bates document evidence, prevented the Jury from making up their own mind about the matter, and ignored the Canons prohibition against partisanship. (See Exh K- Affidavit of Lasher)

34. Judge Buchwald also withheld faxes showing Dr. Konakanchi perjured herself, to convict the Plaintiff so that Konakanchi can avoid jail time for her own crimes, is perhaps the most obvious example of Judge Buchwald's bias toward the Plaintiff. This evidence directly would sway the jurors to acquit the Plaintiff.(See Exh K- Affidavit of Lasher)

35. Dr Burling's own phone records, which should be considered best evidence and far superior to testimony from a witness who admits to be testifying to avoid jail time for his own confessed crimes, that show the Witness and the Plaintiff were in contact numerous times in spite of the witness' claims that they had never spoken.

At trial, the Plaintiff was accused of changing Doctors Burling's instructions without his permission. However, AUSA Richenthal and Greenberg and the District Court withheld evidence of emails and prescriptions documentation in regard to pharmacists Michael Della-Ventura and William Cantagallo who received the approval for the pharmacies to correct prescription dosages from the doctors.

36. Oxycodone testimony was both unduly prejudicial, and now provable to be completely false.

The Prosecution and their witnesses told the Jury that on October 2, 2012, the Plaintiff rejected concerns over Oxycodone prescriptions allegedly being filled by "disheveled" "addicts". This testimony was "other acts" testimony, **not part of the charges** but meant to show if she was a kind of person to commit the allegations in the charges. The testimony is very prejudicial, playing off stereotypes people have about drug addicts.

But, the entire story about these prescriptions were lies, and the Prosecutors knew it all to be lies because the video evidence shows the Plaintiff working in a different store in New Jersey on October 2,

2012. Witnesses who claimed to tell the Plaintiff about people who looked high lied, because she wasn't there. The pharmacist filling the prescriptions was Steven Goloff. If there was anything wrong with those prescriptions, he would have to deal with it. Instead, they made up a story blaming the Plaintiff, and the prosecutors suppressed the video evidence that showed it all to be lies. The "other acts" Oxycodone and Opium testimony, does show what kind of a person the Plaintiff is: she is the kind of person the prosecutors had to knowingly lied about. (See Exh K- Affidavit of Lasher)

37. The Prosecution and the trial Court deceived the jury that the Controlled Substances Act or any federal law makes one pharmacist responsible for another pharmacist's actions by accusing the Plaintiff of forcing the prosecutors' witnesses to break laws by supervising them remotely via phone and cameras. However, there is a number of problems with this accusation.

First of all, there were no crimes committed at these pharmacies by the Plaintiff. That statement stands in stark contrast to the prosecution's and its witnesses fiction created at trial, but it remains true; no crimes were committed.

Secondly, there is video evidence, work schedule, time cards, and EZY passes evidence of the Plaintiff working at a pharmacy in New Jersey on all the dates that the alleged crimes took place in the Indictment (6/1/2012, 6/12/2012, 7/16/2012, 7/17/2012, 8/13/2012, 8/16/2012, and 8/27/2012), that clearly showed she was not remotely monitoring or supervising, nor directing employees in other locations to commit the alleged crime. This video recording was both suppressed and withheld and only came to the Plaintiff's possession in August 2017. The video recordings proved the Plaintiff's ACTUAL innocence; they showed the daily activity of the work flow in the pharmacies and that the Plaintiff abided by all pharmacy law and regulations in that **she properly hand/machine counted, labeled and stored, destroyed medications properly, and dispensed medications with valid prescriptions, all verified by doctors.**

Thirdly, there is no federal law describing how one pharmacist can be held responsible for another pharmacist's actions. The only applicable law that provide directions or oversights to pharmacists and their actions in pharmacies is the pharmacy law (PA27.12(b)(2)). PA 27.12(b)(2) is the governing pharmacy law for theses matters. The governing pharmacy law (PA27.12(b)(2) and the criminal statute 21 U.S.C. 321 (g)(1), 352 (a), 352(c), 353(b)(1), and 353(b)(4)(A), and 21 USC 331(a) and 333(a)(2) require for the accused to be present at the pharmacy at the time the specific prescriptions in question were filled. The Plaintiff was NOT on duty on the Indictment dates, as evidenced by the video recordings, work schedule, time cards, and EZY passes. She can not be guilty of a crime she was not there to commit, and which she did not agree to commit, nor for an act that she did not condone. Because of potential biases and to avoid any shifting of blame, the pharmacy law eliminates any double standard or shifting of blame; each pharmacist is accountable for his actions and can NOT shift blame to someone else. It is the job of any pharmacist while on duty to ensure they themselves follow all laws, regulations, and policies; any misdeeds or mistakes are the responsibility of whoever made the misdeeds or mistakes. Further, any pharmacist on duty also serves as a "supervisor" of themselves and their technicians and is accountable for his shift. Thus it is impossible for her to "conspire with" or aid and abet because the governing laws do not hold her accountable for other employees' actions. These facts about the governing pharmacy law are common knowledge among pharmacists. That pharmacists are responsible for their own actions and cannot blame their conduct on anyone else, be they a pharmacist in charge, a supervising pharmacist, or even the actual pharmacy owner.

To summarize, Judge Buchwald usurped legislative power over the parts of the allegations in the charges that the Plaintiff directed others to misbrand drugs; she allowed self-confessed criminals to confess their own misdeeds and blame the Plaintiff for them, and **withheld physical Evidence that contradicted their testimony.** (See Exh K- Affidavit of Lasher)

38. The **Judge withheld the suppressed exculpatory video evidence.** Although the Plaintiff's counsel informally requested the video evidence before the trial, a formal request to the judge to subpoena this evidence was made on August 31, 2015, before sentencing. The Judge refused this request without giving a reason. Had the judge considered this evidence and pharmacy records, and granted the request, she would have known that it shows the ACTUAL innocence of the Plaintiff, and shown how the government misrepresented her actions on the dates of the indictment, and they would have seen the government's tampering of the exculpatory evidence. It specifically refutes three claim made by the

> government: 1) that she dispensed Oxycontin on October 2, 2012 by proving she wasn't there at that pharmacy on that day but in a New Jersey pharmacy; 2) it shows she performs her duties as a pharmacist conscientiously and not at all as the witnesses claimed; and 3) it completely refutes the idea that the Plaintiff was ever remotely monitoring the pharmacies and calling them to remotely supervise them directing them to commit crimes. This latter claim of holding the Plaintiff responsible for the misdeeds of others while she wasn't present has not basis under law, but the video evidence shows the ridiculous story that attempts to pass blame just isn't remotely true.

This **exculpatory, previously suppressed, evidence** could have exonerated her and is a clear violation of Brady as well as a violation of Plaintiff's 5th Amendment Right (Due Process):

> B. The video evidence is superior so thoroughly and completely that **no jury could convict the Plaintiff**
> C. The video recordings, work schedule, time cards, and EZY passes show she was not present on the alleged days of the criminal activity (6/1/2012, 6/12/2012, 7/16/2012, 7/17/2012, 8/13/2012, 8/16/2012, 8/27/2012, and 10/2/2012, and the lack of her presence on October 2, 2012 when oxycodone was dispensed to allegedly "unkempt" individuals.
> D. **The prosecution and its witnesses claimed the Petitioner did not count pills, reused medications, improperly labeled and stored medications. However, the admittance of vastly superior video evidence will show that the Plaintiff follows rules and regulations of pharmacy law, properly handling pills and prescriptions, labeling and storing and destroying medications properly, and dispensing medications with valid prescriptions which were verified by doctors, all contradicting the prosecutors' witnesses sworn testimony.**

E. **The video recordings will further prove the drug "butalbital" NEVER existed in the pharmacies.**

The best evidence rule (Evidence SS424-documents contradicting testimony) rests on the fact that a document is a more reliable, complete, and a more accurate source of information as to its contents and meaning than anyone's description (See Exh K – Affidavit of Lena Lasher)

39. It is obvious that Judge Buchwald acted improperly over the entire course of these criminal proceedings by looking at the transcripts of all the events in these criminal proceedings and reading the law. We detail these events here to show to anyone reading how Judge Buchwald has shown herself to be too biased and too deeply invested in **her usurpation of power, to preside over this civil case. The Plaintiff's lawyers knew this when they requested her by name.**

40. **Judge Buchwald's betrayal of the law is a betrayal of hard-working conscientious health care professionals who are subject to wrongful prosecutions and convictions** from partial readings of the law by Judges and Prosecutors who choose to "go rogue" and ignore the law.

> The Plaintiff, Lena Lasher, sincerely believes that she can justifiability rely on the United States Supreme Court case Haines v. Kerner 404 U.S. 519 (1972), which clearly states that "all Pro-Se litigants must be afforded the opportunity to present their evidence and that the Court should look to the substance of the complaint rather than form."

REASON FOR GRANTING THE WRIT

This Petition for writ of certiorari must be granted for the following reasons:

I. To resolve the existence of multiple conflicts between the decision of which review is sought and a decision of the second appellate court on the same issue.

An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. In this instance courts have ruled that a judge that shows incompetence in the subject matter of the case should be made to recuse. In this instance the Judge continues to show her lack of understanding of the subject matter. She has demonstrated this incompetence recently with regard to her misconception about what a pharmacist's legal duties are when dispensing Bonafide prescriptions, where the judge clearly thinks it is the same as a valid prescription which requires a pharmacist to confirm the a face-to-face doctor-patient relationship before filling controlled substance prescriptions, but no such requirement is required for bonafide prescriptions for non-controlled substances. The Judge also demonstrated her incompetence in treating Fioricet as a schedule III controlled substance her court room based on the drugs formula, without turning to the record and seeing if the Attorney General has made it a controlled substance or not, and he has not. The Judge's stated reasoning both in her choosing to call the drug by the name of its components and in her deciding it is a controlled substance without any reference to the Attorney General making it one, shows she has not read the Controlled Substances Act, where in sections 811and 812, as well as the definitions found in the law for drug and fixed combination drug, it is clear that the judge is simply incompetent in these matters. Her rulings and statements go beyond mere incompetence and are usurpations of powers she does not have. This puts the judge in a position where recusal will risk exposing her misconduct, so her refusal to recusal is not out of adherence to guidelines for such, but selfishly motivated. It seems obvious that a judge who refuses to recuse will mostly likely be in most need of being made to recuse, especially when the matters involve usurpation of legislative and administrative powers. Other courts have not let things get this out of hand, and they compelled a judge recuse when it was needed but not forthcoming. It is important for the Courts to protect their own integrity, and injunctive relief is an important part of that to help ensure impartiality.

II. To resolve questions regarding the meaning and authority of the Canons of Judicial Conduct.

Judges who show they have violated the Canons of Judicial Conduct should be made to recuse, but while these matters were raised both at the district and appellate level, they were not addressed by either court. By not addressing issues of applicability of the Canons of Judicial Conduct that were raised in the motions these courts ruled on, they raise questions over the function and meaning of them. By ignoring issues over violations of the Canons the Southern District of New York and the Second Circuit are treating them like empty platitudes. A higher court must rule on them to give them meaning to the lower courts.

III. To resolve questions regarding the Code of Federal Regulations of Reconsideration panel, 38 CFR 19.11 over the matter at hand, where these questions on who has the right to be on the Reconsideration panel, will be faced by all similarly positioned appellants finding the appeals court violating the Code of Federal Regulations of Reconsideration panel, 38 CFR 19.11. Simply put, if the 2nd Circuit conducts a kangaroo court, they need to be stopped, and can only be stopped, by a higher court. Clearly, the 2nd Circuit does not have the right to violate the **Code of Federal Regulations of Reconsideration panel, 38 CFR 19.11 by putting the same members who participated in the decision that is being reconsidered onto the reconsideration panel. To reiterate, the Code of Federal Regulations of Reconsideration panel, 38 CFR 19.11 states that The reconsideration panel may not include any Member who participated in the decision that is being reconsidered.**

This appeal is made necessary, by the 2nd Circuit panel as being the same panel in the Plaintiff's motion for reconsideration. The 2nd Circuit's conduct of a kangaroo court, and only a higher court can stop this judicial misconduct.

CONCLUSION

The description of some of Judge Buchwald's misconduct in her dealings with the Plaintiff make it clear that she violates Canons 2 and 3 on a regular basis. Specifically she violated them so that she could misconceive the legal definition of the word "**drug**" to rename Fioricet to something more of her liking. She ignores the vast majority of the Controlled Substance Act to make it look like she's justified in treating Fioricet like a controlled substance, in the absence of the **Attorney General** making it so. Her statements, and her odd conversation with AUSA Richenthal show her disregard for the Attorney General's role and the requirements for findings to be made on the record and the adherence to Title V Section 5. She just takes it upon herself to make it a controlled substance in her court room. She also ignores that **Tramadol was not a controlled substance at the time of dispensing**. She holds the Plaintiff to a face-to-face standard, and to the standard applicable to controlled substances when it is the wrong standard to apply.

The aforementioned were just a few issues which shocked the conscience, and if the jury knew of the aforementioned, the Plaintiff would have been exonerated. Unfortunately Judge Buchwald violating the Plaintiff's constitutional rights and ignored official executive's committing fraud. She withheld the exculpatory video recordings, knowingly allowed perjured testimony, and denied the Plaintiff an evidentiary hearing to obtain a conviction. Her actions warrant recusal.

The test for recusal under Sec 455(a) is whether it was clear that a reasonable person, with knowledge of all the facts, might question the Judge's ability to remain impartial in hearing the case. Additionally Judge Buchwald's undisputed "personal knowledge of disputed evidentiary facts concerning the Proceeding" requires Recusal Under the Express Terms of 28 U.S.C. 455(b)(1). Further, as evidenced aforementioned and below, Judge Buchwald displayed a deep-seated antagonism against the Petitioner that made fair judgment impossible (Liteky v. U.S. 510 U.S. 540, 555 (1994). Clearly, to PREJUDICE and PROFILE the Plaintiff, the District Court usurped her judicial power by amending statutes and conjuring non-official laws, thus violating administrative and legislative power, as evidenced in this writ of certiorari.

The petition for a writ of certiorari should be granted.

Respectfully submitted

Lena Lasher, Pro-se lenalasher Date: May 11, 2019