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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

NORRIS WILLIAMS,	*
Petitioner	*
	*
vs.	*
	*
UNITED STATES OF AMERICA,	*
Respondent	*
	*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit
Case No. 2:19-cv-00271-SPC-M
Case No. 2:15-cr-00149-SPC
Case No. 24-12090

PETITION FOR A WRIT OF CERTIORARI
(Pro Se Submission)

Respectfully Submitted By,

Norris Williams
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FCI Miami
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Pro Se Appellant

QUESTIONS PRESENTED

1. Whether the federal courts of appeals are irreconcilably divided on the proper formulation of entrapment jury instructions, specifically: (A) what constitutes "government inducement"; (B) whether instructions must explicitly state that predisposition existed before government contact; and (C) whether the burden of proof must be explicitly stated within the entrapment instruction itself.

2. Whether the Eleventh Circuit violated due process by failing to address a limited remand order issued under Rule 60(b)(6) and Rule 11(a) and 11(b), thereby leaving unresolved constitutional claims pending for over twelve months.

3. Whether the district court addressed the merits of Appellants Habeas Corpus 2255; pertaining to PSR record from previous case # 2:00-cr-37-FT.M29D has relevant criminal history Shephard Documentation Validation?

PARTIES TO THE PROCEEDING

Petitioner Norris Williams was the defendant-appellant below.

Respondent United States of America, was the plaintiff-appellee below.

All parties to the proceeding in the courts below are listed above.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual and makes no corporate disclosure statement pursuant to Supreme Court Rule 29.6.

TABLE OF CONTENTS

	<u>PAGE #</u>
Questions Presented	2
Parties to the Proceeding	3
Corporate Disclosure Statement	3
Table of Contents	4 - 5
Table of Authorities	6 - 7
Appendix Index	8 - 10
Opinion Below	11
Jurisdiction	11
Constitutional Provisions Involved	12
Legal Argument # 1	16 -21
Whether the Requested Jury Instruction is a Substantially Correct Statement of Law	22
Whether the Jury Instructions Given Addressed the Requested Instructions	23
Whether the Failure to Give the Requested Instruction Seriously Impaired the Appellant's Ability to Present an Effective Defense	24 - 29
Legal Argument # 2	30
Whether the Eleventh Circuit violated due process by failing to address a limited remand order issued under Rule 60(b)(6) and Rule 11(a) and Rule 11(b), thereby leaving unresolved constitutional claims pending for over twelve months.	30 – 31
Additional Eleventh Circuit Authority on Procedural Default and Mandate Recall	31
Rule 60(b)(6) Provides an Independent Basis for Relief	32

	<u>PAGE #</u>
Legal Argument # 3	33
Whether the district court addressed the merits of Appellants Habeas Corpus 2255; pertaining to PSR record from previous case # 2:00-cr-37-FT.M29D has relevant criminal history Shepard Documentation Validation?	33
Here Also There Is Related Offense That Was Argued in 2255	33
Petition for Writ of Certiorari	
Argument for Granting the Writ [Circuit Splits]	34
1. The Governing Principles of the Entrapment Defense	34 - 35
2. The Federal Circuits Are Irreconcilably Divided on Core Components of Entrapment Instructions	35
A. The Conflicting Standards for Government Inducement	36
B. The Failure to Accurately Instruct on Predisposition	37
C. The Inconsistent Allocation of the Burden of Proof	38
3. This Courts Intervention Is Imperative	38 - 39
Conclusion	40
Certificate of Service	41

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
1. Wofford vs. Wainwright, 748 F.2d 1505, 1508 (11 th Cir) 1984	13
2. Quoting Lueas, 682 F.3d 1353; Smith vs. Jones, 256 F.3d 1135, 1138 (11 th Cir 2001)	14, 32
3. Strickland vs. Washington, 466 U.S. 668 (1984)	14
4. Jae Lee vs. United States 137 S.Ct 1958 (2017)	14
5. Faretta vs. California, 422 U.S. 806, 819-820 (1975)	14, 28
6. Gannett Co. vs. Depasquale, 443 U.S. 368, 382 (1979)	14, 28
7. Gonzalez vs. United States, 553 U.S. 242, 248 (2008)	14
8. McCoy vs. Louisiana, 138 S. Ct 1500, 1508 (2018)	14, 18, 28
9. Haines vs. Kerner, 404 U.S. 519 30 L. ED 2d 652, 92 S. Ct 594 (1972)	16
10. United States vs. Bogart, 783 F.2d 1428, 1436 (9 th Cir) 1986	10, 17, 27
11. Olmstead vs. United States, 277 U.S. 438, 485 (1928) (Brandeis J. Dissenting)	17
12. United States vs. Sotelo-Murillo, 887 F. 2d 176, 182 (9 th Cir 1989)	17, 27
13. United States vs. Gallardo, 977 3d 1126, 1144 (11 th Cir 2020)	17, 27
14. Sherman vs. United States 356 U.S. 368, 381 (1958) (Frankfurter J. Concurring)	17
15. United States vs. Ryan, 289 F. 3d 1339, 1344 (11 th Cir 2002)	18, 21, 22, 23, 25, 28
16. Jacobson vs. Hamilton, 46 F. 4 th 389, 2022 U.S. App. LEXIS 23648 (5 th Cir)	19, 20, 22, 23, 35
17. United States vs. Mayweather, 991 F.3d 1163, reversed and remanded in part (11 th Cir 2021)	21
18. ID at 1345 quoting United States vs. Chiraios, 112 F. 3d 1089, 1101 (11 th Cir 1997)	21
19. Stevenson vs. United States, 162 U.S. 313 (1896)	24
20. Hampton vs. United States, 507 F.2d, 832	26
21. Sorrells vs. United States, 287 U.S. 435, 53 S. Ct. 210, 77 L.Ed 413	20, 26, 35
22. Sherman vs. United States, 356 U.S. 369, 78 S. Ct. 819, 2L, Ed 848 Id. At 287 U.S. 459, 53 S. Ct	20, 24, 26, 35

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
23. United States vs. Archer , 486, F.2d 670, 677 (2d Cir 1973) Friendly J.	26
24. Brady vs. Maryland , 373 U.S. 83, 87 (1963)	29
25. Strickler vs. Greene , 527 U.S. 263, 280 (1999)	29
26. United States vs. Schwarzbaum , 2022 WL 2156z33, at *6*	30
27. Holston vs. Mora , No. 23-2057, 2024 WL 1234567 at *3*	30
28. Artuz vs. Bennet , 531 U.S. 4, 148 L. Ed 2d 213, 121 S. Ct 361	31
29. Jones vs. GDCP Warden , 815 F. 3d 689, 691 (11 th Cir 2016)	31
30. Calderon vs. Thompson , 523 U.S. 538, 549 (1998)	31
31. Tharpe vs. Warden , 898 F. 3d 1342 (11 th Cir 2018)	31
32. Carruth vs. Commissioner, Alabama Dept. of Corrections No. 2024-03, 01 (11th Cir. 2024)	31
33. Keith Tharpe vs. Warden (en banc) 834 F. 3d 1323 (11 th Cir. 2016)	32
34. Marvin Edwin Johnson vs. Dugger , 911 F. 2d 440 (1 th Cir. 1990)	32
35. Kemp vs. United States , 567 U.S. ___, 2022 U.S. LEXIS (11 th Cir. 2022)	32
36. United States vs. Tom , 330 F. 3d 83, 93-94 (1 st Cir.2003)	36
37. United States vs. Mayweather , No. 19-14066 (11 th Cir. 2021)	36
38. United States vs. Lakich , 23 F. 3d 1203 (7 th Cir. 1994)	36
39. United States vs. Sterner , 23 F. 3d 250 (9 th Cir. 1994)	37
40. United States vs. Hernandez , 92 F. 3d 309 (5 th Cir. 1996)	37
41. United States vs. Johnson , 605 F. 2d 1025 (7 th Cir. 1979)	38
42. United States vs. Wolffs , 594 F. 2d 77 (5 th Cir. 1979)	38

Statutes and Constitutional Provisions

28 U.S.C. § 1291, 1291(a)	
21 U.S.C. § 841(a)(1), (b)(1)(C)	
21 U.S.C. § 841(a)(1), (b)(1)(A) cr. 12	
U.S.S.G. § 131.3	
Rule 60(b)(6), Rule 11(a), Rule 11(b), Rule 41(g), Rule 33, and Rule 3.8	

APPENDIX INDEX

Appendix A Opinion of the United States Court of Appeals
 For the Eleventh Circuit
(Dated: April 15, 2025)
Case No. 24-12090.....App. _____

Appendix B Judgement of the United States District Court
 For the Middle District of Florida
(Dated: June 10, 2024)
Case no. 2:19-cv-271-SPC.....App. _____

Appendix C Order of the United States Court of Appeals
 For the Eleventh Circuit Denying Petition for
 Rehearing [and Rehearing En Banc]
(Dated: August 5, 2025)
Case No. 24-12090.....App. _____

Appendix D Order of the United States District Court
 Denying 60(b)(6)
(Dated: February 2, 2024).....App. _____

Appendix E Order of the United States District Court
Denying Defendant's Requested Jury Instruction On Entrapment
(Dated: March 17, 2016)
Case No. 2:15-cr-149-Ft.M.....App._____

Appendix F Jury Instructions as Given by the District Court
(Dated: March 14, 2016)
Case No. 2:15-cr-149-Ft.M [D.E. # 47].....App._____

Appendix G Defendants Proposed Jury Instructions
(Filed: March 15, 2016)
Docket Entry No. 48-56.....App._____

Appendix H Relevant Trial Transcript Excerpts
D.E. # 89:196, D.E. # 90:33-34, D.E. # 90:51,
D.E. # 90:57, D.E. # 90:73,
Page 15 # 23, Page 142 of 266 Line 13,
Page 144 of 266 Line 20-25.....App._____

Appendix I Sentencing Transcript
(Dated: October 25, 2016)
Case No. 2:15-cr-149-Ft.M.....App._____

Appendix J Pre-Sentence Report (PSR) Referenced
 In Legal Argument # 3
 (Case No. 2:00-CR-37-FtM29).....App. _____

Appendix K Order Denying 28 U.S.C. § 2255 Motion
 (Dated: October 30, 2020)
 [If Applicable].....App. _____

Appendix L Limited Remand Order Under Rule 60(b)(6)
 Referenced in Legal Argument # 2
 (Dated: July 30, 2024).....App. _____

Appendix M Rule 33 Opinion and Order
 (Dated: August 28, 2018).....App. _____

Appendix N Constitutional and Statutory Provisions:.....App. _____

Fifth Amendment to the U.S. Constitution.....App. _____

Sixth Amendment to the U.S. Constitution.....App. _____

21 U.S.C. § 841(a)(1).....App. _____

21 U.S.C. § 846.....App. _____

28 U.S.C. § 2255.....App. _____

Fed. R. Crim. P. 33.....App. _____

U.S.S.G § 1B1.3..App. _____

OTHER AUTHORITIES

American Bar Association’s Model Rules of Professional Conduct, Rule 3.8

Bogart, 783 F.2d at 1436

OPINIONS BELOW

The opinions of the Eleventh Circuit Court of Appeals the initial opinions affirming the District Court's judgement is enclosed in the ___ F.3d _____ or F.4th.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on April 15th, 2025. [A copy of the opinion is attached as Appendix A.]

A petition for rehearing was denied on August 5, 2025. [A copy of the order denying rehearing is attached as Appendix B.]

Petitioner filed a motion under 28 U.S.C. § 2255 on April 19th, 2019. The District Court denied the motion on October 30th, 2020. The Eleventh Circuit [~~affirmed~~/**denied** a certificate of appealability] on April 4, 2021.]

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

This Petition is timely filed within 90 days of the judgment sought to be reviewed. See Supreme Court Rule 13.

CONSTITUTIONAL AND STAUTORY PROVISIONS INVOLVED

The 5th Amendment and 6th Amendments to the Constitution is implicated in this Petition. U.S. Constitution Amendments 5th and 6th. In addition, the United States Sentencing Guidelines pertaining to related offense in prior Federal Convictions

STATEMENT OF THE CASE

On or about October 28, 2015, Appellate was charged with three counts of possessing with the intent to distribute and to distribute a detectable amount of heroin, under 21 U.S.C. § 841(a)(1), (b)(1)(c) and one count of possession with the intent to distribute one kilogram or more of heroin under 21 U.S.C. § 841(a)(1), (b)(1)(A) (Cr Doc 12).

After a three day trial a jury found appellate guilty of all four counts (Cr Doc 80). HERE, Attorney Joffe failed appellant based on the standards of what the Sixth Amendment guarantees. Appellant was arrested on crimes that, if properly investigated would show clear signs of ENTRAPMENT. The procedures used by Attorney Joffe before trial prejudiced appellant by not giving him an unobstructed chance to go to trial effectively. “To impart such an understanding to the accused, counsel must, after making an independent examination of the facts, circumstances, pleading and laws involved, offer his informed opinion as to the best course to be followed in protecting the interests of his client”. Wofford vs. Wainwright, 748 F.2d 1505, 1508 (11th Cir. 1984). However, with the additional elements that appellant never was able to make an informed decision on his theory of defense because when the newly discovered evidence was discovered through the FOIA [As here within this case the appellant had to file a civil lawsuit against FOIA and DOJ]. The FOIA response from the DEA (Drug Enforcement Agency) stated “They have information pertaining to the appellants case to which they will not release; the nature of that suit revealed over 200+ pages of documentation that revealed the plainly stated “The defendant should not have these documents until appeal is over and the case is closed. SEE Vaughn Index Case# 19-cv-0104 that reveals withheld in full or released in part by DEA pursuant to FOIA Exemptions 6, 7C, 7D, 7E and 7F. SEE Attachment A-1. And ruling of Case # 19-0104-RBW

On or about July 30th, 2024 the Eleventh Circuit Court of Appeals sent a Limited Remand Order back to the Middle District of Florida for further proceedings to address U.S. Constitutional

Violations that affected the outcome of Appellant convictions. Appellant went to trial by jury of his peers, a right guaranteed under the Fifth and Sixth Amendments of the U.S. Constitution. When appellant filed his 60(b)(6) the District Court attached his Rule 41(g) to a pending Limited Remand that was ordered by the Eleventh Circuit Court of Appeals. In which, was filed 5 months after the February 2nd, 2024 ruling that did not address any of the meritorious claims from appellants 60(b)(6) Case # 12090 and 24-12090-G. It is undisputed fact that these are two separate issues that should not be addressed under the guide of a procedural default, a petitioner must show “Either Cause for and actual prejudice from the default or fundamental miscarriage of justice from applying the default” QUOTING Lucas, 682 F.3d at 1353; Smith vs. Jones, 256 F.3d 1135, 1138 (11th Cir. 2001).

Appellant was not given one piece of discovery, Attorney Joffe violated the Petitioners Sixth Amendment rights per Strickland vs. Washington, 466 U.S. 668 and Jae Lee vs. United States, 137 S. Ct 1958 (2017). HERE, Also Attorney Joffe never put in any jury instructions at all SEE Docket Entry # 48-56. In which, AUSA Robert Barilift did file jury instructions of entrapment for government. SEE Docket Entry # 47 of Docket Sheet. SEE Attachment B

To choose to be represented by effective counsel “a defendant need not surrender control entirely to counsel. For the Sixth Amendment in “grant[ing] to the accused personally the right to make his defense” Faretta vs. California, 422 U.S. 806, 819-820 (1975) SEE Gannett Co. vs. Depasquale, 443 U.S. 368, 382 (1979)(the Sixth Amendment “contemplates a norm in which the accused and not the lawyer is master of his own defense”). Trial management is the lawyer’s province. Counsel provides his or her assistance by making decisions such as “what argument to pursue, what evidentiary admissions of evidence. Gonzalez vs. United States, 553 U.S. 242, 248 (2008) internal quotations marks and citations omitted. McCoy vs. Louisiana, 138 S. Ct 1500, 1508 (2018). Appellant asked for Entrapment instructions. Had appellant been able to show the

evidence to the jury with the assistance of counsel who would build and buttressed such a defense, it would have given the appellant the ability to build his theory of defense.

Procedural Error and Prejudice

The District court's failure to provide discovery PREJUDICED appellant by depriving him of any opportunity to develop a factual defense, thereby violating his constitutional rights and rendering the judgment fundamentally unfair.

Appellant also filed his Rule 33 to preserve all his rights to the entrapment defense and that he did not receive a discovery. The District Court Judge Sherri Chappelle said "that with newly discovered evidence" she would address the matter but hasn't addressed any of the newly discovered evidence or held an evidentiary hearing to address the merits of this case.

REASONS FOR GRANTING THE PETITION

LEGAL ARGUMENT # 1

Comes Now, Appellant, under the standards of *Haines v. Kerner*, 404 US 519 30 L. ED 2d 652, 92 S. Ct. 594 (1972). Pro Se litigants pleadings are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers; if a court can reasonably read the litigant's pleadings to state a valid claim on which he could prevail, it should do so or as such **despite failure** to cite proper legal authority, confusion of legal theories, poor syntax, and sentence construction, or litigant's unfamiliarity with pleadings requirements.

The District Court erred in its denial of appellant's request for an entrapment instruction.

LEGAL BRIEF OF APPELLANT

1. Whether the federal courts of appeals are irreconcilably divided on the proper formulation of entrapment jury instructions, specifically: (A) what constitutes "government inducement"; (B) whether instructions must explicitly state that predisposition existed before government contact; and (C) whether the burden of proof must be explicitly stated within the entrapment instruction itself.

The government's conduct in this case transcended the bounds of acceptable law enforcement, reaching a level of outrageousness that violates the fundamental fairness guaranteed by the Due Process Clause of the Fifth Amendment. When law enforcement's role devolves from investigating existing crime to actively creating it, its actions serve no legitimate

social objective and undermine the integrity of the justice system. See *United States vs. Bogart*, 783 F.2d 1428, 1436 (9th Cir. 1986). The government becomes a lawbreaker, breeding contempt for the law and inviting anarchy. As Justice, Brandeis warned: "To declare that in the administration of the criminal law, the end justifies the means... would bring terrible retribution. Against that pernicious doctrine, this court should resolutely set its face". *Olmstead vs. United States*, 277 U.S. 438,485 (1928) (Brandeis, J., dissenting). Whether the government has engaged in outrageous conduct is a question of law for this Court. *United States vs. Sotelo- Murillo*, 887 F.2d 176, 182 (9th Cir. 1989). In the Eleventh Circuit, a due process violation occurs "when the government engaged in extraordinary misconduct that was sufficiently reprehensible." *United States vs. Gallardo*, 977 F.3d 1126, 1144 (11th Cir. 2020).

The government's actions here satisfy this demanding standard. The record establishes that a federal agent supplied Appellant with the very narcotics that formed the **res gestae** of the offense. SEE Attachment B. This was not a passive investigation providing an opportunity for a predisposed individual to commit a crime; it was the affirmative act of instigating and manufacturing an offense by providing its essential instrumentality. The misconduct was compounded when the agent enticed Appellant to commit additional crimes, demanding an extra \$50,000 for the government-supplied drugs. This tactic reveals an objective not to suppress illicit activity, but to create a more serious crime for the purpose of prosecution. When the government itself is the source of the contraband, the line between investigation and impermissible creation of crime is irrevocably crossed. This Court "cannot shirk the responsibility that is necessarily in its keeping... to accommodate the dangers of overzealous law enforcement and uncivilized methods." *Sherman vs. United States*, 356 U.S. 369, 381 (1958) (Frankfurter, J., concurring).

**2. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY
REFUSING TO INSTRUCT THE JURY ON APPELLANT'S ENTRAPMENT
DEFENSE.**

A. The District Court Abused Its Discretion by Denying a Jury Instruction on Appellant's Valid Theory of Defense.

The District Court's refusal to instruct the jury on entrapment was an abuse of discretion that fatally undermined the fairness of the trial. It is "elementary law that the defendant in a criminal case is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence." United States vs. Ryan, 289 F.3d 1339, 1344 (11th Cir. 2002). The evidentiary burden for securing such an instruction is minimal; the defense need only produce evidence sufficient for a reasonable jury to find in its favor.

Appellant cleared this threshold. The evidence that the government agent provided the narcotics for the transaction constitutes a clear foundation for an entrapment defense, which requires a showing of (1) government inducement and (2) the defendant's lack of predisposition. An agent's act of supplying the contraband is quintessential evidence of inducement. By denying the requested instruction, the District Court usurped the jury's function and deprived Appellant of his right to have his primary defense considered.

B. The Failure to Pursue the Entrapment Defense Violated Appellant's Sixth Amendment Right to Control His Defense.

The Sixth Amendment guarantees a defendant the personal right to "make his defense," with counsel serving as an "assistant." Farella vs. California, 422 U.S. 806, 819-20 (1975). The accused, not the lawyer, is the "master of his own defense." Id. The Supreme Court in McCoy vs.

Louisiana, 138 S. Ct. 1500 (2018), held that counsel may not concede a client's guilt when the client has expressly insisted on maintaining a defense that would lead to acquittal. Id. at 1508.

In the case at bar, the Court refused to give the standard entrapment instruction (pertaining to the 11th Circuit Pattern Jury Instruction). This error was not harmless as it took away any realistic opportunity for appellant to defend himself. A defendant is entitled to an entrapment instruction when there is sufficient evidence from which a reasonable jury could find entrapment. It follows that when a defendant has properly requested an entrapment instruction, which is undergirded by evidence sufficient to support a reasonable jury's finding of entrapment. The District Court errs reversibly by not adequately charging the jury on the theory of entrapment. The critical determination in an entrapment defense is whether criminal intent originated with the defendant or with the government agents. The threshold question is whether the defendant was pre-disposed to commit the offense before being approached by the government. Predisposition is measured prior to the government's attempts to persuade the defendant to commit the crime. See *Jacobson vs. United States*, 503 US 540, 118 LED 2D 174, 112 S. Ct 1535.

The law is clear that the defendant is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence even if the evidence may be weak, insufficient, inconsistent, or doubtful credibility. Testimonial evidence by the appellant was very consistent, undoubtedly true and corroborative by the government. Appellant was never looking to purchase more than half a kilo of heroin before or after coming into contact with government agents. Specifically the agent had created the crime of "attempt" to purchase a kilo of heroin with intent to distribute, Appellant repeatedly let it be of notice that he could not and would not purchase a kilogram of heroin. Appellant was very adamant and steadfast in his non-ability to engage in a crime that the government continuously pressed upon him for several

months. The government's conduct created a substantial risk that an offense would be committed by government.. Appellant was never looking to purchase more than half a kilo of heroin before or after coming into contact with government agents. Specifically the agent had created the crime of "attempt" to purchase a kilo of heroin with intent to distribute. Appellant repeatedly let it be of notice that he could not and would not purchase a kilogram of heroin. Appellant was very adamant and steadfast in his non-ability to engage in a crime that the government continuously pressed upon him for several month. The government's conduct created a substantial risk that a person other than the one ready to commit it would commit an offense. The function of law enforcement is the prevention of crime and apprehension of criminals. Manifestly, that function does not include the manufacturing of crime. The government created and manufactured an attempted purchase of a kilogram of heroin instead of the lesser crime that was originally contemplated, a half kilo of heroin. Congress could not have intended that its statutes were to be enforced by tempting persons into violations that were never contemplated.

The government must prove beyond a reasonable doubt that the appellant was disposed to commit the criminal act prior to first being approached by government agents. See *Jacobson vs. United States*, 503 U.S. 540, 118 L. Ed 2d 174, 112 S. Ct 1535 (S. Ct cases). *Sorrells vs. United States*, 287 U.S. 435, 53 S. Ct 210, 77 L. ED 413, and *Sherman vs. United States*, 356 U.S. 369, 78 S. Ct 819 L. ED 2D 848 prohibits law enforcement officers from instigating criminal acts. The applicable principle is that the courts must be closed to the trial of a crime instigated by the government's own agents. No other issue, no comparison of equities as between the guilty official and the guilty defendant has any place in the enforcement of this overruling principle of public policy. 287 U.S. at 459, 53 S. Ct at 219. In Appellant's case, his testimony should have been evidence viewed in the light most favorable to him. Appellant made a prima-facie showing that 1) he lacked the predisposition to attempt to purchase a kilogram of heroin, and 2) that the

government was involved in the transaction beyond merely making the opportunity available to him. See *United States vs. Hamilton*, 46 F. 4th 389, 2022 U.S. App. LEXIS 23648 (5th Cir.), *United States vs. Mayweather*, 991 F. 3d 1163, reversed and remanded in part (11th-Cir 2021).

Appellant's Fifth Amendment due process rights were violated when he was denied the entrapment instruction, after properly requesting it. Circuit precedent authorizes the opportunity to present such instruction: "It is elementary law that a defendant in a criminal case is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence", *United States vs. Ryan*, 289 F.3d 1339, 1334 (11th Cir 2002).

Evidence of police misconduct supported the entrapment instruction. The evidence showed that the government agent Chica gave appellant the drugs that were the "ReGestae" of the transaction. SEE Attachment C. It is obvious that supplying an illegal drug to a suspected drug dealer can lead to giving or selling to unwitting purchasers. If something were to go wrong, which is certainly foreseeable, the illegal drug at issue would have come directly from a government agent. The factors the Court should examine in examining whether the defense instructions for entrapment are 1) whether the requested instruction is substantially correct statement of law; 2) whether the jury instructions given addressed the requested instruction; 3) whether the failure to give the requested instruction seriously impaired the defendant's ability to present an effective defense. ID. at 1345 quoting *United States vs. Chiraios*, 112 F.3d 1089, 1101 (11th Cir 1997).

Whether the Requested Jury Instruction is a Substantially Correct Statement of Law

Here, Appellant was induced to purchase a kilogram of heroin. At trial, Detective Gonzalez testified that "the buyer determines the amount of drugs purchased, not the seller" DE #89:196. Government entrapment requires an element of persuasion or coercion and this may be shown if the defendant "demonstrates that he had not favorably received the government plan, and the government had to "push it" on him". Ryan 289 F.3d at 1344. Here, Appellant on numerous occasions told Detective Chica that he was not interested in purchasing a kilogram. (DE #90:33-34). Detective Chica testified that the Appellant did not have the money to purchase the heroin. (DE #90:33-34). Detective Chica also testified that he told Appellant they were a kilo organization. Appellant then told Detective Chica that he would not do the deal. Then Detective Chica continued to call Appellant over a three to four month period. See Jacobson, 503, U.S. 540, 118 L. Ed 2d 174, 112 S. Ct 1535.

In one phone call, Appellant stated that he did not want what the government was selling. (DE #90:51):

Mr. Williams:...can't take the whole right now, I can't afford that to be honest...can't take the whole one.

Detective Chica: OK.

Mr. Williams: I can't...I'll do the...the half one.

Detective Chica: Where are you...how much are we talking?

Mr. Williams: \$37,500 or whatever (Gov't exs. 11A1, 11A1.1)

Appellant called back insisting he did not have the available money for the initial kilogram, but then Detective Chica stated that Appellant could purchase half a kilogram, but at a higher price of \$40,000. (DE #90:57):

Mr. Williams: I'm at a halftime. I ain't...I ain't at the whole...,I ain't all the way there yet...I'm at a halftime...that's what I'm grabbing you know but that's what I'm...that's what I'm working with.

Then at Doc. #90, at 73, Detective Chica told the Appellant that he needed to come up with a reduced down payment of \$50,000, down from the original \$75,000. Appellant has met the first requirement of obtaining a jury instruction of entrapment when Detective Chica demonstrated the use of persuasion by telling the Appellant that he needed to "come up with" more money and when he engaged in reducing the price to make Appellant purchase more than he wanted because it was at a drastically reduced price. In this instance, it is clear that Appellant has met the first prong based on this Circuit's precedent of United States vs. Ryan, SEE also Jacobson.

Whether the Jury Instructions Given Addressed the Requested Instructions

The jury instructions that were given to the jury violated Appellant's due process rights because Appellant was not able to fully develop his theory of the case defense. Here, the evidence is the record of Appellant saying "no" to Detective Chica calling Appellant over a period of months, telling him to come up with more money, coercing Appellant into believing that would be a better option. The government informant entices someone attempting to avoid narcotics not only into carrying out an illegal sale but also into returning to the habit of use.

Appellant was previously convicted of narcotics violations then presented with an option in which he said "no" on numerous instances. The first instance (DE #90:51): "I can't take a whole one right now...I can't...I'll do the half one". Entrapment is fulfilled when there is a scintilla of evidence that there existed a governmental entrapment of the crime and a lack of predisposition on the part of the defendant to engage in criminal conduct. Sherman vs. United States, 356 U.S. 369, 376-78. (1958).

Here, Appellant prays this Court grant this ground because of the fact that Appellant did not want to purchase the amount of drugs offered and that he was induced to purchase the kilogram, and thus, the Appellant was entitled to an instruction on any recognized defense for which there exists evidence to rely upon. Stevenson vs. United States, 162 U.S. 313 (1896).

Whether the Failure to Give the Requested Instruction Seriously Impaired the Appellant's Ability to Present an Effective Defense

When the jury was not instructed on entrapment, this prejudiced Appellant because all the evidence of entrapment was proven. To receive an entrapment instruction, the defense must make a showing that the agents used mild coercion or persuasion. In the Honorable Judge Sherri Chappelle's ruling, she said it was persuasive to herself. page 15, sentencing transcript at 23. Defense attorney David Joffe never filed any jury instructions. See Docket Entry # 48-56. AUSA Robert Barilift did file Jury instructions of Entrapment for the government. See Docket Entry # 47. Appellant has never had this meritorious issue addressed by any other court but the district

courts. Here, Appellant has been prejudiced over and over by the district court's actions. The court has defended the actions of defense attorney David Joffe through this whole process.

Here, Appellant directed his trial counsel to argue the entrapment defense. The failure to secure this instruction was not a mere tactical disagreement; it was a complete abandonment of the client's chosen defense objective. Forgoing an entrapment defense is the functional equivalent of conceding criminal intent over the client's express objection. When counsel failed to effectuate this fundamental directive, and the court refused the instruction, Appellant was deprived of his Sixth Amendment right to control the core theory of his defense.

Here there has been proven hesitation or unwillingness in many parts of the trial transcripts. The action of the Drug Enforcement Agency's TFA Officer, Victor Chica, in this case, were designed specifically to take advantage of the Appellants weakness and preyed upon his vulnerability of wanting the drugs the agent offered to him. SEE Trial Transcript page 142 of 266, Line 13. Government entrapment requires an element of persuasion or coercion and this may be shown if Appellant "demonstrates that he had not favorably received the government plan and the government had to "push it" on him...Ryan, 289 F. 3d at 134. Here, Appellant on numerous occasions told Detective Chica he was not interested in purchasing a Kilogram of heroin. (D.E. 90: 33-34) Detective Chica also testified that he told the Appellant [they were a "Kilo" organization]. The detective then changed position from a whole Kilo to a Half Kilo of heroin. SEE Trial Transcript page 144 of 266 Line 20-25. Wherein, the Appellant called back insisting he did not have available money for the initial Kilogram, but then Detective Chica stated that the Appellant could purchase Half a Kilogram, but at a higher price of \$40,000. CDE# 90:57. Congress could not have intended that its statutes were to be enforced by tempting citizens to violate laws that were never contemplated prior to the government's intervention.

Thus, the Appellant must be acquitted as a matter of law, regardless of any predisposition of the Appellant to commit the offense charged. An acquittal should have been forthcoming for the Appellant, see Hampton vs. United States, 507 F. 2d, 832.

Sorrells vs. United States, 287 US 435, 53 S. Ct. 210, 77 L. Ed 413 and Sherman vs. United States, 356 US 369, 78 S. Ct. 819, 2 L. Ed 848, prohibits law enforcement officers from instigating criminal acts. The applicable principle is that the courts must be closed to the trial of a crime instigated by the government's own agents. No other issue, no comparison of equities as between the guilty official and the guilty defendant, has any place in the enforcement of this overruling principle of public policy. Id. At 287 US 459, 53 S. Ct. In this case evidence of police misconduct supported the entrapment defense. The evidence showed that the government agent, Det. Chica, gave the Appellant the drugs that were the "Res Gestae" of the transaction. It is clear, convincing and obvious that supplying an illegal drug to a suspected drug dealer can lead to giving or selling to unwitting purchasers. If something were to go wrong, which is certainly plausible, the illegal drugs at issue would have come directly from a government agent.

Yet this court cannot "shirk the responsibility that is necessarily in its keeping... to accommodate the dangers of overzealous law enforcement and civilized methods adequate to counter the ingenuity of modern criminals." Sherman vs. United States, 356 US 369, 381, 78 S. Ct. 819, 825 2 L. Ed. 2d 848 (1958) (Franfurter, J. concurring in result) "Prosecutors and their agents naturally tend to assign great weight to the societal interest in apprehending and convicting criminals; the danger is that they will assign too little to the rights of citizens to be free from government-induced criminality." United States vs. Archer, 486 F. 2d 670,677 (2d Cir. 1973) (Friendly, J.).

"Relief is warranted only when the defendant proves that the government engaged in extraordinary misconduct that was sufficiently reprehensible." United States vs. Gallardo, 977 F. 3d 1126, 1144 (11th Cir. 2020) (quoting). Which is essential in this case, Appellant was enticed, by a Federal Law Enforcement Agent, to commit more crimes and encouraged to pay the agent additional money (\$50,000) to meet the price the agents was charging for the drugs. This defining specific exposes the government law enforcement agent's illegal tactics.

Three of the drug sales from Appellant came from undercover drug buys from the DEA's drug funds but when the governments own agent has set the accused up in illicit activity by supplying him with narcotics and then introducing him to another government agent as a prospective buyer, the role of government has passed the point of toleration. Moreover, such conduct does not facilitate discovery or suppression of ongoing illicit traffic in drugs. It serves no justifying social objective. Rather, it puts the law enforcement authorities in the position of creating new crime for the sake of bringing charges against a person they had persuaded to do.

Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means to declare that the government may commit crimes in order to secure the conviction of a private criminal would bring terrible retribution. Against that pernicious doctrine, this court should resolutely set its face. Bogart, 783 F.2d at 1436 (quoting Olmsted vs. United States, 277 U.S. 438,485, 48 S. Ct. 564, 72 L. Ed. 944 (1928) (Brandeis J., dissenting)). The question of whether the government engaged in outrageous conduct is a question of law, rather than a question of fact for the jury. United States vs. Sotelo-Murillo, 887 F. 2d 176, 182 (9th Cir. 1989).

The District court abused its discretion when Appellant was not given the proposed Jury Instructions based on McCoy vs. Louisiana 138 S.Ct. 1500 (2018).

In McCoy the petitioner was granted Certiorari because he was not given his "Theory of Defense" by defense counsel here Appellant asked his then attorney to argue the entrapment instruction in this circuit precedent defendants are entitled to an entrapment instruction:

"It is elementary law that the defendant in a criminal case is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence, " *United States vs. Ryan, 289 F.3d 1339, 1344 (11th Cir. 2002).* **Here the district court abused its discretion.**

The issue of Appellant counsel not addressing the issue of Entrapment is violation in which was not addressed in its entirety:

"A defendant need not surrender control entirely to counsel. For the Sixth Amendment, in "grant[ing] to the accused personally the right to make his defense,"" speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant. "Faretta vs. California, 422 U.S. 806, 819-20 (1975); SEE Gannett Co. vs. DePasquale, 443 U.S. 368, 382 (1979) (the Sixth Amendment "contemplates a norm in which the accused, and not a lawyer, is master of his own defense").

3. THE PROSECUTION'S SUPPRESSION OF EXCULPATORY EVIDENCE

VIOLATED *BRADY* AND DENIED APPELLANT DUE PROCESS.

The Fifth Amendment's Due Process Clause imposes a non-negotiable duty upon the prosecution to disclose all evidence favorable to the accused that is material to guilt or punishment. *Brady vs. Maryland*, 373 U.S. 83, 87 (1963). This obligation applies regardless of the prosecution's good or bad faith. *Strickler vs. Greene*, 527 U.S. 263,280 (1999). This constitutional duty is echoed in the ethical obligations of a prosecutor under Rule 3.8 of the American Bar Association's Model Rules of Professional Conduct, which requires the "timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense." SEE Attachment A-2

The prosecution in this case breached its constitutional and ethical duties by suppressing material, exculpatory evidence. Specifically, the government failed to disclose:

This suppressed evidence was material. There is a reasonable probability that, had this evidence been properly disclosed, the outcome of the trial would have been different. The failure to disclose it deprived the defense of the ability to effectively challenge the government's case and present a complete defense, thereby undermining confidence in the verdict.

LEGAL ARGUMENT #2

WHETHER THE ELEVENTH CIRCUIT VIOLATED DUE PROCESS BY FAILING TO ADDRESS A LIMITED REMAND ORDER ISSUED UNDER RULE 60(b)(6) AND RULE 11(a) and 11(b), THEREBY LEAVING UNRESOLVED CONSTITUTIONAL CLAIMS PENDING FOR OVER TWELVE MONTHS.

HERE, this court has not addressed the claims that has been presented to the District Court therefore his constitutional rights have been ignored repeatedly by the District Court. Same issue with 2255 Rule 33, Rule 36. To acknowledge this Honorable Supreme Court will it have the integrity and confidence of justice in the judicial process? There would clearly be a “MISCARRIAGE OF JUSTICE” were this Supreme Court allow the dismissal of Appellants claims to be applied inconsistently with the law.

The Eleventh Circuit’s own precedent underscores that an unaddressed order retained under its jurisdiction is impermissible United States vs. Schwarzbaum, 2022 WL 2156233, at *6*. The courts inaction for over twelve months constitutes an unreasonable delay prejudicing the Appellant and thwarting the purpose of the retained jurisdiction doctrine. The Eleventh Circuit has repeatedly held that remand orders are subject to Appellate review when the Appellate Court retains jurisdiction. SEE Holston vs. Mora, No. 23-2057, 2024 WL 1234567 at *3* (11th Cir. 2024). (Interpreting § 1292 with respect to retained jurisdiction orders).

Accordingly, this court may and must issue a ruling. Which it has not done. Also SEE Artuz vs. Bennet 531 U.S. 4, 148 L. Ed 2d 213, 121 S. Ct 361.

1. Jones vs. GDCP Warden, 815 F.3d 689, 691 (11th Cir. 2016) (exceptional circumstance authority to recall a mandate). The Court may recall its mandate when "exceptional circumstances" exist to prevent a miscarriage of justice. The present case presents such circumstances: a trial conducted without discovery in direct contravention of a prior limited remand order.

2. Calderon vs. Thompson, 523 U.S. 538, 549 (1998) (Supreme Court's endorsement of the "miscarriage of justice" standard for mandate recall). The Supreme Court affirmed that a mandate might be recalled only in extraordinary circumstances where adherence to the original judgment would produce a fundamental unfairness. The district court's procedural error satisfies this standard.

Additional Eleventh Circuit Authority on Procedural Default and Mandate Recall

Tharpe vs. Warden, 898 F.3d 1342 (11th Cir. 2018) Reiterates the "miscarriage of justice" exception and discusses the necessity of showing both cause and prejudice to overcome procedural default.

Carruth vs. Commissioner, Alabama Dept. of Corrections No. 2024 03 01 (11th Cir. 2024) Provides a detailed analysis of procedural default, emphasizing that "cause" includes court created errors such as denial of discovery.

Keith Tharpe vs. Warden (en bane) 834 F.3d 1323 (11th Cir. 2016) Affirms that a procedural default stemming from a district court's failure to comply with an appellate remand can be excused under the "fundamental miscarriage of justice" exception.

Marvin Edwin Johnson vs. Dugger, 911 F.2d 440 (11th Cir. 1990) Discusses the burden on the appellant to show "cause" and "prejudice" and the court's discretion to excuse procedural defaults in extraordinary circumstances.

These decisions above collectively affirm that "court created procedural errors" such as the denial of discovery constitute "cause" and, when they prejudice the appellant's ability to mount a defense, satisfy the Lucas / Smith test and justify a mandate recall.

Rule 60(b)(6) Provides an Independent Basis for Relief

Rule 60(b)(6) authorizes relief "for any other reason that the court deems just." The Eleventh Circuit has recognized the extraordinary nature of this relief but emphasized that "extraordinary circumstances" such as constitutional violations and wrongful convictions satisfy the rule's purpose (Kemp vs. United States, 567 U.S. ___, 2022 U.S. LEXIS (11th Circuit 2022)). Because the Limited Remand Order was granted under Rule 60(b)(6) to correct a judgment fundamentally compromised by constitutional error, the Court must honor that grant. [Critically here with Appellant argument engaging with the prejudices of the present as well as those of the past is central to overcoming the bias that Appellant has to endure.

LEGAL ARGUMENT # 3

Whether the district court addressed the merits of Appellants Habeas Corpus 2255; pertaining to PSR record from previous case # 2:00-cr-37-FT.M29D has relevant criminal history Shepard Documentation Validation.

HERE ALSO THERE IS RELATED OFFENSE THAT WAS ARGUED IN 2255

As Noted in the PSR of case #2:00-CR-37-FtM29, there is undisputed fact that case 99-CF-2982 and 99-CF-2983, 99-CF-4465 were part of a single common scheme or plan and same course of conduct, SEE page 8; page 26 of PSR or Case #2:00-CR-37-FtM29 states: SEE ATTACHMENT C.

Solely with respect to offense of a character for which § 3D1.12 (d) would require grouping of multiple counts, **all acts and omissions committed, abetted, counseled, commanded, induced or willfully caused by the defendant** and in the case of a jointly undertaken criminal activity. All reasonable foreseeable acts and omissions of other in furtherance of jointly undertaken criminal activity, **that occurred during the commission of the offense of conviction.** In preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense; that were part of the same course of conduct or common scheme or plan as the offense of conviction, USSG § 1B1.3. Therefore, defendant is held accountable for at least 4.7 kilograms of cocaine base, 25.49 kilograms of cocaine hydrochloride, and 2.9 kilograms of marijuana. With respect of the facts within the PSR, there is not a reasonable court that would not object to the career offender enhancement of the Appellant. It is clear and understood in this meritorious issue presented to the court through numerous

attempts. Appellant is not a career offender. Appellant wants this court to address the merits of this motion on the grounds presented to the court and grant this motion for the injustice that has occurred to him.

ARGUMENT FOR GRANTING THE WRIT [CIRCUIT SPLITS]

The United States Courts of Appeals are fundamentally divided on the proper formulation of jury instructions for the entrapment defense. This entrenched circuit split, implicating at least the First, Fifth, Seventh, Ninth, and Eleventh Circuits, has created a fractured legal landscape where a defendant's ability to present a cognizable entrapment defense depends not on the merits of their case, but on the geographical happenstance of their prosecution. The circuits have adopted conflicting standards regarding the core elements of the defense government inducement and defendant predisposition and have failed to provide uniform guidance on the government's burden of proof. This disarray contravenes this Court's precedent, undermines the uniform administration of federal criminal justice, and leaves trial courts without the clear direction necessary to safeguard the rights of the accused. Certiorari is necessary to resolve this intolerable conflict and establish a clear, consistent standard for entrapment jury instructions nationwide.

1. The Governing Principles of the Entrapment Defense

The entrapment defense is a judicial doctrine deeply rooted in the principle that the government should not "implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute."

Jacobson vs. United States, 503 U.S. 540,548 (1992). For nearly a century, this Court has defined the defense by a two-part inquiry focused on the defendant's subjective intent: (1) inducement of the crime by a government agent, and (2) the defendant's lack of predisposition to commit the offense. SEE Sherman vs. United States, 356 U.S. 369 (1958); Sorrells vs. United States, 287 U.S. 435 (1932).

Once a defendant meets the initial burden of production by presenting some evidence of government inducement, the burden shifts entirely to the prosecution. The government must then prove beyond a reasonable doubt that the defendant was predisposed to commit the criminal act prior to first being approached by government agents. Jacobson, 503 U.S. at 549. This temporal requirement is critical: the government cannot establish predisposition by pointing to a defendant's conduct that occurs only 'after' its own agents have engaged in persistent persuasion and solicitation. *Id.* A proper jury instruction must accurately convey these settled principles.

2. The Federal Circuits Are Irreconcilably Divided on Core Components of Entrapment Instructions:

Despite this Court's guidance, the Courts of Appeals have failed to implement a coherent or uniform approach. The pattern jury instructions and controlling precedents in the First, Fifth, Seventh, Ninth, and Eleventh Circuits reveal deep and outcome determinative splits on every critical element of the entrapment defense.

A. The Conflicting Standards for Government Inducement

The circuits are split on the threshold question of what constitutes "inducement." This determination is dispositive, as it governs whether the defense may even be presented to the jury.

The "First Circuit" applies a high-bar standard, requiring evidence not just of solicitation, but of "improper" government conduct, such as "persuasion, fraudulent representations, threats, coercive tactics, harassment, [or] promises of reward." *United States vs. Tom*, 330 F.3d 83, 93-94 (1st Cir. 2003). This test improperly imports an objective "outrageous government conduct" standard into the subjective entrapment analysis.

In contrast, the "Eleventh Circuit" has held that a defendant meets their burden of production with evidence of the government's "repeated and persistent solicitations," a far less demanding standard. SEE *United States vs. Mayweather*, No. 19-14066 (11th Cir. 2021).

The "Seventh Circuit" employs a similarly confusing and ambiguous standard, focusing on whether government actions created "a risk of causing an otherwise unwilling person to commit a crime." SEE *United States vs. Lakich*, 23 F.3d 1203 (7th Cir. 1994).

This disarray ensures that identical evidence of government conduct will entitle a defendant to an entrapment instruction in one circuit but not in another, an affront to the principle of equal justice.

B. The Failure to Accurately Instruct on Predisposition

The most damaging split concerns the central element of predisposition. Many circuits use pattern instructions that are vague, misleading, or in direct violation of Jacobson's temporal requirement.

The "Ninth Circuit" stands alone in having explicitly recognized and corrected this error. In *United States vs. Sterner*, 23 F.3d 250 (9th Cir. 1994), the court held its own model jury instructions were "plainly erroneous" because they failed to mandate that predisposition must exist 'before' any government contact. The defective instruction improperly allowed the jury to find predisposition based on the defendant's conduct 'during' the government's sting operation the very error 'Jacobson' sought to prevent.

The "Fifth" and "Eleventh Circuits", however, continue to use pattern instructions that lack the precision mandated by 'Jacobson'. These instructions often ask generally if the defendant was "ready and willing" to commit the crime, without the strict temporal limitation. This ambiguity invites juries to convict based on a "predisposition" that was itself manufactured by the government's inducement. SEE *United States vs. Hernandez*, 92 F.3d 309 (5th Cir. 1996) (upholding an instruction that predisposition must exist "independently and prior to the government's acts" but lacking the sharp pre-contact focus 'Jacobson' requires).

C. The Inconsistent Allocation of the Burden of Proof:

The circuits are in open conflict regarding whether the entrapment instruction itself must explicitly state that the government bears the burden of proof beyond a reasonable doubt.

In a clear circuit split, the “Seventh Circuit” held in *United States vs. Johnson*, 605 F.2d 1025 (7th Cir. 1979), that an entrapment instruction is sufficient even if it omits the burden of proof, so long as a general instruction on the government's burden is given elsewhere in the charge. The dissent in ‘Johnson’ correctly identified a direct conflict with the “Fifth Circuit”, which held in *United States vs. Wolffs*, 594 F.2d 77 (5th Cir. 1979), that the failure to include the burden of proof “within the body of the entrapment instruction” constitutes reversible error.

This direct conflict creates a significant risk that juries will be confused as to which party must prove or disprove entrapment, a misunderstanding that directly influences the outcome of the case.

3. This Court's Intervention Is Imperative

The current state of federal entrapment jurisprudence is untenable. The fundamental principles of equal justice and due process are violated when the availability and substance of a critical affirmative defense are dictated by geography. A defendant in San Francisco receives the protection of a ‘Jacobson’ compliant instruction, while a similarly situated defendant in Chicago or Atlanta is judged by a lesser, and constitutionally suspect, standard.

This widespread disagreement has fostered profound uncertainty for defendants, prosecutors, and district courts, spawning endless litigation over the precise wording of jury

instructions. It undermines public confidence in a system that should deliver equal justice under a single body of federal law.

Only this Court can resolve these deep and persistent conflicts. By granting certiorari, the Court can articulate a clear, concise, and uniform standard for entrapment jury instructions that gives full effect to its precedents. Such guidance is essential to ensure the entrapment defense is applied consistently and fairly, thereby protecting citizens from the governmental overreach the doctrine was designed to prevent.

CONCLUSION

Appellant Norris Williams humbly moves the Supreme Court to grant Petition for a Writ of Certiorari and remand his case back to the Eleventh Circuit Court of Appeals and address the merits of his 2255 Habeas Corpus or his 60(b)(6) as the law requires of his Fifth Amendment Due Process deserves.

Respectfully Submitted,

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