PRELIMINARY STATEMENT

The breadth and magnitude of the Constitutional errors in the trial of United States v. Paul Bergrin, is extraordinary. This motion for post-conviction relief will clearly and unequivocally establish that Bergrin never received a "fair trial" based upon deliberate, knowing and intentional conduct by the government and the prosecution sought victory at any and all costs.

Each and every point delineated in this petition invokes violations of either the Fifth, Sixth, Eighth, or Fourteenth Amendments, of the United States Constitution and makes it ripe and permissible in this forum. Most importantly, the violations harmed and prejudiced the Petitioner's constitutional rights and detrimentally impacted his verdict. Consequently, under no circumstances could they be considered "harmless errors." Brecht v. Abrahamson, 507 U.S. 619, 623, 113 S. Ct. 1710, 1714, 123 L. Ed. 2d 353, 363 (1993). Additionally, the deliberate and serious errors that follow this statement, combined with the pattern of prosecutorial and judicial misconduct, will warrant reversal of Petitioner's convictions. Kotteakos v. United States, 328 U.S. 750, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946). Brecht, id., at 638, n. 9.

Petitioner will conclusively prove that a Fundamental Miscarriage of Justice occurred in this case and this Honorable

Court is being implored to reverse the convictions and halt this travesty of justice.

Most importantly, Petitioner submits that each ground-point contains the factual and legal evidence clearly delineating violations of the constitutional right to due process of law, as espoused in Amendment's Five, Six, Eight and Fourteen of the United States Constitution; collectively and as viewed in their totality they overwhelmingly mandate complete reversal of Petitioner's convictions. It is impossible to argue that the errors were either harmless, invited or that only some of the charges/ counts should be reversed. The magnitude of the errors and extraordinary prejudice Petitioner endured in this trial usurps and contravenes the right to a fair trial, which encompassed all counts in the Indictment.

A motion for a new trial pursuant to R. 33 is due to be filed by appointed counsel shortly. Because the 18 U.S.C. §2255 deadline to file is before the R. 33 motion filing, Petitioner makes this court aware that he has additional grounds of actual evidence which are not detailed in this Petition. Petitioner may be required to supplement this petition to more specifically state the specific facts and new evidence which support these grounds should they not be before the court in the R. 33 motion.

I. BERGRIN'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW WERE CLEARLY VIOLATED WHEN "USE IMMUNITY" WAS DENIED AND/OR NEVER OFFERED TO SEMINAL DEFENSE WITNESSES, THAT WOULD HAVE EITHER EXCULPATED BERGRIN OR EVISCERATED THE CREDIBILITY OF THE GOVERNMENT'S WITNESSES.

This is not a motion pursuant to whether judicial immunity should have been offered material defense witnesses, whom either asserted their Fifth Amendment Constitutional right against self-incrimination, or had it wrongfully asserted for them, by the District Court. The magnanimous issue pertains to the infringement of Bergrin's constitutional right, to the due process of law.

A. The Kemo Case

The uncontroverted facts establish that the sole and exclusive witness against Bergrin in the Deshawn McCray (Kemo) murder case was one Anthony Young (Young).

On March 2, 2004, Kemo was shot three times at approximately 2:00pm and in the area of South 19th Street and South Orange, Newark, New Jersey. His stepfather and employer, Johnny Davis (Davis), was present and in such close proximity to the shooting that he actually felt powder burns on his neck.

At the scene of the shooting, law enforcement interviewed Davis and he unambiguously described the shooter as being a

dark-skinned black male with shoulder length dreadlocks. It was conclusively proven that Young had a bald head on this date. During the course of the homicide investigation, leads evinced that the shooter may have been one Malik Lattimore (Lattimore); an individual known to be a dangerous "hit man" and associated with one William Baskerville (Will).

Will had been arrested on November 25, 2003 for making six (6) hand to hand sales of crack cocaine to Kemo and the motive for killing Kemo was his betrayal of Will.

Davis reiterated his description of the shooter in a sworn homicide statement, on the date of the shooting and several months later was shown a six (6) photo array of homicide suspects wherein he identified Lattimore as Kemo's murderer. Moreover, within 48 hours of his son's murder, Davis was shopping at a local area convenience store where he had a confrontation with Lattimore, who threatened him against being a witness. Davis was absolutely certain as to Lattimore being the person who confronted him and killed Kemo and he executed a photo of Lattimore to a defense investigator writing the words he was 1000% positive of this identification. Most importantly, he was shown a photo of Young and he was 1000% sure that he was not the shooter.

Approximately fourteen months subsequent to Kemo's murder and on January 13th, 2005, Young telephonically contacted the

Federal Bureau of Investigation (FBI) alleging he had knowledge of the Kemo murder. The FBI was intricately involved and extremely interested in this case, as Kemo was an FBI informant and one of the witnesses in the prosecution of Will. Will had made multiple hand to hand sales to Kemo of crack cocaine which were recorded, videoed and under law enforcement surveillance. The drug trafficking evidence independent of Kemo was both overwhelming and incriminating.

1. Young's Numerous Lies and Inconsistencies in Proffers Sessions and in Three Trials.

Young was interviewed multiple times by agents of the FBI over approximately a year period and gave multiple versions which were diverse and inconsistent as to Kemo's murder. It must also be accentuated that Young was a violent career criminal with an extensive criminal history and was facing federal weapons charges under the "trigger lock" statute. He alleged that he sought FBI protection against Jamal McNeil (McNeil) and Jamal Baskerville (JB) whom he alleged fear of retaliation.

Young swore that McNeil and JB had killed an innocent female victim during a shoot-out in Irvington, New Jersey, had confided in him and he in turn informed his girlfriend Rashida Tarver (Tarver). There was no evidence ever presented of this Irvington killing and Tarver denied ever being so informed.

Young also asserted that Tarver told Baskerville's family, resulting in his fears.

Young's version of the Kemo murder initially had McNeil being the shooter. As a matter of fact, Young positively identified a photo of McNeil as Kemo's murderer and was willing to testify at trial, under oath, to this fact, even if it meant McNeil receiving the death penalty. Young's second version was his absence from the scene completely and his third, to which he finally testified at trial, was that he was the shooter.

Will was not only indicted for the hand to hand drug offenses, in November 2003, but in 2005 indicted for Kemo's murder. He would proceed to trial on these matters in 2007. Bergrin was the only other person also prosecuted for Kemo's death and he proceeded to trial in both 2011 and 2013; the first trial had resulted in a hung jury-mistrial.

Despite Young's inconsistencies, incredulousness and dichotomous versions, and him being the only witness against Bergrin, the government pressed forward.

The government relied upon Young's statements and testimony that on November 25, 2003, the date of Will's arrest for drug dealing with Kemo, Bergrin contacted Will's cousin Hakeem Curry (Curry), while Young and Rakeem Baskerville (Rakeem) were seated in Curry's auto and advised them of the charges against Will.

Additionally, Bergrin informed them that the hand to hand sales by Will were made to an individual named "Kemo".

Upon receiving this information Young swore at Will's trial in 2007 that he and Rakeem determined that the informant was Kemo and that he, Young, decided to get rid of or kill Kemo, because he crossed a Baskerville. Young also testified in 2007 that Curry informed him Will was facing life in prison for his drug sales. Young would later completely change his testimony as to Rakeem being in the car, his testimony of deciding to get rid of Kemo on November 25, 2003 for crossing a Baskerville and as to whom informed him that Will was facing life in prison.

Young further swore at the 2007 trial that four (4) to five (5) days subsequent to Will's arrest, he was present at a meeting, at approximately 8pm, on Avon Avenue, Newark, N.J. with McNeil, JB, Curry and Rakeem when Bergrin drove up and spoke to them. According to Young, Bergrin advised the group that they had to kill Kemo or Will would get life in prison and never come home; that without Kemo the government had no case and before Bergrin left he uttered the infamous words, "No Kemo, no case."

It must be understood that despite his 2007 testimony, at Bergrin's trials in both 2011 and 2013, Young's new version was that it was Bergrin whom for the first time advised the group (the same individuals), that Will was facing life in prison, that Bergrin never used words to kill Kemo and said words to the

effect that if Kemo was not a witness then Will would go free as Bergrin would win the case; and that Bergrin stated, "No Kemo, no case."

At Bergrin's trial Young completely changed the dates of this meeting to on or about December 4, 2003, the date of Will's detention hearing that Rakeem was never in the auto and he never decided to get rid of Kemo as he swore in 2007. The inconsistencies in Young's testimony between Baskerville and Bergrin's trials were glaring.

In 2007, Young testified Deidre Baskerville (Deidre), Will's wife, was present at a meeting on November 25, 2003 (Trial 4343), as well as Curry, Al Hanif Baskerville, McNeil and JB, to discuss Will's arrest. He excluded her at Bergrin's trial in 2011, (Tr. 10-27-11 at 122-129).

In 2007, Young testified he learned about Will's arrest through Rakeem and Deidre (Tr. 4341); but in 2011 he alleged Rakeem informed him. (Tr. 122).

In 2007, Young was absolutely certain that on November 25, 2003, when Bergrin called, Rakeem was in Curry's car with him (Tr.3450-55) and it was he and Rakeem that collectively determined the FBI informant was Kemo. But, in 2011, it was Jamal Baskerville and not Rakeem in the car.

In 2007, Young supposedly learned from Curry on November 25, 2003, that Will was facing life in prison (Tr. at 4358-

4359), but in 2011 it was four to five days after Will's arrest , he learned for the first time when Bergrin showed up at the street meeting at 8pm on Avon Avenue in Newark, that Will was facing life. (Tr 138-41). A date he would deny and swear the meeting was now not four to five days post arrest, but on or about the date of the detention hearing, December 4.

At trial in 2007, Young said it had not been determined who would kill Kemo if he was located, (Tr. at 4362-63), but in 2011 he testified that it was he who decided to kill Kemo after meeting with Bergrin, four to five days after Will's arrest. (Tr. At 147).

In 2007, Young swore that Bergrin told a group of people, including McNeil and J.B., that "if Kemo was dead, that Will Baskerville would definitely come home from jail [,] " (Tr. at 4361), in 2011 Young admitted Bergrin never said, "If Kemo was dead." In fact Young emphasized that Bergrin "didn't say 'dead' at all." (Tr. at 175-179).

There was an inordinate amount of inconsistencies and when defense could factually prove through objective evidence and records Young was being deceptive, his testimony mysteriously changed; especially after government preparation sessions. McNeil and JB were essential witnesses to this proceeding and against Young. Their testimony would have proven that the

exclusive government witness against Bergrin, in the Kemo case, was fabricating his testimony.

2. The Government Blocks the Defense's Only Witness from Testifying who Would Have Refuted Young's Claims.

Bergrin subpoenaed J.B. and McNeil to his trials; especially in 2013 when it was evident that neither of these individuals would ever be charged or tried in the Kemo case and that Young's testimony was unreliable. Furthermore, any evidence of their drug dealing was beyond the statute of limitations and the investigation into Kemo's murder closed.

The government went through great lengths to intimidate and coerce J.B. to assert his Fifth Amendment right and not testify. In 2011, at Bergrin trial one, and while J.B. and his family were seated in court, Assistant United States Attorney, John Gay vehemently demanded that J.B. be provided counsel and informed of his rights against self-incrimination; even though no active investigation was pending against him and it had been 8 (eight) years since Kemo's murder.

Instead of requesting J.B. leave the courtroom, and/or a side bar, Gay argued that the government may still indict J.B. for murder and that he must be given his rights and a counsel appointed to represent him. This was despite J.B. being placed under oath, while agreeing to testify and vociferously asserting

he did nothing wrong, was innocent and had nothing to hide. He ardently swore he knew nothing about Kemo's murder. The government had also been provided a sworn statement from J.B. exculpating Bergrin, denying there was any meeting wherein Bergrin made the statements Young swore and, as a matter of fact, J.B. denied ever meeting or speaking to Bergrin. Subsequent to Gay's statement, and appointment of counsel, J.B. declined to testify. He took the same position in 2013.

B. The Government Continues to Block the Defenses' Witnesses.

During Bergrin's trial in 2013, the Court, after vigorous objections by defense as to any defense witness having a Fifth Amendment Right, and Bergrin unequivocally and categorically imploring that the subpoenaed witnesses testify, the Court appointed Criminal Justice Act attorney's for every defense witness. Most importantly, the government had pleaded with the Court to appoint counsel, instruct the witnesses of their rights against self-incrimination under the Fifth Amendment and falsely proffered how each of the witnesses may still be prosecuted.

In spite of vehement defense objections, the court not only appointed counsel for J.B., McNeil and Jose Bracero, but also for Michael Lopez, Jason Nieves and Edward Peoples. The court never even questioned these critical witnesses, had them sworn and determined if they had Fifth Amendment rights. Most

appallingly the court ex-parte and sua sponte spoke to appointed counsel in chambers out of defense presence and merely delineated on the record that these witnesses will not be testifying but asserting their Fifth Amendment privileges; thereby stunning the defense, destroying any chance to present exculpatory evidence vindicating Bergrin and trampling important constitutional rights.

Not only would J.B. and McNeil (who had only given a detailed and signed sworn statement denying ever meeting Bergrin and being involved in the Kemo murder); but Lopez, Nieves, People's and Bracero were all interviewed by defense and would have exculpated Bergrin on the remaining material charges. (See tr. 7652-8314).

Defense was so adamant in its position that none of these witnesses had a right to the self-incrimination privilege that it argued: "The government is saying that they think that there's a theory by which they're incriminating themselves. You know we don't- that's not our view based upon the facts…We believe that they're people who have relevant evidence and they should provide it. You know, the Court can, based upon the testimony that they give, stop the proceedings if it wishes and advise them of their Fifth Amendment rights. But until you hear what they have to say, for Mr. Gay to just say that he thinks they have, you know, concerns regarding." (Tr. 7653-7654).

It was apparent that those witnesses would detrimentally affect the government's case and the prosecution fought vigorously to stymie their testimony. It is apparent that Gay was making meritless assertions, as not one defense witness was ever charged with any wrongdoing.

Bergrin personally pleaded and cried out to the court as to the importance of all these witnesses and how their testimony was crucial to him receiving a fair trial." Judge, the prosecution obviously wants to keep witnesses off the stand- no, please let me finish, ok?

Obviously they're trying to chill these proceedings and keep the truth from coming out and keep people from on the stand…

And all these witnesses have come forth with extremely vital material evidence, your honor." (Tr. 7656). All the arguments were to no avail as the government had to keep the witnesses from testifying at all costs.

C. The Court Denies Bergrin's Request for a Continuance as the Marshall's are in Route Transporting Witnesses Who Would have Refuted Abdul Williams' Testimony.

Bergrin was indicted for drug trafficking and one of the most critical witnesses for the government was cooperator Abdul Mutallic Williams. Williams, a career criminal, was facing life

in prison on his charges. Devoid of Williams's testimony, Bergrin avers he would have been acquitted of all drug charges. The government also attempted to use Williams' testimony, in accord with Fed. R. Evid. 404(b), in the Kemo murder case.

Bergrin had two crucial witnesses, Syed Rehman and Drew Rahoo. Both were intimately close with Williams and were interviewed by defense investigators.

Both these witnesses, whom have absolutely no relationship to or with Bergrin, would have testified that Williams schemed, connived and planned with them his cooperation and collectively schemed the fabrication of testimony against Bergrin; in order for Williams to receive the benefits of a cooperating plea agreement.

Both witnesses would have testified that Bergrin is innocent of drug trafficking and that Williams testimony was false, contrived and schemed. These witnesses had absolutely no right to assert any testimonial privilege, as they were serving sentences in federal prison and their cases concluded. Without any hearings, testimony being taken, questioning and over vehement defense objection, the court speculated that Rehman and Rahoo may assert their privilege against self-incrimination, refuse to testify and, consequently the Judge precluded them as witnesses.

The issue also considered by the Court was whether a one-day delay, for the Marshall's to procure the witnesses appearances was necessary. No hearings were held, the substance of the witnesses' testimony never taken and the magnitude of the exculpatory nature of their testimony ignored.

Moreover, both witnesses would have testified as to the wrongful influences attorney Richard Roberts had on Williams' cooperating, as Roberts was retained by Williams and consulted and advised him extensively.

Bergrin's investigator, a retired and former agent for the FBI, had interviewed both witnesses and assured their willingness to testify. (See Tr. 8308). Despite all these delineated and espoused facts, the Court trampled upon Bergrin's rights to due process and this prejudiced and influenced the case inordinately. The court and government were both aware of how vital Rehman and Rahoo were to the interests of justice, but this was ignored.

D. The Allegations in the Esteves'Case

Lastly, Bergrin was indicted for the conspiracy and attempted murder of a government witness, travel act violations and received an extraordinary sentence due to this fact. The government clearly accentuated those facts of the case, opened

with it and relied upon the recordings to prejudice Bergrin. There were recorded conversations with key witness Oscar Cordova and the words, without explanation, were very damaging to Bergrin.

There existed evidence that the recordings were tampered with by an eminent expert, James Reames, which the court disallowed.

Most importantly, the government used a cooperating witness named Maria Correia to develop their investigation. During the course of the investigation, the FBI learned that Correia had stolen informant funds, approximately $20,000 provided to her and that she was engaging in an intimate sexual relationship with Cordova.

Despite these extraordinary circumstances and the fervent exculpatory evidence Correia also developed, that Cordova was concealing, destroying and unjustifiably removing exculpatory evidence against Bergrin; which would have severely damaged the government's case against Bergrin and destroyed these allegations against him. Correia knew that Cordova had failed to reveal evidence of Bergrin's knowledge that Cordova was a government informant, thereby proving Bergrin would not commit crimes with the "known" informant. Additionally, Correia had first-hand knowledge Bergrin was innocent of any drug trafficking, that Cordova had destroyed exculpatory recordings

and of rampant and blatant government misconduct. Bergrin had provided a synopsis of Correia's testimony to both the court and the government.

The court and government also know that Correia, along with attorney Richard Roberts, had coached a witness, Albert Castro, to commit perjury against Bergrin and to falsely cooperate. This evidence would have crippled the integrity of the government's case and Bergrin had subpoenaed Correia to testify, through the Marshall's service; as the government had changed Correia's name to Grace Cruz and hidden her in New Orleans, Louisiana.

What is also indisputable is that Correia had committed additional crimes of credit card, identity and bank fraud, while acting as an informant for the government and that the prosecution held these charges open, as leverage against Correia now revealing the truth and she remained unsentenced; even though she was no longer a cooperator and had been discharged as a cooperating witness for almost two years.

As Correia travelled from Louisiana to Bergrin's trial in Newark, New Jersey and was within 48 hours of testimony, defense was informed by Correia's attorney that she would be exercising her privilege against self-incrimination and refusing to testify. No hearings were held, no query whatsoever and the court made it clear to an absolute certainty that it would

neither grant immunity nor compel the government to grant any witness "use immunity". Furthermore, and most importantly, the government profusely fought the testimony of every witness espoused infra and would not grant immunity to any defense witness. They were charged with winning at any and all costs, and justice, the truth seeking process and the constitution never considered, as part of the equation.

ARGUMENT

Pursuant to statutory authority, the prosecution may compel a witness to testify by granting "use immunity". (See 18 U.S.C. § 6002-6003 (2006)), authorizing grants of immunity to compel testimony before federal courts, grand juries, US agencies and Congress. Use immunity prevents the prosecution from using any direct testimony or evidence derived against the witness in a subsequent prosecution. Kastigar v. U.S., 406 U.S. 441, 462(1972). Prosecutor's grant of use immunity leaves the witness and the government in substantially the same position, as if the witness had claimed the 5th Amendment right, U.S. v. Hubbell, 530 U.S. 27, 37 (2000).

Henceforth, the government's lame excuse that they are not granting immunity because they want to preserve the option of prosecuting these parties in the future is baseless. There existed no viable justification for trampling upon Bergrin's due

process rights and the constitution. It was inequitable, wrong and for this reason alone, the case requires reversal.

The prosecution must as a matter of law grant immunity as broadly as a witness asserts their 5th Amendment right. U.S. v. Balsys, 524 U.S. 666, 682 (1998), Peiffer v. Lebanon School District, 848 F. 2d 44, 46-47 (3d Cir. 1988).

This honorable court must be extremely concerned as to why the government refused, in each circumstance. Only one conclusion can be objectively reached and that is because the testimony would have evinced the incredulousness of their witnesses, case and clearly established rampant misconduct. The government's position is further rendered meritless and constitutionally frivolous, as not one witness when they refused "use immunity" has ever been charged with any crimes.

The court must also consider this inordinate prejudice inured to Bergrin through the courts' inaction. The Judge had an opportunity to order the government to grant immunity and seek justice, but failed to act.

A trial judge may order the government to grant immunity, if a defendant's case would be severely prejudiced without the witness' testimony and when such a witness' testimony would be material or exculpatory, otherwise unavailable, or when the prosecution has engaged in overreaching or misconduct. U.S. v. Thomas, 357 F. 3d 357, 365(3d Cir. 2004). The government should

grant immunity to a defense witness if the witness is available, testimony clearly exculpatory and essential, and no strong government interests oppose immunity.

Bergrin has categorically and unequivocally proffered facts which prove that each and every defense witness, whom was lost as a result of the assertion of their privilege, could have affected the verdicts against Bergrin. He has brought forth credible, logical and believable averments that there was no rational basis for excluding even a single witness and, especially in the Kemo murder case, where the government decided to proceed with one witness; Bergrin should have had the right to have his witnesses granted "use immunity" and ordered to testify. The exclusion of these witnesses was appalling and a clear violation of Bergrin's constitutional rights; especially the tacit nature as to how the court did it. See Tr. 7652-7654.

The government's argument regarding immunity fails to recognize its constitutional duty not to subvert the truth finding process and wholly ignores Bergrin's constitutional right to a fair trial. In these circumstances, the Government's refusal to grant defense immunity is an impermissible due process and Sixth Amendment violation, as recognized in U.S. v. Morrison, 535 F.2d 223 (3d Cir. 1976) and the Supreme Court's holding in Web v. Texas, 409 U.S. 95, 93 S. Ct. 351, 341. Ed. 2d 330 (1972). These cases analyzed the Government's refusal to

grant defense witnesses immunity from a due process perspective, finding that the Government, not the court, abused its discretion by failing to grant immunity. A new trial must be granted as this error substantially prejudiced every count in the trial.

Our highest court has consistently held that "the right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury, so the jury can decide the truth. Just as an accused has the right to confront prosecutor's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law. Washington v. Texas 388 U.S. 14 at 19, 87 S. Ct. 1920, 1923, 18 L. Ed. 2d 1019, 1023 (1967). This right is found specifically in the Sixth Amendment right to compulsory process.

In U.S. v. Morrison, the Court held that: Due process demands that the Government request use immunity for a defendant's witness. See dicta in U.S. v. Leonard, 161 U.S. App D.C. 36, 494 F.2d 955, 985 n. 79 (1974) and C.F. Earl v. U.S. 124 U.S. App. D.C. 77, 361 F. 2d 531, 534 n.1 (1966)(Burger, J.). These circumstances were created in this case when prosecutorial coercion and intimidation caused vital witnesses,

Jamal McNeil and Baskerville, principal witnesses, whom would have vindicated Bergrin completely of the Kemo murder, to withhold testimony out of fear of prosecution.

In Morrison, the Court ordered a judgment of acquittal when a material witness invoked her Fifth Amendment right not to testify and the government refused "use immunity." 535 F. 2d 223. Factually, similar to the case *sub judice*, the Morrison court found a significant due process violation as to defendant's right to a fair trial where a defense witness, (like Baskerville) appeared at trial and the judge provided the witness a lengthy warning about testifying; after the federal prosecutor's tirade and 8 warnings of potential prosecution. The Morrison Court even went so far as to hold that the trial Judge's warnings were the cause of the witnesses exercising the Fifth Amendment was irrelevant to this inquiry. The Court stated that the "…good faith of the Assistant United States Attorney would be relevant if he were charged with violations of 18 U.S.C.§ 1503 which makes the intimidation of a federal witness a criminal offense. It is not, however relevant into whether a defendant was denied his constitutional right…"

The Morrison Court found Web v. Texas controlling, 409 U.S. 95, 93 S. Ct. 351, 34 L.Ed. 2d 330 (1972). In Webb, the Supreme Court reversed the Texas Court of Criminal Appeals and found the defendant's right to due process of law violated after a witness

refused to testify following warnings by the Court. Jamal Baskerville was coerced against testifying after prosecutor Gay's ardent statement about prosecuting him and potential risks of testifying for Bergrin. Gay assured that J.B. was intimidated and these 2011 warnings carried forward to 2013, when he again refused to testify. A scrutiny of Gay's underhanded tactics against J.B. also caused McNeil's 2013 refusal, as they are close associates and in communication with one another. Gay, instead of requesting a side-bar or asking for J.B. to leave the courtroom, emphatically and painstakingly advised J.B. in the presence of his family, that if he was to testify there's a good chance he will be prosecuted for Kemo's murder, drug trafficking and other serious felony. This had a profound and chilling effect on the witness's decision to testify and that is exactly what the government intended. Their nefarious motive is espoused in their failure to ever even charge another witness with any criminal offense. The government's ploy upon the Court was disingenuous. More than a decade has passed since the Kemo murder when Gay went into his dissertation for appointment of counsel for all the witnesses and their rights invocation. At the time of Bergrin's trial, in 2013, the Kemo case was closed and no investigation undertaken for years. There has been no reasonable justification espoused to preclude two exculpatory witnesses to testify. Witnesses whom

would have proven Bergrin's innocence of the charges that prejudiced him most and took forefront in the case. **The additional preclusion of material witnesses interfered with any ability Bergrin may have had to present a defense case and any chance to present direct evidence discrediting Young**. The Government infringed on Bergrin's Sixth Amendment right and all charges wherein this occurred must be dismissed. Gay's purposeful in-court broadcast, in J.B.'s presence is exactly the same as the impermissible conduct in Morrison.

This Honorable Court must meticulously scrutinize the government's conduct in blocking the testimony of witnesses, as it is indicative of the misconduct which laden this case. It proved the government's propensity to win this case at all costs, even the ignorance of seminal statutory and constitutional rights and rules of professional conduct.

During a Judge Martini-Gay colloquy in the 2011 Bergrin trial, Gay stated that Young's uncorroborated testimony was insufficient evidence to prove its case against Bergrin, J.B. and McNeil. In the 2011 case against Bergrin, the government used the coached, perjured and contrived testimony of Albert Castro, whom was never re-called as a witness in Bergrin's 2013 trial. Consequently, the government had no reason to exclude and not grant "use immunity" to J.B. and McNeil, as their idle threats of prosecution could not be achieved; as their existed

no other witness except the incredulous and uncorroborated Young.

In Bergrin's case, the testimony of Maria Correia would have established that no other evidence of Kemo's murder, except Young ever existed and thus Castro was created by an agent and informant of the government.

Gay to Judge Martini, in 2011, "I'll address that Judge. We have not charged Baskerville yet. That's absolutely correct and true: But that's the exact reason why, if he were to take the witness stand and say something that can be interpreted as inculpatory, he could be charged…I'm not going to give the impression that we have scores of agents out there working on the investigation…"

Jamal Baskerville was then sworn and examined by the court, to which he replied, "I don't think I am incriminating myself because I didn't do nothing. I had nothing to do with that."

The point is that all these witnesses, individually and cumulative, would have changed and effected the entire tenure, fact finding and disposition of the essential facts in the case. The testimony was immeasurably important and due process demanded their immunization and presentment. This Honorable Court must ensure the protection of critical constitutional rights and when Bergrin was denied these witnesses, fundamental

fairness in the proceedings evaporated. This case must be reversed.

This Honorable Court must ensure the protection of critical constitutional rights and when Bergrin was denied these witnesses, fundamental fairness in the trial proceedings evaporated. This case must be reversed.

II. BERGRIN'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL WERE INFRINGED THROUGH THE GOVERNMENT'S USE OF CORRUPT, CONFLICTED AND COMPROMISED ATTORNEY'S AS THEIR *DE-FACTO* AGENTS, THROUGH UNIMPEDED CONFLICTED ATTORNEY REPRESENTATIONS AND BY THE GOVERNMENT'S MISCONDUCT.

It was virtually impossible for Bergrin to receive a fair trial with the extraordinary and nefarious use of corrupt, compromised and conflicted attorney's, whom the government had actual knowledge of and whom were encouraged and enticed to act on behalf of the government's interests; and in clear contravention of the United States Constitution, Statutes and Rules of Professional Responsibility.

This issue was raised by Bergrin in 2013, but completely ignored. It is substantive, meritorious and usurps any indicia of propriety.

The government was clearly cognizant that New Jersey attorney, Richard Roberts, represented multiple and conflicted cooperating witnesses and alleged Bergrin coconspirators. Most importantly, they knew that Roberts evaded federal income taxes for over ten (10) years, was committing tax fraud and had laundered a significant amount of dollars. That Roberts was indebted in excess of a half million dollars, had multiple Court ordered liens and judgments against him and was pending disbarment by the New Jersey Ethics Committee.

Bergrin acknowledges that neither Roberts nor the other corrupt attorney's represented him. He also confirms that the witnesses represented by the conflicted, unethical and *de-facto* agent attorneys did not obtain any statements from him, subsequent to their representation or involvement with the government. What is paramount and magnanimous is the government's rampant and incessant misconduct, their involvement in coercing witnesses through their attorneys to contrive, fabricate and manufacture evidence against Bergrin, their concealment of non-waivable conflicts of interest, by attorney's they were related to, the solicitation and presentment of factually inaccurate evidence and their extraordinary violation of Bergrin's constitutional rights, to a fair trial.

The theory behind Massiah v. United States, 377 U.S 201 (1964) was the Supreme Court's ardent position that once an individual is represented by counsel, which Bergrin was, then it is a 6th Amendment violation when individuals used by law enforcement officials gain information. The government's improprieties are nothing but an extension of this position.

In Maine v. Moulton, 474 U.S. 159 (1985), the Court found a 6th Amendment violation when evidence was obtained upon police request, upon a defendant whom was represented by counsel. See also, U.S. v. Henry, 447 U.S. 264, 274-275 (1980), U.S. v. Bender, 221 F. 3d 265 (1sr Cir. 2000), U.S. v. Lentz, 524 F. 3d

501, (4th Cir. 2008). It would be disingenuous to argue that the government was not actively involved in the obtainment of incriminating evidence against Bergrin, using misconduct and improprieties, subsequent to him being represented by counsel. See synopsis on Albert Castro, Maria Correia, Rondre Kelly, Abdul Williams, Syed Rehman, Drew Rahoo, Eugene Braswell, Anthony Young, Yolanda Jauregui, Ramon Jiminez and others, contained infra.

The government's wrongful and unlawful inducement of attorney's to compel their clients to cooperate against Bergrin, along with the failure to vent conflicts of interest, is analogous to using evidence against Bergrin or any other defendant from an expert that never advised the client the report would be sent to the government. See Powell v. Texas, 492 U.S. 686 (1989), (6th Amendment violation when psychiatric examination of the defendant at the prosecutor's request was conducted without notice to the defense counsel. See also Satterwhite v. Texas, 486 U.S. 249, 255-256 (1988). The government created situations which were likely to induce incriminating and fabricated evidence. Henry, 447 U.S. at 272, 274 (1980).

A. Richard Roberts

Supervisory Assistant United States Attorney Grady O'Malley, a Newark, New Jersey federal prosecutor and one of Roberts' closest friends, was well aware of Roberts' problems. Despite known criminal and professional responsibility woes against Roberts, O'Malley accompanied Roberts to the movie premiere of the "American Gangster" movie, a movie based on a case Roberts had worked on as an attorney and was fictionalized by cinema professionals. The movie showing was attended by limited invitation only and "Hollywood's" dignitaries.

Roberts' incessant, unethical, unprofessional and criminal activities dated back to 1993, wherein he received a disciplinary reprimand for failing to provide his client with a written retainer agreement, failing to file a new complaint as he was paid for, failing to apprise his client of the case status and refusing to provide ethics investigators with subpoenaed information. In Re Roberts, DRB 93-342.

The government also knew that Roberts unprofessionalism continued into 2002, where he was admonished again for failing to provide a written retainer agreement, (DRB 02-148), and in 2009, he was adjudicated guilty another two times, in two separate but consolidated disciplinary cases. These two cases addressed FOUR separate matters (In Re Roberts, 299 N.J. 307 (2009), and resulted in two published opinions. Roberts was adjudicated guilty of gross negligence, lacking diligence,

failing to communicate with clients on two matters, engaging in a conflict of interest deleterious to his client's interests and making misrepresentations to a trial tribunal; additionally, he was found guilty of failure to take responsibility for his misconduct by blaming others and fabricating evidence, to a tribunal. {*emphasis added*}

In 2009, Roberts received additional censures from the ethics authority and was placed on attorney probation and ordered to practice under the supervision of an Office of Attorney Ethics approved attorney, for two years. (In Re Roberts, 200 N.J. 226 (2009). Henceforth his abhorrent professional misconduct was known by federal prosecutors and his potential suspension from the practice of law and disbarment possible. What is mind boggling is that during the pendency of his representation of cooperating witnesses and potential witnesses, in the Bergrin case, he had open and pending serious disciplinary allegations which the government assisted him on getting adjourned, until the completion of Bergrin's trials. None of these facts were ever made known to any parties involved in Bergrin's cases; especially the district court.

Roberts was compelled to ingratiate himself with federal prosecutors and the government, or be held responsible for his criminal and ethical misconduct and violations. Defense vociferously submits that these factors created a grave

appearance of impropriety and caused Roberts to suborn perjury, convince witnesses to cooperate with the government and use his client representation for financial and commercial benefits.

The disciplinary complaint resulting from Roberts receipt of large cash payments and failure to perform retained legal duties alone subjected him to criminality and disbarment. It must be accentuated that the ethics charges originated in 2007 and were not resolved until 2015. Through deception and manipulation, Roberts was successful in delaying their resolution. He was finally adjudicated guilty of serious breaches of misconduct, by blaming others falsely for his own conduct and suspended from the practice of law. All this under the watchful eye of Bergrin's federal prosecutors.

Bergrin's law practice was located at The Robert Treat Center, 50 Park Place, Newark, New Jersey on the 10th floor. It remained there until May, 2009 when Bergrin was arrested and detained in federal custody.

Upon Bergrin's arrest, Roberts imminently leased Bergrin's office space and sent out letters to his former clients, offering and soliciting them, through fee discounts. Roberts unlawfully obtained a list of Bergrin's former clients and forged a partnership with now disbarred attorney, Gerald Saluti. Saluti had been an associate with Bergrin and was terminated for stealing funds in 2009.

Roberts had gained notoriety nationally through being portrayed in "The American Gangster" movie. He obtained this acclamation and attention by befriending New York Magazine author, Marc Jacobson. They were very close friends for many years and a piece Jacobson authored got the attention of Hollywood screen writers whom consulted Roberts.

Roberts used the Jacobson relationship to convince his friend to write an article on Bergrin, entitled, "The Baddest Lawyer in New Jersey". The writing excoriated Bergrin as a person and attorney and Roberts was the undisclosed source of the information. Coincidentally, the article was published a close date proximity to Bergrin's jury selection in 2011 and was well publicized. Roberts and Jacobson used their media contacts to try and convict Bergrin and the motive was a second movie deal for Roberts; depicting Bergrin's life.

Roberts planned on replicating his success in "The American Gangster" movie and he had to ensure Bergrin's convictions; to corroborate the portrayal of Bergrin in the magazine article, to remain at the sites of the law office, to continue being retained by Bergrin's old clients and for profit. To this end, Roberts unethically, unprofessionally and criminally, visited and consulted with Yolanda Jauregui, at the Hudson County Jail, Kearny, New Jersey.

Jauregui was Bergrin's live in girlfriend whom was represented by counsel (Chris Adams, of Walder, Haydon, and Roseland, New Jersey) and was indicted for serious felonies: narcotic trafficking, racketeering, violent crimes in aid of racketeering, fraud, etc.…. Roberts contacted and consulted Jauregui without the knowledge or consent of her counsel and implored her to cooperate against Bergrin. He advised her about her pending charges, spoke harshly about Bergrin and offered her a book and movie deal, if she was to cooperate. Additionally, Roberts promised her a lucrative contract and terrified her about prospects of employment for a convicted felon. The government ascertained and learned of Roberts' misconduct and criminal behavior, but never brought this to the attention of either the court or the defense. Roberts continued to be intricately involved in building the prosecution against Bergrin and cooperating witnesses for the government.

Roberts made his commercial ambitions well known to his office staff and another important attorney on Bergrin's case; Henry Klingeman. His ulterior and criminal motives surpassed his ethics, professional and moral responsibilities and he acted as a de-facto agent for the government. Both Roberts and Klingeman collaborated on writing, sponsoring and starring in a Discovery Channel episode and Bergrin's case. Although it was planned during their respective representation of critical

cooperating witnesses against Bergrin, the television show did not air until 2015.

Maria Correia, a cooperating government witness, whom recorded Bergrin on behalf of the prosecution in both 2008 and 2009, befriended Roberts in 2009. Jointly they schemed to terminate Bergrin's representation of career criminal, Albert "Albie" Castro, and have him retain Roberts. Their plan was to convince Castro to contrive and fabricate evidence against Bergin, related to the Kemo murder case, proffer with government prosecutors, testify falsely and seek a reduced state sentence; as a reward for his cooperation and testimony. To successfully achieve this objective, Correia requested and received informant funds from the government, falsely alleging she needed the money to pay Bergrin for criminal acts. Correia used the stolen FBI funds to retain Roberts to represent Castro and she consulted Castro, at the Essex County Jail, Newark, New Jersey. Castro was coached by Correia for his government proffer session and what to say to inculpate Bergrin. Castro and Roberts informed the government that Bergrin had offered him $10,000 to kill Kemo and the government bought it; 'hook, line and sinker." As incredulous as Castro was and, while pending sentencing for major narcotic offenses, weapons charges and aggravated assault on Newark police officers, Castro and Roberts were able to reach a cooperating plea agreement with federal prosecutors. What is

paramount about this relationship is the fact that Castro swore while testifying in 2011, that the government and Roberts convinced him to perjure himself and falsely swear to New Jersey Superior Court Judge, Steven Bernstein, whom presided over the Castro case. Correia's theft was divulged and her use as a government witness terminated. She swears the government and Roberts were cognizant that Castro's testimony was false and she personally informed them of this fact, prior to the testimony. The Honorable Judge William Martini, Judge, United State District Court, New Jersey, opined on the record that Castro was perjuring himself and chided the government to scrutinize it. Castro did not testify at Bergrin's retrial in 2013, never received the benefits of his cooperation and Correia, (according to her) was forced into witness protection, her name changed to Grace Cruz and warned against revealing what she knows.

What is extremely important in this court's consideration of collusion and impropriety between the government and Roberts, on this incident, is this fact: prior to Castro's testimony in 2011, the government possessed Essex County Jail visitation records delineating the fact Correia and her live-in boyfriend Carlos Taveras were associated and visited Castro, multiple times prior to his proffer session and cooperation. Those records were mysteriously and coincidentally misplaced by

prosecutors and not revealed nor turned over until after the 2011 Bergrin trial.

Bergrin attempted to call Correia as a witness at his trial in 2013, but because the government held serious bank and fraud charges open against her, she declined testifying and would have taken the Fifth Amendment and remained silent. These charges were open and pending for years with the government refusing to dispose or resolve them.

The government failed to disclose Roberts' unethical and criminal association with Correia and Castro, and only through investigation and vigorous cross examination did it become known.

During the course of Bergrin's case and prior to trial in 2011, the government interviewed two important associate attorney's, employed or doing work for Bergrin at his firm. The attorney's Dana Scarillo and Brooke Barnett, both consulted Roberts, and Roberts was present as the government interviewed Barnett. Both these attorney's refused or declined to be interviewed by Bergrin investigators nor to testify at his trial. Bergrin submits they would have offered exculpatory evidence.

Cooperating witness, Rondre "Dre" Kelly and Abdul "Mutallic" Williams, were both represented by ROBERTS. These two violent and career criminals both decided to cooperate

against Bergrin, coincidentally, after consulting and retaining Roberts. This was the very first time, in lengthy careers of crime, they cooperated.

What was devious concerning their cooperation against Bergrin are the efforts the government and Roberts took to conceal his representation of them. Kelly actually perjured himself about Roberts' involvement in his cooperation and only after a lengthy and aggressive cross-examination did he finally admit it and Williams statements, FBI 302 reports and proffer session reports, were devoid of mentioning Roberts. The government and Roberts were fully aware of blatant conflict issues in this representation and the evisceration of Bergrin's ability to receive a fair trial. Bergrin was only able to learn of Roberts' trial involvement in Williams' cooperation through admissions Williams made to jail-house cronies, Syed Rehman and Drew Rahoo. Both witnesses whom were willing to truthfully reveal how Roberts, the government and Williams schemed and suborned Williams' false testimony. Rehman was so acutely aware of Williams' connection to Roberts that he even informed defense' investigators of the fact that Williams paid Roberts by check, a $5000 retainer and which bank it was drawn upon--facts only someone with intimate knowledge of the case could know. Unfortunately, the district court suppressed any witnesses' mention of Roberts and precluded these witnesses from

testifying; since the Marshall's were late one day in their arrival for court.

Through Jencks reports, Bergrin became cognizant that Roberts arranged, planned and travelled to the Alleghany County Jail, Pittsburgh, Pennsylvania to proffer Kelly, with New Jersey federal prosecutors. Moreover, that Roberts worked out the details of Kelly's cooperation.

All these factors clarify why the government so arduously argued for all defense witnesses to be provided counsel, that they be advised of their Fifth Amendment rights to remain silent and why all criminal charges remained open; until after the Bergrin case even for non-testifying witnesses. The government also fought strenuously against any witness receiving "use immunity."

The government was provided proffers and multiple statements for defense witnesses and, despite knowing witnesses would offer materially exculpatory evidence, fought to preclude their testimony.

During the 2013 trial of Bergrin, Kelly was cross-examined concerning his representation by Roberts. Kelly testified on direct examination, which the government had to know was false, that Roberts refused to represent him if he cooperated against Bergrin. Tr. (2013), 3466-3467. Testimony clearly coached and perjured. Kelly was also forced to admit that Roberts was

conflicted against representing him because of ethical issues with his license to practice law and because Roberts represented multiple party defendant's in the Pittsburgh federal case. Despite these facts, the government failed to notice defense no motion the court for Roberts' recusal. (Tr. 3466).

Under questioning by prosecutor Minish, Kelly swore that Roberts would not represent him, because Roberts does not represent cooperating witnesses. Tr. 3468.

Minish permitted and condoned Kelly's perjury, knowing Roberts' involvement and representation of Kelly, Williams' attempts at Jauregui and Castro. Despite this obvious perjury and wrongfully coached testimony, Kelly received a 5k1.1, substantial assistance motion, and although he was facing life in prison, was recommended by the government and received time served.

The cross-examination of Kelly proved he was in cohorts with the government and Roberts; and the government knew of the wrongfulness of Roberts' representation of Kelly: Tr. 3646-3647.

Q. You said that Richard Roberts wouldn't represent you because you're cooperating, correct?
A. Yes, against you, yes.
Q. Now isn't it a fact that it was Roberts who set up the meeting when you spoke to the FBI on July 30, 2009 … and you gave evidence against Bergrin in a proffer session in Pittsburgh, Pennsylvania.
A. I believe so.
Q. Now that's a meeting where you are cooperating, right, and giving information against Paul Bergrin.

A. Yes.
Q. And, that's a meeting- who's present? What attorneys are present?
A. Richie's there. (Tr. 3647) Richie Roberts. (3648).
Q. And your attorney had to drive and travel from Newark, New Jersey to Pittsburgh, Pennsylvania, right?
A. Yes. (Tr. 3648).

Not only was Roberts suborning Kelly's perjury in collaboration with the government, but all parties knew that Kelly and Castro were both cooperators, with both giving significant incriminating evidence against each other.

Albert Castro was a friend of Kelly and received hundreds of kilograms of cocaine and heroin, for sale, from Kelly. Facts all parties knew. Kelly not only supplied Castro with life sentence quantities of serious narcotics, but Kelly gave him automobiles with secret trap compartment. Tr. 3667-3669

This honorable court must scrutinize and comprehend why such blatant conflicts were permitted to exist and encouraged by the government. The only logical conclusion is the fact that the prosecution needed de facto agent Roberts as the nexus, for all this to succeed. He was the connection between all parties discussed, on behalf of the government.

In the Williams' controversy, not a scintilla of written materials existed, revealing that Roberts had any contact with Williams. The government even concealed this fact during direct examination of Williams. This is why Bergrin pleaded for witnesses Rehman and Rahoo to testify. They would prove to an

absolute certainty the allegations contained herein. Tr. 8310-8311.

Only under vigorous cross-examination did Williams acknowledge that he personally contacted Roberts, while incarcerated at the Hudson County Jail, Kearny, New Jersey. Williams contacted Roberts for legal representation at a time when Roberts was actively involved with the government, the federal prosecutors of Bergrin and yet, he continued to consult Williams at the jail, until he was formally retained. All under the watchful eye of Bergrin's prosecutors, as Roberts' mission was to consult Williams and convince him to cooperate against Bergrin.

During cross-examination, it was disclosed for the first time that Roberts received a $5000 check from Williams, as an initial retainer and for the time he spent consulting and advising him. None of this was ever revealed to any of the case parties, nor court. It is submitted that only because of this paper trail, did the attorney-client relationship cease. (Tr. 3778-3779). But, Williams had been molded and conformed to the government's puppet and Raheem and Rahoo would have so testified.

The government's theory for the motive of Kemo's death was Bergrin's alleged connection to the Curry Drug Organization and loyalty to its members. The government spent excruciating time

and effort, in an attempt to establish the members of the Curry Organization, its hierarchy and Bergrin's commitment. Moreover, they had multiple witnesses, including agents of law enforcement establish that both Curry and Alquan Loyal, known as the Sheik, were at the highest levels of command in the organization and that Bergrin was their partner.

To further exacerbate the Roberts conflict dilemma, the government was cognizant that Loyal was represented by Roberts, in multiple serious, violent felony cases. They were attorney-client related. Yet, despite this awareness; Williams, Kelly, Castro, Jauregui and Roberts conflicted representations with these individuals and Loyal, they concealed these facts from the court. All the individuals Roberts either wrongfully contacted or represented were cooperators whom were connected to Loyal and gave incriminatory evidence against him. Bergrin learned for the first time that Roberts never revealed his connections to Loyal and the Curry Organization during trial and New Jersey PROMIS GAVEL computer generated information, about Loyal's indictment numbers 96-06-01958 and 94-10-03492; which lists Roberts as Loyal's legal representative. The government and Roberts permitted these witnesses to incriminate, proffer and testify against each other and apathetic to any conflicts or appearances of impropriety. They just never cared about rules, regulations, the Constitution, laws nor the pursuit of justice.

Conflicts, trampling of constitutional rights and prosecutorial misconduct did not end with Loyal.

1. Roberts Attempts to Convince Former Bergrin Clients to Falsely Implicate Bergrin.

Roberts substituted, as attorney of record, for Bergrin, in multiple serious Middlesex County indictments; in the cases of State of New Jersey v. Lamont Love. Love was eventually convicted at trial and sentenced to New Jersey State prison, Northern State prison, Newark, New Jersey. While imprisoned Roberts and case agents in the Bergrin prosecution confronted Love, in an attempt to obtain his cooperation against Bergrin. Love was intimidated and vehemently pressured to fabricate evidence against Bergrin and was promised a sentence reduction. When Love advised the government that he has no information that Bergrin committed any illegal acts nor wrongdoing, he was excoriated and threatened by Bergrin's case agents and Roberts. He was warned to change his position and "play ball" with them by contriving evidence of criminality against Bergrin or suffer the consequences. Like Ramon Jimenez, Love filed ethics complaints. He named Roberts in the complaints and testified at Bergrin's trial. The court prohibited Love from mentioning anything about Roberts' or the government's misconduct, after federal prosecutors objected profusely. The government sought

to protect Roberts and the lack of integrity in their investigation. They had to usurp the truth from disclosure and the door to Roberts' misconduct, criminality and unprofessionalism being revealed.

The government knew that Roberts' representation of Love was also in conflict with his connection to the Curry Organization and Love's alleged cocaine suppliers.

B. Henry Klingeman

Anthony Young was the sole and exclusive witness against Bergrin, in the "Kemo" murder prosecution. There was a plethora of inconsistencies, intentional lies and credibility issues, surrounding Young.

Henry Klingeman, a former Assistant United States Attorney, in the Newark, New Jersey office, and a very close friend and associate to the prosecuting attorneys in Bergrin's case. His loyalty was clearly to prosecutors Gay, Minish, Saunders and his old office and not to zealous representation of Young. This was evident by Klingeman's collaboration with Roberts and the government on writing, producing and filming a documentary on Bergrin; which was done in connection with the DISCOVERY NETWORK and channel aired in documentary form early in 2015.

Klingeman represented Young at the time of this controversial relationship on the documentary with Roberts and DISCOVERY. Just as importantly:

1. Ramon Jiminez

Ramon Jiminez was a cooperating government witness, whom testified on behalf of the government, in 2011. His testimony was opined by the Honorable Judge William Martini, Judge, United States District Court who presided over the case, as incredulous, contrived and fabricated. He was not called by the government as a witness in 2013, Bergrin's second trial, because his proffer statements and testimony was wholly dichotomous to witnesses Abdul Williams, Rondre Kelly and one Eugene Braswell. Furthermore, Jiminez had filed an ethics complaint and sent a formal letter to the New Jersey State Bar naming Prosecutor Gay and Jiminez' attorney, John Azzarello as movants whom attempted to suggest, coach, coerce and intimidate him to lie against Bergrin. Jiminez wrote that Gay and Azzarello used illegal and improper means in an attempt to induce him to perjure himself against Bergrin; "They asked the same questions 100 different ways until I agreed with their answer." Azzarello, like Klingeman was appointed pursuant to The Criminal Justices Act (CJA), to represent a government cooperator; he was also a

former Assistant United States District Attorney, Newark, New Jersey and best of friends with prosecutor Gay.

Klingeman was a conflicted attorney too.

Jiminez had been indicted for the armed robbery of "Planet Chicken", a Newark fast food restaurant, in downtown Newark, New Jersey. Bergrin was his attorney and one of his co-conspirators or co-defendants, in the robbery was one Jose Bracero. Bracero was represented by Klingeman and made the decision to cooperate against Jiminez; especially with Klingeman's strong inducement. Jiminez was facing an extended term of prison for the robbery and the case was assigned to the Honorable Judge Hector DeSoto, Judge, Essex County Superior Court, Newark, New Jersey.

While preparing for Bracero's testimony at trial, Bergrin sent one of his law firm associates to Bordertown State Prison, to interview Bracero. During this meeting, Bracero recanted his inculpation of Jiminez, alleged he fabricated the sworn statement he gave against Jiminez and was coerced as to what to say, to incriminate him. Additionally, Bracero now refused to testify against Jiminez.

As the result of these actions, the State of New Jersey decided to withdraw their cooperating plea agreement with Bracero, prosecute him along with Jiminez and Klingeman, was fit to be tied. He was infuriated and made strong allegations to the Superior Court and the Essex County Prosecutor's office that

Bergrin was unethical, that he breached his responsibilities under the Rules of Professional Responsibility and filed legal motions before Judge DeSoto demanding Bergrin's misconduct be prosecuted; and that his client Bracero not suffer any penalties nor consequences. The State prosecution against Jiminez was dismissed, as no other witness existed to identify him.

Although Jiminez was an important government cooperating witness and co-conspirator, co-defendant of Bracero, Klingeman's conflict was never asserted nor brought to the attention of the Court. Moreover, during recorded conversations with government cooperating witness Oscar Cordova, Bergrin allegedly threatened the life of Jose Bracero. The situation arose when Cordova posed as a Latin King who knew Bracero. According to the government, Bergrin attempted to influence Bracero, in the Jiminez State case to testify falsely and for Cordova to intimidate him against cooperating against Jiminez. The Jiminez case was open and pending, obviously at this time.

2. Klingeman Advises Jose Bracero

Bergrin subpoenaed Bracero to testify on his behalf in 2013 and a Writ of Attestificandum was issued for him to be brought up from New Jersey State Prison, where he was serving his sentence. Bergrin proffered that Bracero would exculpate him of any wrongdoing. Subsequent to consultation with Klingeman,

Bracero declined to testify and through counsel asserted his Fifth Amendment right of self-incrimination.

The government used Klingeman also as their *de facto* agent and had him induced, enticed and acting in concert with Roberts.

C. Christopher Adams Represents Jauregui while his Firm Represents Hakeem Curry.

Attorney Christopher Adams was employed at the Law Firm of Walder, Hayden et al., Roseland, New Jersey and appointed to represent seminal cooperating witness Yolanda Jauregui; who was the sister of Jiminez and Bergrin's live-in girlfriend. She was also an indicted co-conspirator of Bergrin's facing serious and multiple felony violations.

Curry, the alleged motivator of the Kemo murder, an unindicted co-conspirator of Jauregui and Bergrin and allegedly wholly connected to both their cases, was represented at his trial by Adams' firm. The government, cognizant of this critical fact, never brought this to anyone's attention or any party of the court; despite fifty proffer sessions and meetings with Jauregui, wherein she was asked to copiously relate and even testify as to her knowledge of Curry. She incriminated him extensively in narcotic trafficking and in the presence of Adams.

Adams coerced Jauregui to plead guilty to racketeering and violent crimes in aid of racketeering counts of the indictment

and to enter a cooperating plea agreement; this was despite the fact that there was no credible evidence to prove Jauregui's criminality for these charges. This was also consistent with Roberts' pleas to her about pleading guilty cooperating and doing and saying anything she had to, to bury and convict Bergrin.

This Honorable Court must scrutinize all this conflict evidence and infer or deduce Bergrin's due process rights were violated; and the only thing the government sought was victory at all costs.

D. Vincent Nuzzi's Representation of Hakeem Curry

For approximately three years and up to the eve of the trail, Attorney Vincent Nuzzi was the retained trial attorney, along with Adams, for Hakeem Curry.

On the eve of the commencement of Curry's trial, Nuzzi was judicially removed as counsel by the district court and on government motion. The Honorable Faith Hochberg, Judge, United States District Court, District of New Jersey considered federal prosecutor Gay's legal arguments and excoriated Nuzzi for unprofessional conduct. She found that Nuzzi had an "actual" and unwaivable conflict of interest, simply because he represented a Curry underling, Jarius Webb, in the past. That Nuzzi was derelict in his professional duties and

responsibilities and that this conflict should have been brought to the court's attention years before. Gay was aggressive in his argument against Nuzzi remaining on Curry's case, so he is well aware of this vital issue. Gay, in a letter to Hochberg, sought Nuzzi's removal, also accusing him of being one of Curry's "house counsel" by hiring attorneys for members of the Curry Organization and at the same time representing close Curry associates. Both Gay and Hochberg insinuated and inferred that Nuzzi was irresponsible and unethical.

E. Nuzzi Represents Cooperating Witness Eugene Braswell after Roberts & Bergrin's Former Associate Consult with him.

Eugene Braswell was a New Jersey States Corrections Officer assigned to the Northern State Prison, Newark, New Jersey. He was also a major drug dealer using his position as an officer to make narcotic deals, meet connections for his source of supply and other nefarious purposes. Braswell was arrested importing and transporting multiple kilograms of cocaine from Texas to New Jersey and indicted on these charges. He was charged as a drug kingpin and facing 25 years to life in prison. Bergrin knew Braswell as he represented him on an off-duty shooting where a death occurred.

While out on bail for the state charges, Braswell was arrested on federal drug charges. He was released pursuant to

The Bail Reform Act and re-arrested on new, independent and additional federal narcotic charges. He retained Nuzzi for representation on his state and federal charges and decided to cooperate against Bergrin. Coincidentally, while charged federally and prior to cooperation, he was placed on the same tier and unit as Williams at the Hudson County Jail, Kearny, New Jersey. Williams and Braswell schemed their cooperation against Bergrin.

Braswell colluded with members of the Curry Organization while actively involved in his drug business. He also gave evidence incriminating Curry in drug dealing.

The government was obviously fully aware of Nuzzi's conflicted representations in the Curry case, of being one of Curry's house lawyers, and Braswell nexus to Curry. The government used Roberts, Nuzzi and Williams to coerce Braswell to cooperate so they would never investigate Nuzzi's conflicts.

F. Honorable Dennis Cavanaugh's Bias Close Relationships with Roberts and Nuzzi.

In a tenuous and very sensitive situation that this Court must consider: the District Court Judge assigned to Bergrin's case, The Honorable Dennis J. Cavanaugh, was a very close friend of both Nuzzi and Roberts. They all grew up professionally together, attended Seton Hall Law School with one another and

Nuzzi and Cavanaugh worked with one another for years at the Essex County Public Defender's Office, Newark, New Jersey; while Roberts continued to forge his relationship with them and their camaraderie in the Prosecutor's Office of the County. They were all exceptionally close allies and friends for over 30 years at the time of the Bergrin case; this included a multitude of times where they all socialized together.

Most importantly, Cavanaugh dated, and eventually married, Linda Lordi. She was the daughter of renowned attorney and Essex County Prosecutor, Joseph Lordi. Roberts was a supervisor in the Essex Prosecutor's Office working closely with Lordi.

As a matter of fact, Lordi and Roberts were so close that Roberts considered him a surrogate father. Roberts was fatherless and loved Lordi. He made his emotions well known when he credited Lordi for his successes in a proclamation of his achievements in the "The American Gangster" case and movie; and called him his "real" father. Linda Lordi was like a sister in relationship to Roberts and they were well acquainted and associated with each other.

Cavanaugh suspiciously suppressed any and all evidence of Roberts' misconduct. He admonished counsel to not elicit it from the testimonies of Love, Rehman, Rahoo and Correia; although they could have established volatile issues of

improprieties by the government and its criminality which the government squashed and concealed.

Both individually and collectively, the uncontroverted facts delineated, categorically evince an emaciation of Bergrin's due process rights. They also contravene Bergrin's quest for justice.

LAW

A pattern of prosecutorial misconduct infects the integrity of the proceedings. It compromises the search for the truth, seeking justice and will influence the verdict of the fact finder. Brecht v. Abrahamson, 507 U.S. 619, 635 n. 9, 113, S.Ct. 1710, 12: L.Ed. 2d 353 (1993).

In the case sub judice, the attorney and prosecution misconduct violated Bergrin's due process and precluded any viable chance he had of a fair trial. It immeasurably prejudiced him and the inordinate amount of false, fabricated and contrived evidence had to have had a deleterious impact on the guilty verdicts. The government's failure to disclose these acts of misconduct, entice and sponsor them and cannot be tolerated and this case implores reversal.

Bergrin further pleads that this Court find that the government's use of Roberts , Klingeman, Adams and Nuzzi, were tantamount to creating de facto agents; for attorney's whom

representations were supposed to be conflict free, in the best interests of their clients, void of governmental influence-interference and clear of creating inculpatory evidence against Bergrin and for the attorney's benefit. It violated due process of law and it was prosecutorial misconduct to an egregious magnitude.

The prosecutor's actions, solicitations and contributions to the blatant misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Donnelly v. DeChristafaro, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed 431 (1974); Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986). It denied Bergrin a fair trial and reversal of the convictions must follow; especially the cumulative effects of the misconduct. See Pursell v. Horn, 187 F. Supp. 2d 260, 352 (M.D. Pa. 2002).

The conflicts of interest, as espoused supra, results from counsel representing conflicting interests, such as their own criminal or ethical problems and/or considerations of financial gain, due to their representations. These conflicts adversely affected their performance as they induced and advised their clients to admit to crimes they had not committed (attorney Chris Adams coercing Jauregui to plead guilty to racketeering, violent crimes in aid of racketeering), Roberts (encouraging and

advising clients to commit perjury), as also Nuzzi, Klingeman and others.

There is no meritorious position that any of the attorney's delineated and/or the government can raise, that quashes the obvious enumerated conflicts. The only issue is whether Bergrin has established that these conflicts prejudiced him. It is the effect on Bergrin's constitutional right to due process of law, that this court must focus on; nothing more, nor less.

In Cuyler v. Sullivan, the seminal Supreme Court case, the Supreme Court ruled that a defendant can demonstrate a 6th Amendment violation through conflicts of interest. 446 U.S. 335 (1980). Bergrin raised the conflict issue, but the court simply ignored it. In Holloway v. Ark, 435 U.S. 475, 484-485 (1978), the court's failure to inquire into potential conflicts of interest violated defendant's due process rights and resulted in reversal. In Salt v. Epps, 676. F. 3d 468, 481-483 (5th Cir. 2012), the Circuit Court found automatic reversal when the court refused inquiry. See also McFarland v. Yukins, 356 F. 3d 688, 700 (6th Cir. 2004). The issue in the case at hand is exacerbated by the government's treacherous and nefarious involvement in both concealing the conflicts, using them to their strategic and tactical advantage and contributing to the creation of extreme prejudice and adverse acts against Bergrin's rights.

The government's actions created *de facto* agents and prosecutors of counsel. Their actions affected fundamental fairness to Bergrin and infected the fairness of the trial. Darden v. Wanwright, 477 U.S. 168, 180-181, 106 S. Ct. 2464, 91 L. Ed. 20 144 (1986), quoting Donnelly v. DeChristofaso, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed.20 431 (1974).

While the Supreme Court has not formally defined the term "government agent" for 6th Amendment purposes, the Court of Appeals for the Third Circuit held that the answer depends on the facts and circumstances of each case. Matteo v. Superintendent, SCI Albion, 171 F. 3d 877, 892 (3d Cir. 1999). Specifically, there must be some evidence that an agreement, express or implied, between the individual and a governmental official took place. ID. See also, Wallace v. Price, 265 F. Supp. 2d 545, 565-566 (W.D. Pa. 2003), aff'd. 243 Fed. App y 710 (3d Cir. 2077).

It would insult our intelligence if the government was to argue against these attorneys acting as agents, especially Roberts, to assist the government, while also benefitting. Roberts, who had committed tax fraud, tax evasion, money laundering and substantial ethics violations, invites a supervisory prosecutor to a grand opening of a major movie production. He accepts stolen funds from an informant, coaches Castro to lie and, it is revealed by Correia to the government.

Castro commits perjury at trial in 2011, against Bergrin and swears falsely, to Judge Bernstein, in Superior Court; all with Roberts and governmental influence and assistance. Roberts violates the law and consults Jauregui, to which the government becomes cognizant of; he also advises Williams to perjure himself and cooperate, as he does Kelly. All under the watchful eye of the government and with their consent and involvement.

Adams obtains inside information against his client Curry and is clearly conflicted out; yet he convinces Jauregui to cooperate with the government, so he could earn hundreds of thousands of dollars in Criminal Justice Act funds. The government agrees to remain silent.

Nuzzi is in jeopardy of serious ethical violations in, again, the Curry case. He also ingratiates himself with and to the government with Eugene Braswell and never faces ethics violations.

The picture is clear and unequivocal and all to the evisceration of Bergrin's due process rights. Bergrin submits that the government's conduct was also "conscious shocking" and so offensive that it did not comport with traditional ideas of fair play and decency. Breithaupt v. Abram, 352 U.S. 432, 435, 77 S. Ct. 408, 1 L. Ed. 2d 448 (1957), Whitley v. Albert, 475 U.S. 312, 327, 106 S. Ct. 1078, 89, L. Ed. 2d 251 (1986).

III. THE GOVERNMENT'S FAILURE TO DELINEATE RECORDED CONVERSATIONS PROVING BERGRIN'S "ACTUAL INNOCENCE" AND EVISCERATING ANTHONY YOUNG'S CREDIBILITY VIOLATED THE HOLDING IN BRADY V. MARYLAND, GIGLIO V. UNITED STATES AND BERGRIN'S CONSTITUTIONAL RIGHTS.

A. The Government Failed To Disclose Crucial Exculpatory Evidence Which Would Have Affected The Verdict Against Bergrin.

All facts contained in prior points are incorporated by reference herein.

During pre-trial discovery proceedings, the government provided Bergrin with multiple CD discs containing approximately 40,000 Title III intercepted conversations, in their investigation against Hakeem Curry and Ishmael Pray. They never provided any content summaries, table of contents, indexes, nor delineated that the recordings contained exculpatory evidence which would not only have proven Bergrin's "actual innocence" of the Kemo murder, but also prove their exclusive and sole witness against Bergrin was incredulous and had fabricated, contrived and simply manufactured incriminating evidence.

The government was remiss in their statutory obligations to properly seal wiretap recordings, in United States v. Curry, et al thereby resulting in a multitude of inadmissible recorded conversations. Despite the inadmissibility of the recordings the government was fully cognizant of their substance; yet they

knowingly and purposefully admitted diametrically opposed and inconsistent evidence. Most importantly, they condoned and admitted false evidence and testimony to the jury and argued that wrongful and improper inferences be adduced and drawn from this inadmissible evidence; which clearly resulted in violation of Bergrin's essential due process rights.

This Court must be cognizant of the fact that in order to use the CD's and listen to recordings, Bergrin had to open the CD, go to each conversation individually and one at a time; and the time consumption was immeasurable. They were formatted in such a burdensome way that it would have taken a minimum of 20,000 hours to listen to them. Additionally, at the same time as providing these CD's they turned over 20,000 pages and pieces of discovery and these extremely exculpatory recordings were buried, concealed and hidden within; which was tantamount to never providing them.

Instead of meeting their inescapable duty to <u>make</u> this exculpatory evidence known, the government issued a statement that, because they violated the Title III sealing requirements, they would not be using any of these recorded conversations and, the only reason they are providing them is to meet their Jenks Act obligations. Thereby obfuscating the seminal nature of the recordings.

Moreover, the government was cognizant of the fact Bergrin was a *Pro Se* litigant, when they had three full time federal prosecutors assigned to the prosecution, a media expert, and multiple federal case agents. While held in pre-trial detention, at the Metropolitan Detention Center, (MDC), Brooklyn, New York, Bergrin was held in a unit consisting of approximately 100 pre-trial detainees; all whom were provided with CD's of their discovery and there was only one discovery computer to review recordings and discovery; thus Bergrin had only about one hour per day to review his complex discovery materials and without the government specifying this crucial Brady material or even classifying it as Brady of Giglio evidence, it was virtually impossible for him to receive a fair trial. It could not be done.

Henceforth, the "true meaning" and spirits of Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) and Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) were trampled upon. As a matter of fact, when demanded, the government denied possession of any Brady evidence. Bergrin had the statutory and constitutional right to be informed by the government that there is not only Brady material contained in a plethora of recordings, but that they also significantly impeach Young's credibility.

During the trial of William Baskerville, in 2007, and continuing for approximately seven years, it was both Young's and the government's ardent position, that Young and Rakeem Baskerville were seated in Curry's Range Rover automobile, on the morning of November 25, 2003 and after a meeting at the Baskerville residence. At this time a purported telephone conversation occurred between Bergrin and Curry, wherein Rakeem and Young determined that the informant in Will's case was Deshawn "Kemo" McCray. Moreover, that until Curry, Young, Rakeem and Jamal Baskerville and Jamal McNeil met with Bergrin, none of them had any clue Will faced life in prison. Young also swore that none of them were aware of any case facts. This was his proffered statements and sworn trial testimony in 2007 and 2011.

During all of Young's proffer sessions and in trial preparation with the government for United States v. Baskerville, in 2007, as well as the actual trial testimony, and at Bergrin's 2011 trial, Young had emphatically and vociferously swore that: Bergrin appeared at a street meeting, at approximately 9:00pm, at Avon Avenue and S. 15th Street, Newark, New Jersey, four to five days subsequent to Will's arrest and for the first time made them aware that Will was facing life in prison, that if Kemo would testify Will would go free and that

Bergrin stated, "No Kemo, no case." T. 4349, L. 16-19 T. 4363, L.15, T. 4364, L. 1-12, T. 4365, L. 15-18.

During the trials of Bergrin, in both 2011 and 2013, the government vehemently argued that no meeting occurred with Bergrin until December 4, 2003, and they wrongfully and deceptively argued that they had an intercepted telephone conversation between Bergrin and Curry proving this fact.

In summation, prosecutor Joseph Minish, contravening the substance of known recorded conversations argued that: "the event of significance that happens after Thanksgiving, is the detention hearing on December 4, 2003. This was the first time that Mr. Bergrin and William Baskerville are told he's facing life…And on that day there were phone calls between Bergrin and Curry, three calls." T3-8504:24. Minish even used demonstrative evidence to emphasize this date and the fact of Bergrin advising the group, Will faced life in prison.

Minish absolutely and pointedly asked the jury to conclude that the date of the meeting was December 4, 2003, knowing Young had fabricated his testimony and that the recordings proved this was untrue. He implored the jury to find that "the date of the detention hearing at which Mr. Bergrin had told the Curry gang that you got to kill Kemo." T. 8536:23-8538:7; What is troubling is the fact that he made this argument knowing that this date was a fiction and that Young had finally admitted in 2011, that

Bergrin NEVER informed anyone to "kill" Kemo. T. 175-190; although Young swore in 2007, at the Baskerville trial that Bergrin told the group to kill Kemo. Minish also fervently argued to the jury in 2013 that, "NO ONE IS GOING TO KILL KEMO MCCRAY IF WILL BASKERVEILLE WAS DOING TEN YEARS. IT WAS NOT GOING TO HAPPEN." T. 8504. Again, all this time having in-depth knowledge that recordings existed which evidenced these sworn facts to be false.

The government was fully cognizant of their Brady and Giglio obligations, and knew that if Bergrin became cognizant of the intercepted conversations it would exculpate him from Kemo's murder and prove Young's deception. They knew that their (Young's) alleged motive or theory for the murder of Kemo was fabricated in that this alleged group did not learn at this alleged Bergrin meeting, that Will faced life in prison. They also knew that Young contrived the fact that Bergrin informed the group that without Kemo, Will would go free; but if he was to appear at trial, Will would get life; and that without Kemo, the government had no case. The Brady and Giglio recordings contravene all this testimony to an absolute certainty.

The paramount point is that the recordings contained absolute proof that on November 25, 2003, Young and Curry were informed that Will faced life in prison as Bergrin read them the facts contained in the Criminal Complaint, that Bergrin let it

be known that the evidence against Will was overwhelming, independent of Kemo and between November 25 to December 9, no street meetings ever occurred with this group and Bergrin; and most importantly that Bergrin had clearly informed Curry that he could get a deal for Will for about 10 years. (The recordings will be discussed with specificity, infra).

In essence: the recordings were crucial to a determination of the truth seeking process and Bergrin's ability to receive a fair trial. The government sought to win at all costs, even if it meant falsifying facts and evidence and this was espoused by their arguing the December 4, 2003, date for the Bergrin meeting, knowing recording 135, 475, dated December 4, proved this fact false. They even went so far as to wrongfully send a memo to the Court, authored by prosecutor Steven Saunders, that "this was the date Bergrin met with this alleged group and advised them, no Kemo no case." See Saunders memo attached hereto. The government's constitutional violations of Bergrin's due process and equal protection rights resulted in a grave miscarriage of justice.

Lastly, and prior to review of the actual recordings: Bergrin did NOT receive operable CD recordings until trial commenced; thereby further trampling his due process rights and any reasonable opportunity to listen to them. He complained on the record of this fact and eventually received new copies of

the 40,000 conversations. In any event, based upon the government's misleading representations about not possessing any Brady or Giglio material, and the government not intending to use the recordings; they would not have been listened to.

B. The Recordings

Enclosed are excerpts of recordings contained within the 40,000 CD's. It does not include all Brady and Giglio evidence which the government wrongfully failed to disclose.

1. November 25, 2003, call 1, 339, 406 at 13:22:12

Curry informs the caller (unidentified male), that he was going to a concert in New York City tonight and then leaving tomorrow (Nov. 26), for Thanksgiving in North Carolina. That he intends to be away at least 3-4 days and will be unavailable.

This recording should have made the government aware that Young's proffer statements, as well as his 2007 Baskerville trial testimony and 2011 Bergrin testimony pertaining to the street meeting with Bergrin, Curry and others was not truthful. Young never equivocated as to this time period nor ever state that this date was inaccurate until 2011 when he testified in

Bergrin's first trial and was confronted with the fact he was lying.

2. November 25, 2003, call 711475 at 13:31:26

Hamid Baskerville calls Curry to notify him that his brother Will was arrested this morning at Will's house. This call occurs at 1:30 p.m.

Curry sounds completely surprised and had no idea about this. This conversation is in complete contrast to Young's sworn trial testimony and proffer statements, that Young, Curry, Hanif and others met at 10:00, that morning to discuss and strategize about Will's arrest and that Curry, in his presence, telephoned Bergrin.

3. November 25, 2003, call 986, 037 at 14:40:21

Bergrin called Curry this afternoon to let him know that he had just received a telephone call from Will's wife, Deidre Baskerville, advising him that her husband had been arrested this morning. (Curry was the first cousin of Will and had been raised along with Will and Rakeem by their grandmother). Curry informed Bergrin that he knew nothing concerning the arrest of his cousin. It disproves Young's testimony in 2007 and 2011

about the early morning meeting between Curry, Deidre, the Baskerville's and Bergrin being notified by Curry to represent Will.

4. November 25, 2003 (17:01 hours)

Bergrin called Curry to let him know the substance of Will's criminal complaint. That Will was accused of making five hand to hand sales, of small quantities of crack cocaine, to a confidential FBI witness, Will said named "Kemo;" that there were recordings and video surveillance; that the case agent was Shawn Mason, FBI; and any quantity over 50 grams carries a statutory maximum of LIFE in prison. This is a critical call as it proves Curry and Young knew the statutory maximum was life and the quantity of evidence, independent of Kemo.

5. November 25, 2003, call 346671 at 17:05:00

Curry is intercepted contacting Rakeem Baskerville to ask him "who is some guy named 'Kemo.'" This call was made within minutes of Bergrin conversing with Curry about the Rule 5 Initial Appearance, before the United States Magistrate, about Curry learning the contents of the Criminal Complaint and whom Will advised Bergrin was the FBI witness.

This recording is vital in that it proves Rakeem Baskerville was never in Curry's Range Rover vehicle with Curry and Young when Bergrin called; Young swore and testified to this lie repeatedly in both 2007 and 2011. Further it proves Young and Curry knew Will was facing life in prison and it was Curry, by repeating what Bergrin was informing him telephonically, who advised Young that Will faced life in prison; and not Bergrin for the first time at some street level meeting, 4-5 days after Will's arrest, or on December 4, or any date thereafter.

Rakeem responded to Curry, "I don't know him; I think he's from Irvington." This also proves Young was untruthful when he testified it was he and Rakeem, while seated in Curry's Range Rover (when Bergrin called), that figured out the informant was Kemo. It also proves Young lied at William Baskerville's 2007 trial when he testified that on November 25, 2003, while seated in Curry's vehicle with Rakeem, when they figured out the confidential informant was Kemo, Young made the decision to get rid of Kemo, because he crossed a Baskerville. It eviscerates the accusation that Kemo was murdered because he was an informant. It proves the motivation was retaliation.

6. November 25, 2003, call 4461206, at 17:34:44

Curry calls Will's brother Al Hamid Baskerville (Curry's first cousin) immediately after speaking to Rakeem Baskerville

on the telephone and asks him, "Who the fuck is Kemo or some shit."

This conversation is important because it depicts that Young perjured himself, when he testified in Baskerville 2007 and Bergrin 2011, that Young and Rakeem determined whom "Kemo" the informant was, while seated together in Curry's Range Rover.

During the Al Hamid call, Curry also states, "I ain't seen nor talked to you." Again, when Young repeatedly proffered to the government and testified in 2007, 2011 and 2013, that he met with Curry and Al Hamid the morning of Will's arrest (November 25, 2003), the government knew he was being untruthful.

The perjured testimony of Young is even further exacerbated and evinced by the recordings:

7. November 25, 2003 4:24:46

Curry contacts Hamid Baskerville, another brother of Will and another first cousin of Curry, to advise him that Will's charges carry LIFE in prison. This is also a call and conversation in Young's presence, according to Young.

These recordings would have destroyed the magnitude of Young's perjured testimony wherein he described to the jury how shocked everyone was when Bergrin informed them, during this street meeting, that Will faced life; and that none of them had

any clue as to the consequences of the charges before this meeting in December. Tr. 10/28/11, 138-141.

This Honorable Court must be further informed out of the approximately 40,000 intercepted conversations not a single one contains even a hint of this Young contrived meeting with Bergrin. There does not even exist any chatter of such a meeting, it being planned, any parties advising the other, nor any words about it, subsequent to its alleged occurrence. Most importantly, the government cannot aver that the parties did not speak openly and freely on the telephone.

8. November 26, 2003, call 231475 at 16:29:45

Curry calls Al Hamid Baskerville and tells him, "He is going to see Paul at his office to find out what the fuck is going.

This is less than 24 hours after Will's arrest and is indicative that Bergrin did not hold any street meetings with Curry, nor anyone else as Young testified.

9. November 26, 2003, call 127781, 15:00:24

Bergrin calls Curry to advise him that he will be in his office in 15 minutes to meet with Curry.

This is significant to prove that Bergrin met Curry in his office, the day subsequent to Will's arrest and that, one could infer there was no street meeting; as Young testified.

10. November 26, 2003, call 995926 at 17:38:38

This is a very vital conversation and extremely exculpatory.

Curry calls his confidant, and unindicted co-conspirator, Jarvis Webb. The subject witness (Webb) whom caused attorney Vincent Nuzzi to be judicially conflicted, as trial attorney in United States v. Curry, and kicked off Curry's case.

Curry converses with Webb and states: "he just came from Bergrin's office and that Curry asked Bergin what kind of time Will was facing. Bergrin said 20 years and Curry responded, what is he really facing- Bergrin responded about 12 years. Bergrin said he sold about 100 grams of crack cocaine." Webb then advised Curry, "on 12 he does 10:

This conversation would have conclusively proven to the jury, as Minish argued in summation; that Bergrin and Curry would not have killed Kemo if they believed he was only facing 10 years. Words that completely eviscerate the government's entire theory of Bergrin's culpability and the motive to kill Kemo.

Its powerful impact not only proves Bergrin never held a street meeting wherein he discussed Will's case; but the fact that by indisputable evidence and Bergrin's own words, no one ever believed Will would get life if Kemo was a witness and the fact that he was only looking at about 10 years. Furthermore, that Bergrin never advised Young, Curry, etc. that Will was going to get life and Bergrin never contemplated a trial.

THERE CAN BE NO EVIDENCE STRONGER THAN THE WORDS IN THESE CONVERSATIONS AND THEY SHOULD NOT HAVE BEEN BURIED AMONGST 40,000 OTHER INTERCEPTIONS.

11. November 26, 2003 call 244,900 at 18:56:5

Curry confirms he is about to leave Newark, New Jersey for North Carolina, to spend the Thanksgiving holidays there.

With these recordings the government should have scrutinized Young's accusations copiously and never suborned perjury by permitting him to testify in 2007, at the Baskerville trial, that he met with Bergrin, Curry, etc.… at around 9:00pm, on Avon Avenue, Newark, New Jersey, 4-5 days after Will's arrest; and the rest of what he falsely swore to.

12. December 4, 2003, 1913 hours

Bergrin telephones Curry to advise him that earlier today he attended Will's detention hearing. He is further intercepted informing Curry that he believed he could get Will bail, that the government's evidence is very strong and the most Will is realistically looking at is a plea for 13 years;

This call is extraordinarily significant for three reasons: 1) It is the second intercepted conversation since Will's arrest, wherein Bergrin is informing Curry that Will is only facing about 10 years. (That's about all he would do on 13 years). That Bergrin would never make this representation to the leader of the Curry drug organization, unless it was a reliable and valid statement;

2) That it would be absurd to suggest Bergrin would hold a street meeting, in the middle of the drug infested hood, Avon Avenue at 15th Street, Newark, New Jersey with Curry and the Baskerville's, Young and McNeil, when Curry has repeatedly come to his office and; and

3) That Bergrin never informed anyone he can win the case without Kemo and Will would get life, if Kemo testified. It completely disproves every lie that Young advanced and the government propounded.

What is also very instrumental to this Brady, Giglio, due process and equal protection motion, is the fact that Bergrin advised Curry that he "would do his best" and Curry stated,

"Fight for him." Again, no discussion about Kemo, getting rid of witnesses, trial nor holding any meetings. As a matter of fact, Bergrin ends the call by telling Curry that he will call him tomorrow. This is December 4, 2003, the date the government and Young falsely asked the Bergrin jury in 2013, to accept as the date of the street meeting with Bergrin.

When Bergrin tells Curry that he will speak to him tomorrow, which is December 5, 2003, evidence cannot be stronger that there was no meeting on December 4; the date of Will's detention hearing. With this intercepted conversation, this Court must ponder as to why Minish, Saunders and the government would intentionally deceive the Court and vociferously argue; that this was the date Bergrin had that street meeting with Young. This Court must conclude it was to defer attention away from the government's intentionally concealing these recordings and attempting to divert the fact such substance exists. It also confirms their, win at all costs attitude; even if perjury is suborned, evidence contrived and fabricated and important constitutional rights eviscerated.

13. December 7, 2003

Three days later, Curry is intercepted conversing with Rakeem Baskerville. Rakeem is very upset with Bergrin and calls him a "dumb mother fucker." Rakeem accused Bergrin of

permitting someone to read his file and tells Curry, "I am not dealing with Bergrin anymore and he is finding himself a new lawyer."

This interception is extremely critical because it evinces distrust in Bergrin and alienation. Words and actions inconsistent with an alleged co-conspirator complicit in the planned murder of a government witness. It would not happen. Since it has been proven that up until December 4, 2003, there's no meetings with Bergrin. (Call 1261893 at 13:36:12 is Curry informing an unidentified black male that he has not been outdoors for several days.

Bergrin should have had the benefit of this call to also prove the fact there was no street level, confidential meeting.

14. February 18, 2004, call 1032806, 13:26:31

This call occurred approximately two weeks preceding the murder of Kemo. Curry is overheard further alienating Bergrin by advising a female not to use Bergrin as her attorney.

15. February 18, 2004, call 1143277, at 22:06:44

Curry advises a black male that "HE AIN'T FUCKING WITH PAUL ANYMORE. I DON'T RECOMMEND THAT GUY."

Again, this is a conversation approximately two weeks prior to Kemo's murder.

There can only be one logical way to interpret this call and the chronology leading up to it. That Bergrin is not a trusted person within the Curry Organization, wherein they would ever risk him having knowledge of a murder. Additionally, Curry would not do anything to alienate, upset nor anger Bergrin, if Bergrin was complicit.

16. February 20, 2004, call 1203305, at 16:34:13

This call is the icing on the cake in proving Bergrin's innocence. Curry is discussing Bergrin and informs the unidentified black male: "PAUL IS ABOUT COPPING OUT. TAKING MONEY AND PLEADING GUILTY. CURRY WANTS PAUL OFF WILL'S CASE."

If Bergrin had anything to do with Kemo's murder, he would be contemplating litigating Will's case; not pleading him out. Bergrin would be fighting Will's case and believe that the intended killing of Kemo would have an effect on the defense of the case; not be guiding, recommending and aggressively seeking a plea of guilt, as this conversation depicts. Moreover, if Bergrin was involved with Kemo's murder there would be no talk of getting him off the case. Bergrin would be an intricate part of the case.

This conversation is clearly dichotomous and exculpatory to Bergrin's involvement in the Kemo murder.

In sum: the government has a statutory and constituted obligation to ensure Bergrin was cognizant that exculpatory and case altering impeachment evidence, both existed and was contained in the recordings. Instead they usurped their professional, legal and moral responsibilities and hid them within a massive mountain of discovery and intercepted conversations. They buried these recording in a plethora of immaterial, irrelevant and useless evidence. The government was aware that the burdensome and cumbersome manner by which they handed over the recordings and formatted the CD's to even attempt to listen to them, was tantamount to never receiving them.

As aforementioned, the government's case against Bergrin for Kemo's murder was contingent on the jury believing Young. His veracity would have been destroyed by the recorded evidence and the Government knew that.

What is repulsive and disheartening, is that the government interviewed Young for an extended period of time and on an immeasurable number of occasions. They knew that Young had falsely incriminated Jamal McNeil, as the shooter and murderer of Kemo and that Young was even willing to testify to this fabrication, even if it meant McNeil being put to death. If they were to achieve their objective of obtaining a guilty

verdict at all costs and under any conditions, they had to obfuscate material, exculpatory and impeachment evidence.

Hassan Miller was incarcerated at the Hudson County Jail, Kearny, New Jersey and shared a cell with Young. He was Young's closest friend and ally at the institution and a government cooperator himself. He was known to the government as an informant and they had vouched for his credibility and integrity in the past. During governmental interviews with Miller, he alleged that Young had incriminated himself and was willing to wear a concealed recording device at the jail. This was approved by the Department of Justice and Department of Corrections. What is of paramount importance is that Miller informed the government that he had Young's confidence and that Miller was informed, by Young, that Bergrin was innocent. That Young had revealed to him that he falsely incriminated Bergrin to benefit himself and be approved as a cooperating witness.

This exculpatory fact was never revealed to Bergrin. It could have persuaded the triers of fact to acquit Bergrin; and the Kemo murder was the driving force that prejudiced the indictment, and all the other charges.

C. Additional Brady and Giglio Evidence, never disclosed

1. Maria Correia

Maria Correia, a cooperating government witness whom secretly recorded Bergrin, in hopes of incriminating him, had objective evidence that Bergrin knew Oscar Cordova, was an informant; within a short period of time of Bergrin meeting him. This extraordinary fact would have positively influenced the jury to acquit Bergrin of attempting to hire Cordova to kill a witness. The government accentuated recorded inflammatory statements, Bergrin made to Cordova and used it in their opening statement to prejudice the jury against Bergrin and make him appear devious. Correia's testimony of this concealed fact was never disclosed by the government whom refused to grant her "use immunity". Thus, Bergrin could never have learned this and bring it to the jury's attention.

2. Yolanda Jauregui

Yolanda Jauregui, a cooperating government witness, informed the government that Bergrin:

1) Never used Abdul Mutallic Williams as a "taxi-driver-courier," to deliver drugs for either her or Bergrin, to their clients. That this was absolutely false and perjurious.
2) That Bergrin never had anything to do with Rondre Kelly's drug trafficking and that Kelly's accusations against Bergrin being any kind of leader or organizer of a drug organization was perjurious. That Bergrin never set prices, solved problems, had

anything to do with drug deliveries nor did anything as Kelly alleged, thereby falsely alleging Bergrin was a drug Kingpin.

3) That Bergrin never sold kilograms of drugs to Eugene Braswell, as he alleged.

4) Also, that she was offered a new home, money and other undisclosed benefits, if she testified against Bergrin.

None of this was disclosed to Bergrin.

3. Ramon Jiminez

Ramon Jiminez, also a cooperating government witness exculpated Bergrin against Kelly's allegation; that Jiminez delivered multiple kilograms of drugs to Kelly, on behalf of Bergrin and at the Law Office of Pope and Bergrin, 572 Market Street, Newark, New Jersey. Jiminez knew that this evidence was fabricated. He also told the government facts which would have impeached Eugene Braswell's testimony against Bergrin; especially when Braswell contrived evidence of Bergrin-Jiminez introducing him to a Peruvian connection and Braswell being provided multi-kilograms of cocaine. Further, Jiminez was aware that Bergrin had nothing whatsoever to do with Abdul Williams and drug trafficking.

Despite all of this Brady/Giglio evidence being revealed to the government, by their own cooperators, it was never disclosed to the defense.

LAW

The United States Constitution requires a fair trial, and one essential element of fairness is the prosecutions obligations to turn over exculpatory evidence- United States v. Bagley, 473 U.S. 667, 674-675, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985); Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). This requirement exists even if the defendant has not made a specific request. Strickler v. Greene, 527 U.S. 263, 280, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999); United States v. Agurs, 427 U.S. 97, 107, 96 S. Ct. 2392, 49 L.Ed. 2d 342 (1976).

By the government dumping 40,000 intercepted conversations, contained in multiple CD's, devoid of any summaries or substance descriptions, along with over 20,000 pages of other materials on Bergrin; while he was incarcerated pre-trial and extremely limited in any kind of mechanism to play the recordings and decipher materiality or relevance; they engaged in egregious Brady misconduct. It was a blatant denial of Bergrin's constitutional due process. To hold otherwise would be a misnomer and travesty of justice. Donnelly v. DeChristafoso, 416 U.S. 637, 647, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974).

The government knew the limitations of their case and went through great lengths to conceal exculpatory recordings. They

were also fully cognizant of their obligations to disclose impeachment evidence and the recordings contained a plethora of this. The Kemo case was wholly contingent and dependent on Young being believed and the recordings established he lied. Giglio, 405 U.S. at 151, 154. What is extraordinarily crucial is the fact that the recordings corroborate Bergrin's innocence and prove that the chief evidence was contrived. The Kemo murder case was the vehicle that drove the jury's perception of Bergrin, along with other withheld evidence. If Bergrin was never charged with Kemo, then he would not have suffered the inordinate portrayal of being violent and being prejudiced to the point of a guilty verdict.

If this exculpatory evidence and evidence of impeachment was presented to the jury, the court would have granted Bergrin's Rule 29, Fed. R. Crim. P. motion. It was the prosecutor's duty to learn of any favorable evidence known to law enforcement and to make sure Bergrin had reasonable notice. Kyles v. Whitley, 514 U.S. 419, 437-438, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). What happened here is more akin to active concealment. The government must concede the evidence was favorable, that they should have placed Bergrin on notice of it and it would insult this Court's intelligence, for them to argue, Bergrin was not prejudiced. See Strickler, 527 U.S. at 281-282.

Due process imposes an "inescapable" duty on the prosecutor "to disclose known, favorable evidence rising to a material level of importance." Kyles v. Whitley, 514 U.S. 419, 438 (1995). Favorable evidence includes both exculpatory and impeachment material that is relevant either to guilt or punishment. See Bagley, 473 U.S. at 674-676; Giglio, 405 U.S. at 154. These recordings prove Young fabricated the following facts:

1) That Rakeem Baskerville was in the front seat of Curry's vehicle, when Curry spoke to Bergrin on November 25, 2003;
2) That Young and Rakeem Baskerville, while in this vehicle, determined the informant was Kemo, and that Rakeem knew Kemo;
3) That Bergrin shocked the group at a street meeting, 4-5 days after Will's arrest, or on December 4, 2003, by informing them Will would get life in prison if Kemo testified;
4) That there was a strategy session with Curry and the Baskerville's on the morning of November 25, 2003;
5) That Bergrin believed Will would be sentenced to more than 10-12 years;
6) That Bergrin intended to proceed to trial in the case instead of pleading Will guilty; (Curry and Bergrin believed and knew the evidence was overwhelming against Will independent of Kemo.

Consequently, it would have been ludicrous to kill Kemo and assert that his demise would win the case.

The recordings eviscerate the government's entire theory, motive and factual evidence on the Kemo case. They also prove Bergrin was innocent of drug trafficking and the conspiracy to murder witnesses.

Any evidence that would tend to call the government's case into doubt is favorable for Brady. See Strickler, 527 U.S. at 290. These are the most serious crimes known to humanity and Bergrin's constitutional due process rights were trampled upon.

The credibility of Young, Williams, Kelly, Cordova and Braswell were instrumental to the government's proofs and Bergrin's punishment. These witnesses caused Bergrin to be sentenced to spend the rest of his natural life in prison for crimes he did not commit.

Both willful and inadvertent failure of the prosecution to disclose evidence, favorable to the defendant, requires reversal of the conviction; especially when the prejudice suffered is as extraordinary as in the case sub judice. See Strickler, 527 U.S. at 281-282, Giglio, 405 U.S. at 154. It is Bergrin's ardent position that the manner of the recordings being given to him was exactly the same as never disclosing them.

Where a defendant does not have enough information to find the Brady material with reasonable diligence, the government's

failure to produce the evidence is analogous to suppression. In the case of Milke v. Ryan, 711 F. 3d 998, 2013 U.S. App. LEXIS 5102, No. 07-99001, (9th Cir. 2013), the Circuit Court held that Brady was clearly violated when evidence took 7000 hours to discover. It would have taken Bergrin over 20,000 hours to review the intercepted conversations, recordings and under the circumstances and conditions of Bergrin's pre-trial detention, any significant time to discover was impossible. A reasonably diligent defendant, as Bergrin was, could not have been expected to discover these recordings in time for trial.

To find prejudice under Brady and Giglio, it is not necessary to find that the jury verdict would have come out differently, although Bergrin strenuously submits, it would have. Kyles, 514 U.S. at 434. It suffices that there only be a "reasonable probability of a different result" as to either guilt or penalty. Id. The government's conduct undermined the wrongful outcome of the trial. No civilized system of justice should have to depend on such a tainted trial, laden with dishonesty and over-zealousness. Bergrin must be bestowed with all reasonable and favorable instances of his innocence; which he has never equivocated upon.

Bergrin is abundantly aware of the law pertaining to disclosure and that the fact that by the prosecution dumping 40,000 conversations, with dysfunctional discs, amidst another

20-30,000 pieces of discovery, they will allege they met the requisites of Brady, Giglio and their progeny of cases. What distinguishes the case at hand, is the government's blatant and flagrant deceit and misrepresentations that the recordings are devoid of Brady-Giglio evidence.

Model Rules of Professional Conduct, R. 3.8 (1983), states that a prosecutor violates his responsibilities when he intentionally fails to disclose exculpatory evidence to the defense; and the government is aware of the existence of this evidence which tends to negate guilt.

The government would be ingenious and incredulous, if they argued that the recordings would not have altered the juries' judgment of Young's credibility. Young was the sole, uncorroborated career criminal who gave conflicting and contradictory testimony of the Kemo murder and of Bergrin allegedly giving advice to the effect of "no Kemo, no case." Higgs, 713 F. 2d at 42. The Court must grant a new trial when conduct, such as occurred in Bergrin's case, affects his right to a fair trial. The Due Process Clause of the 6th and 14th Amendments and Equal Protection Clause of the Fifth Amendment to the Constitution mandates this action.

The government's failure to meet the spirit of Brady with their method of providing malfunctioning CD's, vociferous assertions that there is "no" Brady evidence and that the

recordings are devoid of both impeachment and exculpatory evidence, and their innate understanding of Bergrin's time consuming restrictions, was reprehensible. These actions must be condemned.

United States v. Shaffer, 789 F. 2d 682, 690 (9th Cir. 1986) is a case analogous to Bergrin's. The Court reversed the Shaffer's conviction because they found due process constitutional violations of the government's Brady requirements, when the prosecution represented that "the recordings would be of no value to the defense." The Court held that, the Government's lack of good faith appears clearly in their reaction upon finding out that the defense had obtained the trial transcript. That reaction was to deny that anything in the transcript constituted a prior inconsistent statement, "Thus the government clouded the issues by arguing that they provided the discovery, the manuals containing Brady or Giglio materials, resulted in a mistrial. Additionally, the Court found Brady violations, when the government turned over mountains of documents, as they did in Bergrin's case; and contained within this mountainous pile of discovery was exculpatory documents. This excoriates Brady's spirit and is unfair. Hughes v. Hopper, 629 F. 2d 1036, 1039 (5th Cir. 1980). The Court firmly asserted "that defense counsel's knowledge of the evidence is effectively nullified when the prosecution

misleads the defense into believing the evidence will not be favorable to the defendant."

Furthermore, since Bergrin had no knowledge that the recordings contained exculpatory or favorable information and had no objective or "reasonable" way to ascertain their contents, he should not be penalized. Most importantly and especially; since the government made specific, articulable assurances, to the Court and Bergrin that the recordings contain no Brady or Giglio evidence and are unfavorable to Bergrin they should now suffer the consequences. United States v. Gaston, 608 F. 2d 607 (5th Cir. 1979); Freeman v. State of Georgia, 599 F. 2d 65, 72 (5th Cir. 1979), cert denied, 444 U.S. 1013, 100 S. Ct. 661, 62 L. Ed. 2d 641.

For the aforementioned reasons, this Court must reverse Bergrin's convictions.

IV. NO RATIONAL JURY COULD HAVE FOUND PETITIONER AIDED AND ABETTED THE KEMO MURDER BECAUSE THE GOVERNMENT OFFERED NO EVIDENCE OF THE REQUISITE *MENS REA* AND *ACTUS REA* ELEMENTS.

Petitioner incorporates by reference all facts and legal arguments averred in other sections of this brief as if delineated in their entirety.

Racketeering Act 4(b) of Count 1 and Count 13 of the Indictment charged Petitioner with aiding and abetting the murder of a witness (Kemo Deshawn McCray "Kemo") with intent to prevent his testimony at an official proceeding in violation of 18 U.S.C. §1512 (a)(1)(A) and 18 U.S.C. §2.

18 U.S.C. §1512 (a)(1)(A) states in relevant part: "Whoever kills. . .another person, with intent to. . . prevent the attendance or testimony of any person in an official proceeding is guilty of a crime against the United States."

18 U.S.C. §2, provides: "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal; (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

A. The Evidence Offered Against Petitioner

The sole "evidence" the government offered for the aiding and abetting charges was the uncorroborated, conflicting and wholly incredulous testimony of one witness: career criminal Anthony Young.[1]

Through Young, the government elicited testimony that would serve as the *only* basis of the aiding and abetting. According to Young, those facts, which are unequivocally denied by Petitioner, are that:

(1) On the day of William Baskerville's November 25, 2003, arrest, that Young was present in the car when Petitioner called Hakeem Curry, William Baskerville's cousin, and

[1] Contrary to the claims and insinuations which have been propagated for more than twelve years, there is not--nor has there ever been in existence--a recording (sealed or improperly sealed) in which Petitioner says the now infamous, Hollywood-movie worthy and fictitious phrase "No Kemo, No case." No such evidence exists or has ever existed.

In 2003, the FBI was conducting an investigation into William Baskerville's narcotics distribution activities. During that same time period, the DEA also was conducting a separate investigation involving Hakeem Curry. In the DEA's investigation, there were more than forty-thousand wiretap recordings. Those recordings spanned from 2003 and are claimed to have ended "on or about" March 1, 2004, the day before the Kemo murder.

The court and the public have been led to believe that a "sealing issue" precluded introduction and admission into evidence of recordings in which Petitioner allegedly made such a damning statement or similar statements implicating himself in Kemo's murder as well as being involved in a drug conspiracy with Hakeem Curry. In fact, the recordings prove otherwise. As documented in other sections of this brief, the recordings refute Young's claims and prove he lied when implicating Petitioner. The recordings also prove there was no drug trafficking conspiracy between Petitioner and Hakeem Curry. Indeed, the recordings prove Curry's and Rakeem Baskerville's mistrust and animosity toward Petitioner; that Curry referred cases to other criminal defense attorneys including Vincent Nuzzi, Esq.; and that he directed his underlings not to deal with Petitioner.

overheard Petitioner say to Curry, "Will said it was some guy—K-amo;"

(2) That a few days, a week or two weeks later (depending on which of Young's version is alleged), Petitioner met with Young, Hakeem Curry, Rakeem Baskerville, Jamal Baskerville, and Jemal McNeil on Avon Street in Newark one winter evening and said:

(a) Will Baskerville was facing life imprisonment;

(b) That if Kemo didn't testify, that Will would win his case and come home;

(c) But, that if Kemo testified, Will would spend the rest of his life in jail.

The government does not allege that Petitioner knew anything or did anything once he left this alleged meeting. This point is not disputed. Young's testimony is clear: ALL decisions, plans and acts occurred AFTER Petitioner left. No one informed Petitioner after he left this alleged meeting that a decision was made to murder Kemo.

More than 3 (three) months after this alleged meeting, Kemo was shot and killed.

B. Even Accepting the Government's Proof as True, They are Insufficient to Prove Aiding and Abetting 18 U.S.C. §1512 (a)(1)(A).

Even if what Young claimed actually occurred--that Petitioner stated that, if "Kemo" testified, William Baskerville will go to jail for life; but without Kemo's testimony, Baskerville would get bail and win the case--there still is insufficient proof to establish the *mens rea* or *actus rea* of aiding and abetting the specific substantive offense in 18 U.S.C. §1512 (A)1(a). The statements attributed to Petitioner simply are not enough.

1. The Supreme Court's Analysis of Crimes Based on Speech Set forth in Elonis v. U.S.

In Elonis v. United States, the Supreme Court reversed a conviction for terroristic threats against the defendant for his very disturbing and violent posts on Facebook which appeared to be directed toward his estranged wife. Elonis v. United States 135 S. Ct. 2001, 192 L. Ed. 1, 2015 U.S. LEXIS 3719, 83, U.S.L.W 4360, No. 13-983 (2015). The defendant also made alarming threats to harm children. Id. Elonis argued that the posts were quotes from a rap song.

In considering if the posted threats were sufficient to uphold Elonis' conviction, the Court employed a First Amendment analysis. The Court found it improper to base a criminal conviction upon an "objective standard" of how a reasonable person would interpret Elonis' statements instead of *proof of*

Elonis' intent in posting the statements. The court reversed the conviction, finding that another person's perception of Elonis' intent could not sustain his conviction. Id. Rather, the Court held subjective evidence of Elonis' intent must be proven beyond a reasonable doubt. Id.

"Objective tests tend to focus on the reaction of a reasonable recipient of the statement." An objective "reasonable person" interpretation would impose criminal liability for the foreseeable (and unforeseeable) consequences one's statement had on his or her listeners. See also Morissette v. United States, 342 U.S. 246 (1952); Rogers v. United States, 422 U.S. 35, 47 (1975).

Moreover, "[a]n objective test reduces culpability on the all important element of criminal intent to negligence." Such a test is "inconsistent with "norms for construing criminal statutes," which "presume that intent is the required *mens rea* in criminal laws." An "objective construction" "would create a substantial risk" of one being charged criminally for "negligently misjudging how others would construe a person's words," without proof of criminal intent. Rogers, 422 U.S. at 43-44.

A standard of subjective intent acts as a safeguard against potentially arbitrary enforcement. Accordingly, a "reasonable

person's" interpretation of a speaker's words, as (allegedly) was the case here, is insufficient to prove intent under Elonis.

2. The Alleged Statements were Vague, Subject to Various Interpretations and Insufficient to Prove Petitioner Intended to Aid and Abet Young to Commit the Specific Crime of Murder of a Witness.

Petitioner denies making the statements Young alleged. But even if the statements actually were said, they do not prove Petitioner had the *intent* to commit the specific act of murder to prevent a witness' testimony, as opposed to some another nonspecific act, crime or nothing at all. The words attributed to Petitioner by Young are subject to multiple interpretations such as:

(a) Contact Kemo and pay him not to testify;

(b) Convince Kemo to leave the jurisdiction and not show up at court to testify;

(c) Threaten, coerce, intimidate and influence Kemo not to testify;

(d) Restrain Kemo from appearing in court; or

(e) Meant nothing at all--it was an attorney explaining to his client's family (Baskervilles' brothers Jamal and Rakeem and his cousin Hakeem Curry) the case against Baskerville.

In the case sub judice, Petitioner is not charged with felony murder or involuntary manslaughter. He is not charged

with a crime because of negligent acts. Petitioner is charged with deliberately aiding and abetting Young to commit a very specific crime for the very specific purpose set forth in 18 U.S.C. §1512 (a)(1)(A), *to wit*, the crime of murder with the intent to prevent a witness' testimony.

3. Proof That Young Perceived Petitioner's Words to Mean Murder is Legally Insufficient to Prove that Petitioner Actually Intended the Act of Murder.

Petitioner's conviction stand on evidence that Petitioner may have in "some way" unknowingly or inadvertently contributed to Kemo's murder, regardless of the fact there was no proof offered this is what Petitioner intended. There must be evidence offered to prove Petitioner shared the specific intent: (1) that Young commit murder (and not some other crime); and (2) that the murder was intended to prevent a witness' testimony as required by 18 U.S.C. §1512 (a)(1)(A).

The words Young alleged Petitioner uttered are not enough to prove what the Petitioner's specific intent was, or if Petitioner had any intent other than stating the facts of the case. While the alleged statements could have been interpreted by the listener to encourage commission of some unlawful act,

they certainly do not prove a shared intent to commit the very specific and ultimate act of murder. [2]

It is not Young's interpretation of what he believed Petitioner intended by his words which controls. Rather, the evidence must prove beyond a reasonable doubt that *Petitioner intended* to aid and abet the specific crime of murder a witness with the intent to prevent his testimony.

C. The *Mens Rea* and *Actus Rea* Elements of Aiding and Abetting the Specific Substantive Offense the Principal Committed Must be Found beyond a Reasonable Doubt.

The Due Process Clause protects the criminally accused against conviction "'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'" Jackson v. Virginia, 443 U.S. 307, 315 (1979)[3] (citations omitted). "[S]ufficient proof" is "defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the *existence of every element of the offense*." Id. (emphasis added).

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[2] As explained in other sections of this brief, if the jury was actually able to apply the incomprehensible instructions, there is a grave danger that they returned a verdict based upon a vague belief that Petitioner's words themselves were "some act" which "somehow" resulted in Kemo's murder, regardless of whether Petitioner acted unknowingly and without intent to aid and abet the specific crime in 18 U.SC. §1512 (A)1(a) or any crime.

[3] "[P]roof beyond a reasonable doubt has traditionally been regarded as the decisive difference between criminal culpability and civil liability" which "operates to give 'concrete substance' to the presumption of innocence, to ensure against unjust convictions, and to reduce the risk of factual error in a criminal proceeding." Jackson, supra at 352-362. (citations omitted).

"[A] conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm." Id.(citations omitted).

1. Proving Aiding and Abetting in the Third Circuit

When a defendant is charged with aiding and abetting, the Government must prove beyond a reasonable doubt each and every one of the required *mens rea* and *actus rea* elements of aiding and abetting the *specific substantive offense*. United States v. Rosemond, 134 S. Ct. 1243, 188 L. Ed. 2d HR 1, 2. 134 S. Ct. 1240, 188 L. Ed. 248, 2014 U.S. LEXIS 1787 (2014).

In the Third Circuit, the elements the government must prove beyond a reasonable doubt include: [4]

(1) That the defendant knew in advance the specific substantive offense that the principal intended to commit; United States v. Carbo, 572 F.3d 112, 118 (3d Cir. 2009); See also U.S. v. Rosemond, supra.[5]

[4] In Nye & Nissen v. United States, 336 U.S. 613 (1949), the Supreme Court explained: "In order to aid and abet another to commit a crime it is necessary that a defendant 'in some sort associate himself with the venture, that he participate in it as in something that he wished to bring about, that he seek by his action to make it succeed.' L. Hand, J., in United States v. Peoni, 100 F.2d 401, 402." 336 U.S. at 618. The Third Circuit has called this the "classic definition" of accomplice liability. United States v. Nolan, 718 F.2d at 591.

[5] Citing United States v. Kemp, 500 F.3d 257, 293 (3d Cir. 2007), quoting United States v. Dixon, 658 F.2d 181,189 n. 17 (3d Cir. 1981).

(2) That the defendant shared the principal's intent and that it was the defendant's intentional purpose, conscious objective and "specific intent to facilitate" to aid the principal in committing that specific crime; United States v. Mercado, 610 F.3d 841, 848-849 (3d Cir. 2010);[6] Carbo, supra at 118 (emphasis added);

(3) That the principal actually committed the specific crime for which the defendant is charged to have aided and abetted; and

(4) That the defendant performed an affirmative act, with full knowledge and intent, that his affirmative act would help and, in fact, did help the principal successfully commit that specific crime. United States v. Soto, 539 F. 3d 191, 194-97 (3d Cir. 2008).

"Unknowing participation" is not sufficient proof to establish aiding and abetting. United States v. Newman, 490 F.2d at 143. The defendant must wish to bring about the specific crime and desire that it succeed. United States v. Peoni, 100 F. 2d 401, 402 (2d Cir. 1938).[7]

"[M]ere presence" at a crime scene or "mere knowledge" of the crime to be committed is insufficient to support an aiding

[6] United States v. Garth, 188 F.3d 99, 113 (3d Cir.1999

[7] See also Nye & Nissen v. United States, 336 U.S. 613, 618 (1949); United States v. Bey, 736 F.2d at 895; United States v. Newman, 490 F.2d at 143.

and abetting conviction. United States v. Soto, 539 F. 3d 191, 194-97 (3d Cir. 2008).[8]

Furthermore, "facilitation" for aiding and abetting purposes is "'more than associat[ion] with individuals involved in the criminal venture.'" Soto, supra at 194 (quoting United States v. Dixon, 658 F.2d 181, 189 (3d Cir.1981)).

"The government must prove beyond a reasonable doubt that the defendant [sic] [intentionally] participated in "a substantive crime with the desire that the crime be accomplished." United States v. Newman, 490 F.2d 139, 143 (3d Cir. 1974). To prove intentional participation, the government must prove beyond a reasonable doubt that it was the accomplice's purpose (conscious objective) or specific intent to help bring about the specific substantive crime the principal actually committed. United States v. Soto, 539 F. 3d 191, 194-97 (3d Cir. 2008)[9]

The Government also must prove that the defendant "participate[d] in" Id., and "associated himself with the venture and sought by his actions to make it succeed." United States v. Powell, 113 F.3d 464, 467 (3d Cir.1997).

[8] See also United States v. Bey, 736 F.2d 891, 895-96 (3d Cir. 1984) (aiding and abetting must include instructions that mere knowledge of the crime is insufficient).
[9] See also United States v. Wexler, 838 F.2d 88, 92 (3d Cir. 1988); United States v. Bey, 736 F.2d at 895; United States v. Newman, 490 F.2d 139, 143 (3d Cir. 1974).

The evidence must be clear that the accomplice "must intend to aid and abet the *specific offense* or criminal scheme charged in the indictment" and not some other scheme. See, e.g., United States v. Kemp, 500 F.3d 257, 299-300 (3d Cir. 2007); United States v. Dobson, 419 F.3d 231, 236 (3d Cir.2005). (emphasis added).

There can be "no danger" that a defendant "would be convicted for aiding and abetting some other scheme" than the specific substantive offense in the indictment for which he is charged to have aided and abetted. Kemp, supra at 299-300. (emphasis added) See also United States v. Newman, 490 F.2d 139, 143 (3d Cir. 1974).[10].

D. The Supreme Court's holding in United States v. Rosemond Leaves No Doubt:

Proof of Intent to Aid and Abet is Only Satisfied by Evidence that a Defendant obtained Advance Knowledge that the Principal was Going to Commit a Specific Crime, Shared an Intent for it to Occur, Knew when it was to Occur and AND Knowingly Performed an Act to Aid the Principal in Successfully Committing that Specific Crime.

In the Supreme Court's 2014 decision of United States v. Rosemond, the Court analyzed the law of aiding and abetting in

[10]See also United States v. Newman, 490 F.2d at 143, (error not to include in charge that aiding and abetting required willful participation, where, "Consistent with the court's instructions, the jury might have convicted Garca on the basis of a conclusion that the defendant participated in the activities charged without knowing of their criminal objective.")

determining whether the lower court's charges adequately instructed the jury on the elements of aiding and abetting. United States v. Rosemond, 134 S. Ct. 1243, 188 L. Ed. 2d HR 1, 2. 134 S. Ct. 1240, 188 L. Ed. 248, 2014 U.S. LEXIS 1787 (2014);

The defendant in Rosemond had participated in an attempted sale of marijuana to two buyers. After the buyers took the marijuana and ran, shots were fired. The defendant was charged with using a gun in connection with a drug trafficking crime, in violation of 18 U.S.C. § 924(a) or, in the alternative, with aiding and abetting that offense under 18 U.S.C.S. §2.

The district court instructed the jury that they could find defendant guilty of violating 18 U.S.C. §924(c) as an aider and abettor if the evidence showed that he knowingly and actively participated in a drug trafficking crime. The court did not direct the jury, however, to consider if the defendant knew about the gun before the drug deal. The jury found the defendant guilty of violating 18 U.S.C. §924(c).

On appeal, the Supreme Court found that the district court's instructions to the jury -- the very same instructions as those given in Petitioner's case -- were erroneous because they failed to require proof that defendant **knew in advance** that one of his cohorts would be armed. In telling the jury to consider merely whether defendant knew his cohort used a firearm, the district court did not direct the jury to determine

when defendant obtained the requisite knowledge, i.e. to decide whether defendant knew about the gun in sufficient time to withdraw from the crime. Rosemond, 134 S. Ct. 1243, 188 L. Ed. 2d HR 1, 2. 134 S. Ct. 1240, 188 L. Ed. 248, 2014 U.S. LEXIS 1787 (2014). (emphasis added).

The Court in Rosemond specifically held that, when an accomplice knows nothing of a gun until after it appears at the scene, he may have already completed his acts of assistance; or even if not, be now at that late point have no realistic opportunity to quit the crime. And when that is so, the defendant has NOT been shown the requisite intent to assist a crime involving a gun.

The Court held that the **intent requirement** necessary to prove aiding and abetting **can only be satisfied** when a person **actively participates** in a criminal venture **with full knowledge** of the circumstances constituting the offense. Rosemond, 134 S. Ct. 1249. *(*emphasis added*)*. A defendant must **know in advance when the specific substantive offense** is going to be committed and the defendant **also must intend** that the principal commit **that very specific offense**. (emphasis added)

The aiding and abetting analysis in Rosemond applies to all aiding and abetting cases, not just those involving the statute at issue in Rosemond. In fact, the Third Circuit's Model Jury

Charges cites Rosemond in its commentary of aiding and abetting all crimes, not just the statute at issue in Rosemond.

E. No Rational Jury Could Have Found Proof Petitioner Knew In Advance that Young Intended to Commit the Specific Crime of Murder to Prevent Kemo's Testimony, Shared that Intent, Knew When it Would Occur or Knowingly Performed an Act which Actually Helped Young Successfully Commit the Murder.

Petitioner unequivocally and categorically denies that he ever met with Anthony Young, Hakeem Curry, Rakeem Baskerville, Jemal McNeil and Jamal Baskerville as Young testified and fabricated.[11] Under no circumstances nor at any time did Petitioner:

1. Inform anyone that Will Baskerville would receive life in prison;
2. Advise that, if "Kemo" testified that Will Baskerville will go to jail for life; but that, without Kemo's testimony, Will would get bail and Petitioner would win the case;
3. State that the government has no case without Kemo as a witness; or
4. Make the statement "No Kemo, No Case" or utter any similar statement.

[11]As more fully detailed in Point 1, supra, individuals Young claims were at this alleged meetings deny in sworn affidavits such a meeting occurred. Petitioner was blocked from having his testimony, which clearly would have refuted Young's claims, from being heard at trial.

In the three months from the date of this alleged street meeting to the day of the murder, there was not an iota of evidence offered to prove Petitioner knew in advance, shared the intent that the specific crime of murder to prevent a witness' testimony be committed or performed an act which helped Young carry out the murder successfully. Not a scintilla of evidence[12] exists that Petitioner had any involvement whatsoever.

This Court is respectfully implored to consider the following uncontroverted facts. There is no evidence Petitioner ever:

1. Met with any of the alleged co-conspirators to follow up, counsel or give any advice on the William Baskerville case after the alleged Avon Street meeting;
2. Was present when the parties made the alleged decision to search for "Kemo;"
3. Was present when any of the alleged parties made any decisions pertaining to Kemo;
4. Was present when any party made the determination to harm "Kemo" by any means;

[12]In fact, the wiretap recordings in the DEA's investigation of Hakeem Curry show Curry's and Rakeem Baskerville's mistrust and animosity toward Petitioner; that Curry hired other criminal defense attorneys and directed his underlings not to deal with Petitioner. There were more than forty-thousand wiretaps which were recorded during the Curry investigation by the DEA. During that same period, the FBI was conducting a separate investigation into William Baskerville. The DEA's recordings span from October of 2003 and ended on March 1, 2004, the day before the Kemo murder.

5. Knew that any party possessed a handgun nor any weapon after this the alleged meeting;
6. Knew that any party had allegedly located Kemo at any time;
7. Knew that any party was actually searching or looking for Kemo to do anything to him;
8. Was Informed that Anthony Young or anyone else had been hired or paid in any manner whatsoever to harm Kemo;
9. Knew that there was a plan to kill Kemo;
10. Knew that Kemo had been located on March 2, 2004, in Newark, New Jersey;
11. Knew that Kemo was going to be shot on March 2, 2004;
12. Knew that any member or participant in this alleged group possessed any weapons on March 2, 2004;
13. Knew that Kemo had in fact been shot on March 2, 2004, in Newark, New Jersey;
14. Knew how any of the parties planned to make their "get away" after shooting Kemo;
15. Was informed by anyone that Kemo had, in fact, been shot;
16. Discussed with Will Baskerville, nor anyone else, what would occur if "Kemo" was not a witness. In fact, the testimony against Baskerville at his 2007 trial by cooperating witnesses Troy Bell and Eric Dock was that Baskerville sought advice from another inmate, named Joey Merlino, on the

consequences of Kemo not testifying; there is no evidence that Baskerville ever sought this advice from Petitioner;

17. Filed legal motions after March 2, 2004, or made any arguments which attempted to use Kemo's death to obtain a legal, tactical or strategic advantage on behalf of Baskerville;

18. Filed a bail motion on behalf of Baskerville after March 2, 2004; in fact, Petitioner continued to implore Baskerville to enter a plea of guilty; or

19. Ever filed a motion to dismiss charges against Will Baskerville because Kemo "was no longer a witness."

It is undisputed that, ONLY AFTER Petitioner left this alleged-phantom meeting (on some unspecified date and time that is repeatedly changed), did all the plans, searching, locating, decisions and events occur. The murder happened more than three (3) months later.

F. There was No Proof Offered Petitioner Aided and Abetted Kemo's Murder "With Intent to Prevent" his testimony as Required by 18 U.S.C. §1512 (a)(1)(A).

Implicit in the *mens* rea and *actus rea* elements of proof necessary to establish aiding and abetting 18 U.S.C. §1512 (a)(1)(A), evidence must be offered to prove the following facts:

(1) That Petitioner knew ahead of time:

a. That Anthony Young was going to murder Kemo;

b. That Young was going to murder Kemo with the intent of preventing his testimony;

c. That Young was going to commit the murder imminently or within a known time frame;

d. That Young committed the murder;

(2) That Petitioner shared the same intent as Young, *to wit*, murder with the purpose and intention of preventing Kemo's testimony; and

(3) That Petitioner knowingly took some action to help Young successfully murder Kemo on March 2, 2004.

Throughout the years, Young gave different reasons why he murdered Kemo including:

(1) He did it for money;

(2) He was ordered to do it;

(3) It was a demand made of him;

(4) Because this was what happened when you "crossed a Baskerville;"

(5) To punish a "snitch," as is known to be one of the reasons behind gang-related murders; (See article reporting how widespread witness retaliation and intimidation was on the streets of Newark and the resulting number of cases which were dismissed or not prosecuted in Essex County each year);

(6) So Baskerville could get bail and come home; and

(7) To prevent Kemo's testimony at Baskerville's trial.

Despite the various reasons Young gave for Kemo's murder, the government used Young's testimony to establish its allegation that Kemo was murdered to prevent his testimony in Baskerville's trial.

The government, however, did not offer any evidence to prove Petitioner knew, in advance or at any time, that Young planned to murder Kemo on March 2, 2004, to prevent his testimony (1 above). Nor was evidence offered to prove Petitioner knew or shared the intent to aid and abet the specific act of murder of a witness, as opposed to another act such as bribery, threats, assault, etc., to prevent testimony. Nor did the government offer evidence to prove Petitioner took some or any action which helped Young successfully murder Kemo on Mach 2, 2004.

1. The Jury Never Heard Evidence of Actual and Factual Innocence Buried Among the 40,000 Wiretap Recordings from the DEA's Investigation of Curry which Proved Petitioner Intended to Plead Baskerville due to the Overwhelming Evidence against Him.

During the same period that the FBI was conducting its investigation of William Baskerville, the DEA was conducting a separate investigation of William Baskerville's cousin, Hakeem

Curry. During the DEA's investigation, Curry and numerous individuals' phones were wiretapped. It is estimated that more than 40,000 (forty thousand) calls were recorded between October of 2003 and March 1, 2004. The government claims that the recordings stopped on or about March 1, 2004, the day before Kemo's murder.

As noted in other sections of this brief, the government assured the defense that it would not use these recordings at trial because they were inadmissible due to a sealing issue. But, buried among those 40,000 recordings, was irrefutable proof Young perjured himself and testified falsely about Petitioner.[13]

In particular, the recordings prove that, within days of Baskerville's wife Deidre Baskerville retaining him,[14] Petitioner made it clear he never intended for Baskerville's case to go trial; that he intended to have Baskerville plead; and estimated that Baskerville would likely serve 13 (thirteen) years, not life in jail. Id. In light of the recordings, the government knew or should have known that the Petitioner never believed the case would proceed to trial and that Young had lied.

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[13] As documented in other sections of this brief, Petitioner was unaware that this exculpatory evidence was buried among the 44,000 recordings in the United States v. Hakeem Curry case. The government did not disclose that the recordings had *Brady* material. Instead, the government represented that, due to an. as yet, unexplained and unspecified "sealing issue," the recordings would not be used in Petitioner's trial.

[14] William Baskerville's wife Deidre Baskerville retained Petitioner and paid the retainer by check. She later filed a complaint against Petitioner with the Fee Arbitration Committee seeking return of the legal fees she paid to Petitioner.

And, if Petitioner always knew the case would not procced to trial, then it logically follows Petitioner could not have aided and abetted in Kemo's murder "with intent to prevent his testimony." Since there was zero proof offered of Petitioner's specific intent for this *mens rea* element of the crime, there is insufficient proof as a matter of law.

G. The Government Has Never Proven when this Alleged Meeting Occurred, When Petitioner Obtained Advance Knowledge that the Murder was to Occur or When the Crime would be Committed.

To prove virtually any crime, the date or approximate date it is alleged to have occurred must be proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

As explained in other sections of Petitioner's brief, Young and the government kept changing the date of when this alleged meeting occurred. Initially, the meeting was claimed to be four to five days after Baskerville's November 25, 2003, arrest; then it changed to the date of William Baskerville's detention hearing; then, during its 2013 summations and in opposing the judgment of acquittal, the government claimed the meeting occurred on December 4, 2003.

Each time Petitioner provided irrefutable evidence that the meeting couldn't have happened on or about the date claimed, Young or the government offered a new date.

After the verdict, Petitioner provided evidence from the Curry recordings which proved this December 4th date also was inaccurate. After the brief was submitted, the government withdrew the claim the meeting occurred on this date. **As of this writing, it is unclear when the government is claiming that this alleged meeting occurred**.

The ever-changing date markedly prejudiced Petitioner's ability to defend and confront the evidence against him. He is unable to explore if there is potential alibi evidence to refute the date of this alleged meeting. Procedural due process required that the Petitioner have sufficient notice to effectively prepare a defense

The lack of a date under these circumstances is also substantively fatal to the government's proof, particularly under Rosemond. The government must prove approximately when Petitioner learned of the plan to murder Kemo and when it was planned to happen.

Accordingly, the Court must find this evidence insufficient as a matter of law.

H. The Government Did Not and Could Not Offer Facts to Prove All Elements of Aiding and Abetting because Petitioner is Actually and Factually Innocent.

The government offered no factual evidence from which a rational jury could find all of the elements needed to prove

aiding and abetting the murder of a witness AT ALL, let alone proof beyond a reasonable doubt.

Petitioner never, under any circumstances, aligned himself with the illegal scheme either partially or "in its entirety," and obviously, did not know of the use of a firearm. Rosemond, supra at 1251. Like the defendant in Rosemond, there was absolutely no factual evidence offered to prove Petitioner intended or manifested an intent to bring about Kemo's murder to prevent his testimony. Id. Nor was factual evidence offered to prove that Petitioner had "foreknowledge" or advance knowledge of the murder or that it would occur more than three months after this alleged December meeting.

There was no proof offered that Petitioner knowingly intended to "participate" in the specific crime of murder of a witness to prevent his testimony as if it were something that he wished to bring about and seek by his own action to make succeed. Nye & Nissen v. United States, 336, U.S. 613, 617, 69 S. Ct. 766, 93 L. Ed. 919 (1949). Nor was proof offered that Petitioner knowingly and intentionally performed an act to further Young's success in murdering Kemo on March 2, 2004.

All are necessary to prove aiding and abetting. See Rosemond, 188 L. Ed. 2d, at 264-265 LED. H.R. (15), 134 S. Ct. 1250.

Rhetorically, if Petitioner NEVER was told, did not know of anything which had been planned, intended or done, how does the government prove, in accordance with Rosemond and Third Circuit case law, that he aided and abetted ANYTHING let along the murder of a federal witness?

The government cannot, in good conscience, argue that Petitioner's words conveyed a clear knowledge and intent of a murder he wished to bring about as there is simply no evidence from which to do so. .

But, if this Court should find that there was some proof from which a jury could find that Petitioner knew of and intended to help the murder be committed, the *actus rea* element still is not met. The government did not offer (nor could they ever offer) evidence that Petitioner performed an affirmative act that helped Young successfully murder Kemo on March 2, 2004.

In accordance with *United States v. Rosemond* and Third Circuit precedent, no rational jury--applying the facts from the actual evidence offered as well as the lack of evidence offered to the law--could have found beyond a reasonable doubt that Petitioner aided and abetted in the Kemo murder.

I. No Rationale Jury could have Found Petitioner was involved in a Drug Trafficking Conspiracy with Hakeem Curry or that Petitioner Had Any Motive to Aid and Abet in Kemo's Murder.

Petitioner had absolutely no motive to aid and abet in Kemo's murder. There was no evidence at trial, nor has there

even been evidence, that Petitioner conspired with Hakeem Curry in drug trafficking.

Not one of the 40, 000+ wiretap recordings in the DEA's Curry investigation implicate Petitioner in the Kemo murder or a narcotics conspiracy with Hakeem Curry; to the contrary, the recordings show Curry and the gang's growing contempt and distrust of Petitioner. Hakeem Curry, in particular, expressed his frustration and hostility toward Petitioner on the recordings. He was angry that Petitioner was not doing what Curry wanted.

In addition to proving Curry's and Rakeem Baskerville's disdain and distrust of Petitioner, Curry is heard telling other gangmembers not to hire Petitioner as an attorney. Instead, Curry refers them to other lawyers including Vincent Nuzzi, Esq. And, as explained further below, the lack of evidence that Petitioner was involved in drug trafficking with Curry also proves that the Kemo charges were not part of a RICO conspiracy.

Because there simply was no evidence offered to prove all of the elements of aiding and abetting the murder of a witness to prevent his testimony, there was insufficient evidence as a matter of law. Racketeering Act 4(b) of Count 1 and Count13 and should never have been included the indictment.

J. The Government Charged Petitioner with Involvement in the Kemo Murder as a Strategy to Bolster its RICO Case and Inflame the Jury's Passion.

The government charged Petitioner with aiding and abetting the Kemo Murder when there was no evidence upon which to do so. Most troubling is that the government charged Petitioner with crimes relating to the Kemo murder when the government knew, from the DEA wiretap recordings, that Petitioner was not involved. The government knew or should have known, when the recordings contradicted Young's claims and disproved Curry and Petitioner were involved in a conspiracy, that it was basing the charges against Petitioner upon blatant perjury.

During the trial of *United States v. William Baskerville*, AUSA John Gay testified that Petitioner and other co-conspirators were not charged because the Government did not ". . . feel we can prove the case beyond a reasonable doubt at trial." (May 8, 2007, transcript pages 6277:1 to 6277:25).

Moreover, AUSA Minish's comments in summations during the U.S. v. Baskerville belie any claim that other evidence existed of Petitioner's involvement aside from Young's uncorroborated and perjured testimony. AUSA Minish stated:

> …***Let's put an end to this Paul Bergrin thing***. Defense counsel's argument, taken to its logical conclusion, is this: Paul Bergrin gave him [William Baskerville] bad legal advice, that if you kill this guy, somehow or another you'll get off so, therefore, the fact that he actually did it should be excused; that because he

> made a decision, which ***by the way, we have no idea if that was the advice, there is zero testimony to say that was even advised prior to giving up the name, prior to the defendant making a call to Rakeem Baskerville***, but somehow or another, having bad legal advice is to excuse this act? Or the fact these other men have not been charged yet...***This is a full three years after the crime was committed***...while John Gay is my boss, I can tell you right now, it doesn't matter a whole heck of a lot whether or not he's convinced what he believed…whether back in his office he believes or in his personal opinion he believes people are involved does not get you a conviction. {***emphasis added***}.

(May 10, 2007, *United States v. William Baskerville*, 6707:17-6709:3).

Moreover, AUSU Robert Frazer noted:

> [O]thers responsible for contributing to the death of Kemo have not been charged with murder or any other crimes associated with this murder…John Gay told you why. Because we only charge people that we can prove - - where we can prove the case beyond a reasonable doubt…***Anthony Young told us about the other co-conspirators and the whole plan and their roles, but Anthony Young by himself, by himself does not equal beyond a reasonable doubt***. If we had come in here without Eric Dock, Rick Hosten and Eddie Williams and all the others, just put Anthony Young up there, could we have expected you to vote this case beyond a reasonable doubt based on Anthony young's lone testimony? No….***We're not going to put one person up there without corroboration***. {emphasis added}.

(May 10, 2007, *United States v. William Baskerville*, 6660:16-6661:10)

1. **No Rational Jury Could Have Compartmentalized the Evidence in a RICO Mega Trial.**

The government included the legally and factually baseless charges in the RICO indictment despite the utter lack of evidence offered to prove these charges. The charges were brought into a Rico mega-trial which charged numerous inflammatory and sensationalized crimes. As a result, the jury's and the court's ability to view the evidence--or more accurately, the lack of evidence -- offered to prove the Kemo charges was clouded.

The jury instructions further muddied the waters. They did not explain what factual evidence the government offered to prove each element of aiding and abetting. But even if they did, no jury would have been able to distinguish the lack of evidence offered to prove the Kemo from the evidence offered to prove the other charges. The inability to compartmentalize the evidence offered to prove the Kemo related charges resulted in spillover prejudice.

The resulting spillover-prejudice subverted the truth seeking function of the jury and misled the court. It relieved the government from its obligation to prove each and every element of every charge in the indictment and undermined confidence in the jury's verdict. And it caused the jury to convict Petitioner of the most serious charges in the indictment when there was no factual or legal basis for them.

2. This Court is in a Position to Render a Decision based upon a Dispassionate and Objective Review of the Evidence, not the Highly Sensationalized Allegations in the Indictment.

Early in the case, the court had to decide numerous motions. Included among them were motions to dismiss the RICO counts and a motion to sever the Kemo charges from the rest of the indictment. Petitioner incorporates the arguments offered by his attorneys in support of those motions herein. At the time the trial court and Third Circuit considered these motions, all it had before it were the highly sensationalized allegations in the indictment which it had to accept as true.

3. A Mere Elements Analysis Renders the Charges related to the Kemo Counts in the Indictment hollow.

With all the government's proofs now known, as well as the information offered in this motion, the court is now in a position to consider the evidence offered with a dispassionate and objective view. And, an elements analysis--applying the actual proof offered to the legal elements required to prove each charge --shows that a prima facie case has not been proven for any of the Kemo related counts.

a. The Kemo Related Charges Should Never have Been Charged at all; as a Predicate Act of a RICO Conspiracy; as a VCAR; Brought in the Same Indictment; or Tried before the Same Jury.

Now, with the government's evidence--and lack thereof--revealed, the following is abundantly clear:

1) the government should never have charged Petitioner with the Kemo Related counts;
2) the government should never have charged the Kemo murder as a predicate act of RICO, a RICO Conspiracy, a Violent Crime in Aid of RICO or any other conspiracy in the indictment;
3) the government should not have included the Kemo related charges in the same indictment as the RICO charges because there was no nexus between the two; and
4) the government should never have tried the Kemo counts in the same trial as RICO and the other unrelated charges.

Petitioner is factually, actually and legally innocent. It would be a manifest injustice for his conviction to stand. Petitioner cannot be condemned to serve multiple life sentences for crimes he did not commit. Accordingly, Petitioner respectfully petitions this Court to grant Petitioner's motion to vacate the judgment of conviction and set aside the sentence.

V. THE AIDING AND ABETTING INSTRUCTIONS DEVIATED FROM THE MODEL CHARGES AND MISLED THE JURY THAT THEY COULD FIND PETITIONER GUILTY IF THE MURDER WAS A FORESEEABLE ACT OF NEGLIGENCE.

Bergin incorporates by reference all facts and legal arguments averred in this brief as if delineated in their entirety.

Racketeering Act 4(b) of Count 1 and Count 13 of the Indictment charged Petitioner with 18 U.S.C.§2[15], aiding and abetting the offense in 18 U.S.C. §1512 (a)(1)(A).

18 U.S.C. §1512 (a)(1)(A) provides that: "Whoever kills…another person, with intent to. …prevent the attendance or testimony of any person in an official proceeding is guilty of a crime against the United States."

A. The Aiding and Abetting Instructions Given to the Jury

In charging the jury on the aiding and abetting counts, the court instructed the jury:

"The aiding and abetting statute, Title 18 United States Code §2, provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or

[15] The aiding and abetting statute, Title 18 U.S.C. §2, provides:
(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

***

A person may be guilty of an offense because he personally committed the offense himself or because he aided and abetted another person in committing the offense. A person who has aided and abetted another person in committing an offense is often called an accomplice. The person who the accomplice aided and abetted is known as the principal.

In this case, the Government alleges that Defendant Paul Bergrin aided and abetted others in murdering a witness with the intent to prevent his testimony, as charged in Racketeering Act 4(b) and in Count 13 of the Indictment. In order to find Defendant guilty as an aider and abettor of this offense you must find that the Government proved beyond a reasonable doubt each of the following four (4) requirements:

First: That someone committed each of the elements of the murder as I have explained those elements to you earlier in these instructions. That person need not have been charged with or found guilty of the offense, however, as long as you find that the Government proved beyond a reasonable doubt that someone committed the offense;

Second: That Mr. Bergrin knew that someone was committing or was going to commit murder of Kemo McCray to prevent him from testifying at an official proceeding;

Third: That Mr. Bergrin knowingly did some act for the purpose of aiding, assisting, soliciting, facilitating

> or encouraging another in committing that murder and with the intent that the murder be carried out; and
>
> Fourth: That Mr. Bergrin's acts did, in some way, aid, assist, facilitate, encourage someone in murdering Kemo McCray. T.8886.87

Instruction No. 36B, Page 67-70 of Jury Instructions. (T885)

B. The Jury Instructions Deviated from the Third Circuit's Model Jury Charges on Aiding and Abetting in 7.02.

The aiding and abetting instruction given to the jury deviated from the Third Circuit's aiding and abetting Model Jury Charge.

Specifically, the third and fourth elements of the Third Circuit's Model Jury Charges describe the *actus rea* elements a jury must find beyond a reasonable doubt to convict a defendant of aiding and abetting. 7.02 states:

The Fourth Element of the Model Jury Charge on Accomplice Liability (7.02) states:

> Fourth, the (defendant) performed an act in furtherance of (the offense charged)
>
> ***
>
> To show that (name of defendant) performed an act(s) in furtherance of the offense(s) charged, to satisfy the fourth requirement, the government needs to show some affirmative participation by (name) which at least encouraged (name of alleged principal) to commit the offense. That is, you must find that (name of defendant) s act(s) did, in some way, [aid,] [assist,] [facilitate,] [encourage,] (name of alleged principal) to commit the offense(s). (Name of defendant) s act(s) need not further [aid,] [assist,] [facilitate,]

> [encourage,] every part or phase (or element) of the offense(s) charged; it is enough if (name of defendant) s act(s) further [aid,] [assist,] [facilitate,] [encourage,] only one (or some) part(s) or phase(s) (elements) of the offense(s). Also, (name of defendant)'s acts need not themselves be against the law. {emphasis added}

In Petitioner's case, the above standard instructions were replaced by the following two sentences:

> "Fourth: That Mr. Bergrin's acts, did, in some way aid, assist, facilitate, or encourage someone in murdering Kemo McCray. Defendant Paul Petitioner s acts need not themselves be against the law."

It is evident that the omissions to the standard instructions substantially lowered the burden of proof to satisfy the fourth element.

The modifications made to the model charges in Petitioner's case also was misleading on the differences between the Third and Fourth Elements. The instructions given deleted language from the Model Jury Charges. The words deleted from the instruction were "To satisfy the third requirement…" and "To show that (name of defendant) performed an act(s) in furtherance of the offense(s) charged, to satisfy the fourth requirement, the government needs to show some affirmative participation..."

This framing language in the model jury charges is significant because it explains to the jury that there are differences between the third and fourth elements. By deleting these words, the instructions molded the two different elements'

analyses together. In doing so, the instructions failed to distinguish between what the jury must find to satisfy the third element as distinct from the fourth element of aiding and abetting.

This made the deletion of the entire paragraph from the fourth element even more prejudicial. There is no way to tell if the jury used the same evidence to find both the third and fourth elements.

Viewed as a whole, the omission of this language is significant because it changes the meaning of the instruction on the most contested issue legal and factual issue in the case --- whether words without action enough to prove Petitioner aided and abetted in the murder.[16]

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[16] The following is the Third Circuit's Model Jury Charge in Aiding and Abetting. The language which was **DELETED** in the charge given in Petitioner's case is **BOLDED AND ALL CAPPED.**

Third: That (name of defendant) knowingly did some act for the purpose of [aiding] [assisting] [soliciting] [facilitating] [encouraging] (name of alleged principal) in committing the specific offense(s) charged and with the intent that (name of alleged principal) commit that [those] specific offense(s)

Fourth: **THAT (NAME OF DEFENDANT) PERFORMED AN ACT(S) IN FURTHERANCE OF THE OFFENSE(S) CHARGED.**

In deciding whether (name of defendant) had the required knowledge and intent **TO SATISFY THE THIRD REQUIREMENT** for aiding and abetting, you may consider both direct and circumstantial evidence including (name of defendant)'s words and actions and the other facts and circumstances. However, evidence that (name) merely associated with persons involved in a criminal venture or was merely present or was merely a knowing spectator during the commission of the offense(s) is not enough for you to find (name) guilty as an aider and abetter. If the evidence shows that (name) knew that the offense was being committed or was about to be committed, but does not also prove beyond a reasonable doubt that it was (name)'s intent and purpose to [aid] [assist] [encourage] [facilitate] or otherwise associate (himself) (herself) with the

C. The Instructions left a "danger" that Petitioner could be Convicted of Aiding and Abetting a Different Crime.

The Third Circuit is emphatic that the jury instructions for aiding and abetting "need to be clear that the accomplice must intend to aid and abet the *specific offense* or criminal scheme charged in the indictment" and not some other offense. See, e.g., United States v. Kemp, 500 F.3d 257, 299-300 (3d Cir. 2007); United States v. Dobson, 419 F.3d 231, 236 (3d Cir.2005)." (*emphasis added*). The court's instructions absolutely must leave "no danger" that a defendant "would be convicted for aiding and abetting some other scheme" than the specific substantive offense which he is charged to have aided and abetted. Kemp, supra at 299-300.[17]. (emphasis added)[18].

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offense, you may not find (name) guilty of the offense(s) as an aider and abettor. The government must prove beyond a reasonable doubt that (name) in some way participated in the offense committed by (name of alleged principal) as something (name of defendant) wished to bring about and to make succeed. **TO SHOW THAT (NAME OF DEFENDANT) PERFORMED AN ACT(S) IN FURTHERANCE OF THE OFFENSE(S) CHARGED, TO SATISFY THE FOURTH REQUIREMENT, THE GOVERNMENT NEEDS TO SHOW SOME AFFIRMATIVE PARTICIPATION BY (NAME) WHICH AT LEAST ENCOURAGED (NAME OF ALLEGED PRINCIPAL) TO COMMIT THE OFFENSE. THAT IS, YOU MUST FIND THAT (NAME OF DEFENDANT)'S ACT(S) DID, IN SOME WAY, [AID,] [ASSIST,] [FACILITATE,] [ENCOURAGE,] (NAME OF ALLEGED PRINCIPAL) TO COMMIT THE OFFENSE(S). (NAME OF DEFENDANT)'S ACT(S) NEED NOT FURTHER [AID,] [ASSIST,] [FACILITATE,] [ENCOURAGE,] EVERY PART OR PHASE (OR ELEMENT) OF THE OFFENSE(S) CHARGED; IT IS ENOUGH IF (NAME OF DEFENDANT)'S ACT(S) FURTHER [AID,] [ASSIST,] [FACILITATE,] [ENCOURAGE,] ONLY ONE (OR SOME) PART(S) OR PHASE(S) (ELEMENTS) OF THE OFFENSE(S). Also, (name of defendant)'s acts need not themselves be against the law.**

[17]See also United States v. Newman, 490 F.2d at 143, (error not to include in charge that aiding and abetting required willful participation, where, "Consistent with the court's instructions, the jury might have convicted Garca on the basis of a conclusion that the defendant participated in the activities charged without knowing of their criminal objective.")

[18]See also United States v. Newman, 490 F.2d at 143, (error not to include in charge that aiding and abetting required willful participation, where,

United States v. Bey, 736 F.2d 891, 895-96 (3d Cir. 1984) (aiding and abetting must include instructions that mere knowledge of the crime is insufficient). The recent Supreme Court decision in Rosemond v. United States reinforces the correctness of the Third Circuit's view:

1. The Changes to the Third Element of the Model Charges on Aiding and Abetting.

The language of the model jury charge for the third element of aiding and abetting states:

> Third: That (name of defendant) knowingly did some act for the purpose of [aiding] [assisting] [soliciting] [facilitating] [encouraging] (name of alleged principal) in committing **the specific offense(s) charged and with the intent that (name of alleged principal) commit that [those] specific offen**se(s)

(emphasis added). Below is the instruction given in Petitioner's case:

> Third: That Mr. Bergrin knowingly did some act for the purpose of aiding, assisting, soliciting, facilitating or encouraging another in committing **that murder and with the intent that the murder be carried out.**

(Emphasis added).

Murder is not the specific crime Petitioner is charged with aiding and abetting. Petitioner is charged with murder *with the intent* to prevent a witness from testifying as set forth in 18

"Consistent with the court's instructions, the jury might have convicted Garca on the basis of a conclusion that the defendant participated in the activities charged without knowing of their criminal objective.")

U.S.C. §1512 (a)(1)(A). ("Whoever kills…another person, with intent to. …prevent the attendance or testimony of any person in an official proceeding is guilty of a crime against the United States."

And, as explained below, because of the varied and numerous charges and predicate acts relating to the Kemo murder in the indictment and jury charges, the fact that the substantive offense was unclear is one of several fatal flaws.

D. The Jury is Instructed on the Elements of 42 Different Crimes arising out of 5 Different Plots

Twenty-three Counts of the indictment were submitted to the jury. Although the charges related to 5 separate plots, the jury was given instructions on 42 separate criminal offenses.

In Racketeering Count One, the jury was instructed on the elements of twenty-two (22) different crimes. (See pages 33-115 of jury instructions). For the same conduct, instructions were given on the elements needed to find a violation of federal law or a violation of state law (state conspiracy and state aiding and abetting). The charges directed the jury to consider different burdens of proof and different elements.

E. The numerous instructions to the Jury Arising out of the Kemo murder.

The instructions in the indictment charge Petitioner with crimes breaking at least 8 laws arising out of the Kemo murder.

1. Count 1, Racketeering, Predicate Acts 4a, 4b, 4c and 4d

   4a. Conspiracy to commit murder under 18 U.S.C. 1512

   4b. Aiding and abetting the murder of witness 18 U.S.C. 1512

   4c. Conspiracy

   4d. Aiding and abetting Murder N.J.S.A. 2C:2-6

2. Count 2 Racketeering Conspiracy
3. Count 3 Violence Crimes in Aid of Racketeering
4. Count 12 Conspiracy to Murder a witness
5. Count 13 Aiding and Abetting the murder of a witness

The instructions for Racketeering Act 4(d) of Count One charged Petitioner with aiding and abetting a murder under New Jersey state law. N.J.S.A. 2C:2-6 and Murder N.J.S.A. 2C:11-3a(1)

F. Instruction to Give a Defendant Charged with Multiple Offenses Separate Consideration is Erroneous and Deviates from the Model Jury Charges.

Instruction No. 25 instructs the jury that it "must separately consider the evidence that relates to each offense, and you must return a separate verdict for each offense." The language of the instruction parrots the language of the model jury charge until the last paragraph.

The model jury charge instructs that, "Your decision on one offense, whether guilty or not guilty, should not influence your decision on any other offense charged."

The instruction given in Petitioner's case added the clause underlined and bolded below:

"**With the exception of those racketeering acts that duplicate other crimes charged in the indictment**, your decision on one offense, whether guilty or not guilty, should not influence your decision on any other offense charged."

This instruction informs the jury that it should apply the same law on the substantive counts which they were instructed to apply in considering the RICO predicate acts.

G. The *Mens Rea* Instructions for Aiding and Abetting Adopt a Negligence Standard of Proof.

The instructions were completely disjointed. The jury was instructed to consider all of the Racketeering Predicate Acts in Count One BEFORE the jury is instructed on the substantive offenses which correlate to the predicate acts.

The instructions also direct the jury to jump to different parts of the 160 page of instructions between the racketeering acts and the substantive offense to determine the totality of the instructions and what they must consider.[19]

[19]The Honorable William Martini anticipated these concerns in Petitioner case.

The third Element of the aiding and abetting charge in Count 13 uses the term "knowingly." On page 51, Instruction 35A, Racketeering Act 1, the court informs the jury that all *mens rea* terms, i.e., knowingly, intent, purpose, etc., will be given at the end. ("Also, many of the terms "knowingly," intentionally" or "willfully," I will define those terms later.")

Those terms do not get defined until pages 150-152 of the instructions. The Instruction given to the jury in 5.01 "Proof of Required State of Mind-Intentionally, Knowingly, Willfully." The instruction states:

> You may also consider the natural and probable results or consequence of any acts (name) knowingly did, and whether it is reasonable to conclude that (name) intended those results or consequences. You may find, but you are not required to find, that (name) knew and intended the natural and probable consequences or results of the acts (he)(she) knowingly did. This means that if you find that an ordinary person in (name's) situation would have naturally realized that certain consequences would result from (his)(her) actions, then you may find, but are not required to

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The differences between these RICO predicates are not merely a pleading concern. Thinking through to the practicalities of trial, it concerns the Court that evidence of these different alleged criminal acts likely would pose evidentiary problems. For example, the Court would be sensitive to the admission of the Kemo murder evidence in conjunction with the Monmouth County hitman case, which involved different defendants, save Bergrin, and occurred four years later. To the extent that the hitman evidence would be used to demonstrate motive in the Kemo trial, this clearly would be inappropriate. Further, the spillover prejudice from the introduction of each witness murder case in a trial of the other would give the Court serious pause. Beyond this, the Government would introduce its mortgage fraud case and prostitution cases during the same megatrial. The many and complex limiting instructions that would have to be employed as to the counts and defendants would confound the Court, let alone the jurors." See April 21, 2010, opinion dismissing RICO for lack of pattern and continuity

find, that (name) did know and did intend that those consequences would result from (his)(her) actions.

The jury was given the instructions that it could find Petitioner guilty of aiding and abetting if the murder was the "natural and probable cause" of the murder. Under these instructions, there is a risk that the jury found that Petitioner guilty, because it was foreseeable that Petitioner's negligence could have unknowingly "in some way" "facilitated" the murder, even if the Petitioner, never at any time intended for a murder to occur.

This would be no different than applying the Pinkerton doctrine used in law of conspiracy. But the Pinkerton doctrine does not apply to aiding and abetting.

The result of this instruction is that the jury applied a civil standard of proof than what is required to prove aiding and abetting. There is a substantial risk that the jury convicted Petitioner on this charge based on a negligence and foreseeability standard.

H. In United States v. Rosemond, the Supreme Court rejected the same jury charges as those given in Petitioner's case.

There can be no doubt that the jury instructions MUST ensure that the jury instructions are clear that a defendant is charged with aiding and abetting THE SPECIFIC SUBSANTIVE CRIME

charged in the indictment as opposed to some other offense after the Supreme Court's 2014 decision in Rosemond v. United States.

Here, the specific substantive offense which Petitioner was charged with aiding and abetting was the murder of witness with intent to prevent his testimony. But the numerous charges of different laws in the predicate acts and different elements of proof throughout the indictment muddied the waters.

In Rosemond, the Supreme Court found that the district court's instructions to the jury -- the very same instructions as those given in Petitioner's case -- were erroneous because they failed to require proof that defendant knew in advance that one of his cohorts would be armed. In telling the jury to consider merely whether defendant knew his cohort used a firearm, the district court did not direct the jury to determine when defendant obtained the requisite knowledge, i.e. to decide whether defendant knew about the gun in sufficient time to withdraw from the crime. Rosemond, 134 S. Ct. 1243, 188 L. Ed. 2d HR 1, 2. 134 S. Ct. 1240, 188 L. Ed. 248, 2014 U.S. LEXIS 1787 (2014). (emphasis added).

The intent requirement of aiding and abetting *can only be satisfied* when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the offense. Rosemond, 134 S. Ct. 1249. *(*emphasis added*).*

The jury should have been instructed that the government be required to prove *beyond a reasonable doubt*, that Petitioner had "foreknowledge" of the killing. Rosemond, supra at 1251. Petitioner must have been proven to "participate" in the crime of murder of a witness to prevent his testimony as if it were something that he wished to bring about and seek by his own action to make succeed. Nye & Nissen v. United States, 336, U.S. 613, 617, 69 S. Ct. 766, 93 L. Ed. 919 (1949).

In accordance with *United States v. Rosemond* and Third Circuit precedent, the jury instructions were erroneous because they did not instruct the jury that it had to find beyond a reasonable doubt that Petitioner had the requisite "intent," advance knowledge, and performed an affirmative act which furthered the successful commission of the specific crime he is alleged to have aided and abetted. _____-_____, 188 L. Ed. 2d, at 264-265.

The Third Circuit's Model Jury aiding and abetting charges cite Rosemond for crimes aiding and abetting in all crimes, not just the statute at issue in Rosemond.

I. The Jury Instructions did not Explain to the Jury what Factual Evidence the Government Presented would Make Petitioner Guilty of Aiding and Abetting

The jury instructions did not explain to the jury what specific evidence they should consider in deliberating on these

counts. Petitioner submits that no reasonable person, attorney or judge could create an elements analysis from the jury instructions or apply the facts averred in the 130 page indictment to the instructions and the evidence presented.

Tailoring the instructions to explain the specific proofs the government claims establishes the elements of the aiding and abetting count was crucial because the jury was unable to compartmentalize the Kemo facts from the rest of the evidence offered at trial.

And, as explained earlier in this point, the instructions provided in Petitioner's case posed a "grave danger" that the jury's verdict was based on a belief that Petitioner "somehow" inadvertently may have aided and abetted some act which resulted in Kemo's murder.

In accordance with *United States v. Rosemond* and Third Circuit precedent, the jury instructions were erroneous because the jury was not instructed that the government was required to prove *beyond a reasonable doubt*, that Petitioner had "foreknowledge" of the killing. Rosemond, supra at 1251.

Petitioner must have been proven to "participate" in the crime of murder of a witness to prevent his testimony as if it were something that he wished to bring about and seek by his own action to make succeed. Nye & Nissen v. United States, 336, U.S. 613, 617, 69 S. Ct. 766, 93 L. Ed. 919 (1949).

J. The Errors in the Jury Charge so Infected the Entire Trial that the Resulting Conviction Violates Due Process.

To obtain collateral relief for errors in the jury charge, the degree of prejudice which must be shown is "'whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process." Henderson v. Kibbe, 431 U.S., at 154, 97 S.Ct. at 1736 (quoting Cupp v. Naughten, 414 U.S. 141, 147, 146, 94 S.Ct. 396, 400, 38 L.Ed.2d 368 (1973)). Here, that burden has been met.

Petitioner was extraordinarily prejudiced by the erroneous aiding and abetting jury instruction. The jury clearly struggled with the evidence when considering the charges relating to the Kemo murder. During deliberations, the only questions asked by the jury involved the Kemo murder. Specifically:

1) "We request help finding exhibits (audio) of conversations between Hakeem Curry and Paul Bergrin;"
2) "We request testimony be read back from Anthony Young's testimony from Monday 2/4;" and
3) "If Eric Dock's prison log is in evidence, can we review it."

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In light of the foregoing, the instructions were an unconstitutional deprivation of due process of law. The jury

was instructed to apply a civil negligence standard. Petitioner's conviction cannot stand on the basis that murder may have been a foreseeable consequence of how others might have erroneously interpreted his statements (assuming these statements were made).

For the aforementioned reasons, Petitioner's conviction must be vacated and his conviction set aside.

VI. RICO IS UNCONSTITUTIONAL

Petitioner submits that the RICO statute is unconstitutional

The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law. The Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or it is so standardless that it invites arbitrary enforcement. Kolender v. Lawson, 461 U. S. 352, 357–358.

A fundamental element of due process is that a law "must give fair notice of conduct that is forbidden or required." FCC v. Fox Television Stations, Inc., ___ U.S. ___, ___, 132 S.Ct. 2307, 2317, 183 L.Ed.2d 234, 245 (2012).

A statute that criminalizes conduct "in terms so vague that [persons] of common intelligence must necessarily guess at its meaning ... violates the first essential of due process of law." Lanzetta v. New Jersey, 306 U.S. 451, 453, 59 S.Ct. 618, 619, 83 L.Ed. 888, 890 (1939)

A. The RICO Statute is Unconstitutional.

First, RICO is vague because a "person of ordinary intelligence" is unable to understand RICO's true meaning.

Second, RICO is unconstitutionally vague because the statute delegates excessive enforcement discretion to the Executive Branch. The statute provides too great an opportunity for prosecution to exercise its powers arbitrarily and abusively.

Third, the statute violates separation of powers issues. Courts are required to do more than interpret RICO. Courts are required to legislate from the bench, in particular with regard to jury instructions. In doing so, Courts are being made to substitute as a quasi-legislative department of government.

Fourth, RICO is overly broad. Petitioner recognizes that the overbreadth doctrine is an analysis which normally applies to challenges of statutes on First Amendment grounds. The doctrine, however, is applicable to a constitutional analysis of RICO because the statute gives the executive branch too much discretion over who it will chose to prosecute in a RICO case for what and by when.

RICO casts its net too broadly. The statute permits the government to charge conduct in one indictment that it would not otherwise be able to charge but for RICO's massive and broad reach, i.e., crimes that are beyond the statute of limitations; crimes that fit a pattern; or charging attenuated criminal conspiracies and actors under one indictment.

Petitioner specifically challenges the pattern requirement for being unconstitutionally vague because the predicate acts,

or the "continuity plus relationship" test either: (1) fails to give prospective notice and fair warning to defendants, or (2) places arbitrary or discriminatory discretion in the hands of prosecutors, judges or the jury.

B. RICO is Unconstitutional As Applied to Petitioner's Case.

RICO is unconstitutional as applied to Petitioner's case. No rational jury could comprehend the instructions in this RICO mega-trial. The length of the jury charges, conflicting elements and differing burdens of proof for federal and state laws made it virtually impossible to create or apply an elements analysis.

The judge and jury were unable to apply precise standards to guide in ascertaining the offense. The jury could not reasonably be expected to apply the law of RICO to the evidence in this case. This is made abundantly clear from the unworkable and unwieldy jury charges.

Petitioner requests that the court permit the parties to submit legal briefs on this issue. There are several organizations that may seek to submit *amicus* briefs to the court.

VII. THE COURT ERRONEOUSLY AND PREJUDICIALLY FAILED TO INSTRUCT THE JURY THAT PETITIONER'S SUBJECTIVE INTENT MUST BE PROVEN BEYOND A REASONABLE DOUBT.

All facts delineated in this motion are incorporated by reference herein as if contained here in their entirety.

A. The Kemo Case was Improperly Based on what Young Perceived Petitioner to Mean without any Proof of what Petitioner Actually Intended.

The government used cooperating witness Anthony Young to testify as to alleged statements Young claimed Petitioner made during a meeting on the streets of Newark one evening. Young claimed that Petitioner met with him and at least five other gang members associated with Curry either four to five days after Will Baskerville's November 25, 2003, arrest; or on December 4, 2003, the date of the detention hearing; or any date thereafter (whichever version Young swore to and the Government falsely presented). While there are too many fabricated time sequences to decipher an accurate date, this meeting is alleged to have occurred sometime in or about 2003.

At this alleged street meeting, Young testified that Petitioner uttered words to the effect of: "Will Baskerville is facing life in prison for his sales of crack cocaine; that Will will receive a life sentence and never come home if Kemo were to testify so don't let that boy testify; that if Kemo does not

testify, Will will get bail and come home and Petitioner will win the case. No Kemo, no case."

Petitioner then left the meeting. After Petitioner left, the gang discussed Will and Kemo and made the decision to kill him. Young gave several other versions, but essentially, that was its essence.

More than three months after this alleged meeting, Kemo was shot and killed on the streets of Newark. There is absolutely no claim, allegation or evidence that Petitioner had any involvement whatsoever in the Kemo murder other than what Young claims occurred at this alleged meeting. That fact is not in dispute. The uncorroborated claims of this one and only witness is the basis upon which the government charged Petitioner with aiding and abetting and conspiracy to commit murder of a witness to prevent his testimony.

Petitioner profusely and vehemently denies that any meeting between him, Young, Curry, McNeil, and the Baskervilles ever occurred. Petitioner further denies that he ever uttered the words alleged by Young. From the facts enunciated herein; Petitioner is confident that this Court is well aware Young is incredulous and fabricated the meeting and statements. Nonetheless, for purposes of the argument espoused in this Point, Petitioner asks this Court to credit and consider what Young testified to as the truth.

B. The Esteves Case was Improperly Based on what Petitioner was *Perceived* to Mean without any Proof of what Petitioner Actually Meant.

Oscar Cordova was a paid government informant hired specifically to infiltrate the legal defense of Petitioner's client Vincent Esteves. The government's strategy was to put Cordova in a position to meet and entrap Petitioner. For six months, Cordova kept coming around and strung Petitioner along with false promises that he would pay for Esteves' legal fees and investigation expenses.[20] At virtually every meeting, Cordova pushed for Petitioner to commit criminal acts.

1. Oscar Cordova: A Pathological Lying "Hit Man" without a Gun who Pays Petitioner.

From the outset of meeting Cordova, it was obvious to everyone that Cordova was a pathological lying "poser" with serious psychological and substance abuse problems. He was caught by Petitioner and others in a multitude of obvious and absurd lies. Among those lies were that:

1) Cordova's father was "Lord Gino," leader of the Latin Kings, and that Lord Gino controlled the organization from the Supermax ADX

[20] As explained in other points in this brief, one of the reasons why joinder in this case was so prejudicial was because Petitioner could not testify in defense of some counts without being forced to give up his Fifth Amendment Right other counts.

Prison in Florence, Colorado through the use of Government telephones and his own illegal cell phone--an absurd and unbelievable claim given the well-known constant monitoring of inmates at the most secure facility in the country;[21]

2) That Cordova knew the Esteves' witnesses and related people, which was obviously false since Cordova had no clue what the witness looked like, where they were located and who their bosses were; and

3) That Cordova, a supposed high-ranking leader of the Latin Kings and the son of Lord Gino himself, needed to be provided with a gun to commit the murder(s) Cordova kept saying he wanted to commit, which Petitioner refused to supply.

Cordova told these and many, many more outlandish lies not just when he met Petitioner but when he testified. For example, Cordova was allowed to testify before the jury that he was afraid to testify in Petitioner's trial because he had received death threats---clearly leading the jury and everyone to believe that Petitioner was behind these threats. The government made no attempt to investigate Cordova's claim before he was placed on the stand.

After testifying, the Marshalls looked at Cordova's phone and immediately determined that Cordova had called the death

[21]If the government claims continued ignorance of this blatant lie, Petitioner asks this court to compel the government to produce Cordova's birth certificated and compel the testimony of Cordova's mother's as well as Gustavo Colon, Inmate Reg. No. 07984-4424, who remains in federal custody at the ADMAX USP in Florence, CO. serving a life sentence.

threats in on himself. Only after the Marshalls called this to the attention of the AUSAs trying the case did Cordova's lie get exposed. But by the time, the seed had been planted and the damage had been done. Despite the alarm, wasted law enforcement resources and immutable prejudice caused by Cordova and the government's failure to investigate, Cordova was never prosecuted for this crime. And the court did not declare a mistrial.

In addition to eliciting this reprehensible testimony from Cordova, the government still, to this day, has not corrected Cordova's perjured testimony that he was the son of Lord Gin, a claim which lent credence to the government's theory that Cordova was perceived as an actual "hitman" from anyone.[22]

For six months, Cordova kept putting off giving Petitioner the needed legal fees for Esteves' case so he could have a reason to continue reaching out to Petitioner. While Cordova kept promising to pay for Esteves' legal fees, Cordova repeatedly suggested to Petitioner that witnesses be killed and that Petitioner purchase narcotics. None of these events ever

[22]Nor has the government disclosed the ongoing payments the government regularly paid to Cordova him; his history of psychological problems and pathological lying; psychiatric medications Cordova was taking; the other cases in which he testified; the cases in which there also were claims of Cordova manipulating recording devices by such using his own recording device, editing the recordings and then replaying them into his government recorder; the fact that his failure to make child support payments was overlooked; the crimes the government allowed Cordova to commit which were not part of his assigned operation; and the times the government interceded to prevent Cordova from being charged by local law enforcement.

occurred; nor can it be argued that they were ever attempted; nor were they even close to happening.

There always were conditions placed on each request made by Cordova which Petitioner refused to meet. For instance, Cordova pleaded for a description, photo and location of witnesses; none was never provided. And, despite Cordova's constant urging, Petitioner never took action to provide Cordova with a gun. None of the conditions precedent ever were fulfilled to assist Cordova or further his scheme.

C. The Jury was Erroneously Instructed to Consider Others' Perception of Petitioner's Words as Proof of his Intent.

Throughout the trial, the government argued vehemently to the jury that they should use "*objective*" reasoning to determine Petitioner's state of mind to prove his specific intent. The court and government implored the jury to use their "*common sense*" and what a "*reasonable person*" would believe by Petitioner's statements.

The only evidence the government relied upon to prove intent was Young's testimony --*Young's belief*-- of what he thought Petitioner meant when the statements allegedly were made at this meeting one winter evening on the streets of Newark.

The government also used cooperating witnesses Pozo, Moran, and Williams to attempt to prove intent by having these

criminals interpret what they believed Petitioner's statements to mean. The government did the same with the Cordova case.

D. In Elonis v. United States, the Supreme Court Rejected an "Objective" or "Reasonable Person" Interpretation Standard to Prove Criminal Intent.

In the Supreme Court's recent decision of Elonis v. United States, the Court held that it was reversible error for the court to instruct the jury that the government only needed to prove how a "reasonable person" would interpret the defendant's statements. 135 S. Ct. 2001, 192 L. Ed. 1, 2015 U.S. LEXIS 3719, 83, U.S.L.W 4360, No. 13-983 (2015),

In Elonis, the defendant was convicted of "threatening communications." He posted degrading and violent remarks on Facebook about his ex-wife and others. He wrote that "he wanted to kill his wife;" that someone should kill his wife; that someone should fire a mortar launcher at her house; that the judge in his matrimonial case deserves a bullet; and that "hell hath no fury like a crazy man in a kindergarten class." He further posted his intent to slit his ex-wife's jugular and use explosives. The communications were disturbing, alarming, and, if viewed objectively, undoubtedly threatening.

At trial, the court in Elonis, like the one in Petitioner's case, instructed the jury to use their judgment as to what a "reasonable person" would understand from Petitioner's words and

actions. In considering the issue, Supreme Court found that a reading of dictionary definitions of the words used by Elonis clearly conveyed a threat; however, the definitions only speak to what the words convey and mean literally; they do not prove the mental state of the author. Id at 10.

Wrongdoing must be conscious to be criminal. Morissette v. United States, 342 U.S. 246, 250, 72 S. Ct. 240, 96 L. Ed. 288 (1952). Justice Jackson, in Morissette, wrote that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea*, scienter, malice aforethought, guilty knowledge and the like. Id. at 252, 72 S. Ct. 240, 96 L. Ed. 288; 1 W. La Fave, Substantive Criminal Law § 5.1, pp. 332-333 (2d ed. 2003). A defendant must know and intend the facts which make his conduct a criminal act. Staples v. United States, 511 U.S. 600, 608, n. 3, 114 S. Ct. 1793, 128 L. Ed. 608 (1994).

In Morissette, for example, the defendant had taken spent shell casings from a government bombing range, believing them to be abandoned. During his trial for "knowingly converting" property of the United States, the Judge instructed the jury that the only question was whether the defendant had knowingly taken the property without authorization. Id. supra. at 248-249. The Court reversed the defendant's conviction, ruling that he had to not only know that he was taking the casings, but that

someone else still had the property rights in them. He could not be held liable "if he truly believed the casings to be abandoned." Id. at 271, 72 S. Ct. 240, 96 L. Ed. 288; see Id. at 276, 72 S. Ct. 240, 96 L. Ed. 288.

The highest court of our land has consistently interpreted statutes to ***require a defendant's knowledge*** that his actions were criminal or that ***he intended the criminal consequences*** from his acts. They would never permit a "broad range of innocent conduct" to sweep individuals into criminality. Liparota v. United States, 471, U.S. 419, 420, 105 S. Ct. 2084, 85 L. Ed. 2d 434 (1985). Id. at 426.

Another example is the Supreme Court's holding on Posters "N" Things, Ltd. v. United States, 511 U.S. 513, 114 S. Ct. 1747, 128 L. Ed. 2d 539 (1994). There, the Court interpreted a federal statute prohibiting the sale of drug paraphernalia. The Court considered whether the items seized qualified as drug paraphernalia was an objective question which did not depend on the defendant's state of mind. Id., at 517-522, 14 S. Ct. 1747, 128 L. Ed. 2d 539. In other words, whether the mere possession of the items which were considered drug paraphernalia under the law was sufficient to convict without proof that the defendant knew that the items were likely to be used as paraphernalia.

The Court held that an individual could not be convicted of selling such paraphernalia unless he "knew that the items at

issue were likely to be used with illegal drugs." Id. at 524, 14 S. Ct. 1747, 128 L. Ed. 539. Such a showing was necessary to establish the defendant's state of mind. (emphasis added)

The burden imposed upon the prosecution is to prove, beyond a reasonable doubt, that a defendant was not legally innocent, but that his conduct was wrongful. X-Citement Video v. United States, 513 U.S. 64, 70, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994). Requiring only that a defendant act knowingly "would fail to protect the "innocent actor." Carter v. United States, 530 U.S. 255, 269, 120 S. Ct. 2159, 147 L. Ed. 2d 203 (2000). The "presumption in favor of the scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." X-Citement Video, 513 U.S. at 72, 115 S. Ct. 464, 130 L. Ed. 2d 372.

Although the statute at issue in Elonis pertained involved a charge of making threatening communications under 18 U.S.C.S § 875 (c), its holding is not limited to "threatened communication" cases. The basis of the Court's decision to reverse Elonis's conviction was a First Amendment analysis. The essence of the Court's holding is that speech, no matter how offensive it is or how it is interpreted by others, cannot be criminalized without proof of the speaker's intent.

Accordingly, the holding and analysis in Elonis' applies to cases where intent and mental state is an element of proof, and,

in particular, where the criminal act charged is based upon words used by a defendant. Such is the case here.

To limit Elonis's holding would improperly result in "having liability turn on a 'reasonable person' standard" and "permit[ing] criminal convictions [to be] premised on mistakes--mistaken assessment by a speaker about how others will react to his words." United States v. Houston, 2015 BL219153, 6th Cir. No 14-5295 (6th Cir 2015).

E. Instructing the Jury to Apply the Wrong Standard of Proof of Intent Extremely Prejudiced Petitioner, Infected the Entire Trial, and Undermined Confidence in the Jury's Verdict.

The facts in Elonis are analogous to the facts, sub judice. In Petitioner's case, the prosecution and Court took words, without action or other proof of intent, and clearly argued and instructed the finder of fact to apply a "reasonable person" standard -- a burden of proof unequivocally impermissible and in contravention of law. Staples, 511 U.S. at 606-607, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (quoting United States v. Dotterweich, 320 U.S. 277, 281, 64 S. Ct. 134, 88 L. Ed. 48 (1943).

The district court had a *sua sponte* obligation to correctly instruct the jury on the elements of proof. But the Court consistently and improperly directed the jury to use their "common sense," and "objective reasoning" in their understanding

of the facts and to and what a "reasonable person" would believe by Petitioner's statements on the Kemo and Cordova-Esteves' cases."

The Court failed to specifically instruct the jury, that they must consider *Petitioner's subjective intent*: What did Petitioner mean? What did Petitioner intend? And, if the government failed to meet their burden of proof beyond a reasonable doubt in proving Petitioner's intent/intended conduct; they must acquit him. Had this charge been given, it would have resulted in Petitioner's acquittal.

In both the Kemo and Esteves' cases, *Petitioner's* intent was the most critical element to be proven in the case. Improperly instructing the jury on the requisite *mens rea*, scienter, and culpability had fatal consequences for Petitioner's defense.

With regard to the Kemo related counts, it is not disputed that Petitioner was NOT present, consulted nor cognizant of what was decided AFTER he left this alleged meeting. The fact the decision occurred out of Petitioner's presence is probably the only consistent fact in all of Young's testimony at the various trials. The government does not refute this fact. It would be a travesty of justice to wrongfully permit Petitioner's conviction to rest upon Young's perception of what Petitioner intended.

This is precisely why the government had Young originally testify that Petitioner used the word "kill;" a clear subornation of perjury. The conflicting testimony in the 2007, 2011 and the 2013 trials leaves complete ambiguity in how the words could be interpreted. But the jury was not properly instructed that the mere statements were not, by themselves, sufficient proof to convict, regardless of how they were interpreted by listeners or the effect the statements had on others' decisions and actions.

In considering if the government met its burden of proof, the jury should have been instructed that it needed to find sufficient evidence of Petitioner's subjective intent. The jury should have been instructed to consider if the government's evidence proved, beyond a reasonable doubt, *Petitioner's mens rea* and *scienter -- the specific intent requirement of the substantive offense*. Using another person's interpretation of Petitioner's words and the effects of those words is just not enough under the law to prove criminal culpability.

Improperly instructing the jury to apply an objective or "reasonable person" standard was an error of constitutional magnitude. If the jury had been properly instructed, Petitioner would have been acquitted as the facts, his conduct, and his inaction exculpated him.

Because the jury was erroneously directed to apply the objective legal standard of intent, Petitioner's convictions must be set aside.

VIII. THE GOVERNMENT OBSTRUCTED JUSTICE, COMMITTED OUTRAGEOUS MISCONDUCT, SUBORNED PERJURY, PROVIDED FALSE AND MISLEADING TESTIMONY AND EVISCERATED THE CONSTITUTION'S DUE PROCESS CLAUSE.

I, Paul Bergrin, do hereby swear to the accuracy of these facts under penalty of perjury.

Bergrin hereby incorporates by reference all facts delineated within this post-conviction relief petition. More importantly, he incorporates by reference the 28 U.S.C. 2255 motion, affidavit in support of motion and reply brief filed by William Baskerville, in the United States District Court, District of New Jersey, Civil No.: 13-5881; including submissions dated November 23, 2015, and filed before the Honorable Judge Peter G. Sheriden, United States District Court, District of New Jersey and entitled Pro-Se Supplemental Letter Brief.

With this motion, filings and submissions, this Court will bear witness to the most outrageous acts of governmental misconduct observed in its illustrious career. This case is laden and riddled with extraordinary incidents and violations of the Constitution's Due Process Clause, Rules of Professional Responsibility and suborned perjury. The knowing and deliberate use of false, fabricated, and contrived testimony is inordinate; and acts of misconduct disheartening.

The objective evidence that this motion point will conclusively establish, I pray will not only reverse Bergrin's convictions, but will compel this Honorable Court to present its findings to the Office of Professional Responsibility and Inspector General, Untied States Department of Justice.

Assistant United States Attorney and lead prosecutor against Bergrin, John Gay, failed to meet his Title III statutory obligations, during a wiretap investigation of Hakeem Curry (Curry Investigation) and Ishmael Pray, resulting in suppression of thousands of conversations and making them legally inadmissible. There were approximately 40,000 wiretap recordings during the course of the Curry investigation. Again, the targets of the investigation were Curry and Pray and their alleged narcotics trafficking organization and there was not one (emphasis added) conversation, chatter nor clandestine discussion depicting any meeting with Bergrin, subsequent to William Baskerville (Will's) arrest on November 25, 2003 as described and testified by Anthony Young (Young).

There exists not a shred of evidence Bergrin ever attended a meeting with Young, Curry, Rakeem, and Jamal Baskerville (Rakeem-Jamal), and Jamal McNeil; or that he ever advised, counseled or informed this group that ("No Kemo, no case); without Keno as a witness, the government would not be able to

prosecute Will and he would thus receive bail, go home and Bergrin would win the case.

Moreover, there is not a scintilla of evidence of this meeting being held and/or Bergrin ever stating Will would receive life in prison for his de-minimis sales of small quantities of crack cocaine. The sole and exclusive witness inculpating Bergrin in Kemo Deshawn McCray ("Kemo") murder was the word of Young.

As absolute facts: The recorded evidence contained in the interceptions, clearly, unequivocally and categorically prove that Young lied during government proffer sessions; perjured himself at trial; contrived and manufactured evidence; distorted facts; was wrongfully and illegally coached to lie, that testimony was suggested and he was suborned by the federal prosecutor's to commit perjury; and this created blatant material (emphasis added) inconsistencies in his testimonies, that would be clearly visible to any prosecutor or law enforcement agent.

Despite acute knowledge of misconduct and wrong doing by its exclusive witnesses, that was objectively apparent through actual recorded conversations, the government became a party to the subversion of justice and became intertwined with this outrageousness; thereby trampling Bergrin's Constitutional rights to Due Process of Law and any semblance of a fair trial.

This may be their justification for intentionally burying the CDs containing the Curry investigation recordings amongst 20,000 plus pages of discovery and misrepresenting to all concerned that there is no Brady nor Giglio material in the recordings and it would be a waste of time to review them. THE GOVERNMENT KNEW THE EXPLOSIVE SUBSTANCE OF THE RECORDINGS AND THEIR MONUMENTAL IMPACT ON THE CREDIBILITY OF THEIR CASE. (emphasis added)

The government abdicated their obligation to seek justice and perform within the parameters of the law and Rules of Professional Responsibility. Their flagrant and incessant failure to turn a "blind eye" and ignore the incredulous statements and inconsistencies resulted in a grave miscarriage of justice; which must be remedied as a matter of law, by this Honorable Court.

Moreover, this Court will become acutely aware of the deliberate disregard of the truth seeking process by the government's failure to investigate, ascertain the truth, and appalling misrepresentation of evidence.

Bergrin submits that the Kemo prosecution was so inflammatory and prejudicial to him and the Indictment that these overwhelming accusations, controlled and caused the guilty verdicts in all the other counts. The government knew the effects the Kemo prosecution would have on obtaining a guilty

verdict on the other counts of the indictment and their objective, was to present evidence on it.

Preliminarily, the following interceptions, not summarized in previous motions, (emphasis added) establish without any doubt, that Young lied and fabricated his knowledge and evidence in this case; from the date it evolved and commenced.

The prime date is November 25, 2003, the date of Will's arrest, search of his home in Westfield, New Jersey, seizure of all his and his wife Deidre Baskerville (Deidre) motor vehicles and R. 5, Fed. R. Crim. P., Initial Appearance. This Court must be cognizant of the Star Ledger newspaper articles that resulted from this case; especially the one attached hereto which includes the substance of a communication between Bergrin and Curry, on November 25th wherein the name "KEMO" was used.

The Curry intercepts establish to an absolute certainty (emphasis added), Young manufactured evidence.

(a) Young repeatedly testified that he attended a meeting, on November 25, at approximately 0930-1000 hours, at the home of Jamal Baskerville, 17th Street and Avon Avenue, Newark, New Jersey. Also in attendance was Curry, Rakeem, Jamal McNeil, and Deidre Baskerville. The objective of this meeting was to discuss Will's arrest by the FBI that morning, whether they will also be arrested and how best to help Will. He even went as far as to testify that he entered Rakeem's van with Deidre and Rakeem,

leaving all the others alone on the sidewalk to privately discuss Will's dilemma; and that Deidre was laughing and had to be scolded by Rakeem. He began this testimony at the Baskerville trial in 2007, T. 4341-4343 and it continued through Bergrin's trials.

What is pre-eminent in these facts is that their false accusations caused multiple witnesses to assert their 5th Amendment right against self-incriminations (RIGHTS); thus precluding Bergrin from calling them as defense witnesses to dispute Yong's credibility. Even though the government possessed evidence Young was falsifying evidence, they assisted in its presentation and refused to grant immunity to any witness; which was simply unjust, unfair and illegal.

Young testified that Curry commenced contacting Bergrin, in Young's presence at 10-10:30 a.m. to ask Bergrin to check on Will, as Curry was concerned and worried. He also wanted Bergrin to get Will bail. Baskerville, T. 4349-4350. Young repeatedly proffered and swore, that he, Curry and Rakeem were all present in Curry's Range Rover vehicle each time Curry spoke to Bergin that morning and AGAIN AT 4:00 p.m. (emphasis added).

Young testified that Curry placed the Bergrin calls on speakerphone, so they could overhear the conversation. He later changed this proffered and testified to facts about the

speakerphone; to Curry repeating in his and Rakeem's presence in the auto, the substance of Bergrin's comments.

Young swore that Curry had the Range Rover parked on 17th Street and Avon Avenue, Newark, New Jersey at the time he and Rakeem were inside and listening to Curry repeat the conversation. He further swore he heard Curry repeat the name "KAMO" and it was HE and RAKEEM whom figured out exactly who "KAMO" was; and it was actually Kemo. He said that at this moment he made the decision to get rid of Kemo because he informed against a Baskerville (Baskerville, T. 4349-4353) (Emphasis added). Young further clearly testified that Curry informed him at this time, that Will was facing life in prison.

The recordings prove:

That Young, Curry and Rakeem were never present together during any conversation November 25, 2003, and were never in Curry's Range Rover that day. Most importantly, Young never deciphered with Rakeem that "Kamo" was in fact Kemo Deshawn McCray and no determination was ever made by Young, nor anyone else at the time, to get rid of Kemo. Young contrived his presence in Curry's vehicle, Rakeem's presence in the vehicle and the fact that they all sat in Curry's Range Rover automobile on 17th Street and Avon Avenue, Newark.

This began a progression of lies, fabrications and incriminations. Young incriminated Bergrin and Rakeem and caused

innocuous, harmless conversations and information that was informative, into a criminal murder indictment.

Additionally, the recordings established that there was never any meetings the morning of November 25th with Young, Curry or anyone else. This was completely contrived by Young.

What is deplorable and despicable is the fact that Young did not contact the FBI to cooperate until after he was arrested for weapons offenses as a career criminal. This was approximately nine (9) months subsequent to Kemo's murder and a plethora of newspaper articles detailing the killing; including Bergrin's conversations with Curry and the name "Kemo." The government was aware of these facts and the recordings evinced that Young was lying and they endorsed it and let him testify.

November 25, 2003

(a) The recordings from 11:58:58 a.m. to 12:08:19, calls 09218-09228, clearly prove Curry was at home and that he never left his home until after 12:00 p.m. At this time he was heading directly to his store "The Closet," in Union, New Jersey. Henceforth, there was no meeting at the Baskerville residence with Curry and others to discuss Will, there was no concern by Curry about Will's arrest and Young was never present during telephone conversations, as he described and swore under oath. (T. 4343 Baskerville)

(b) The recordings evince that on November 25, Curry had no information nor contact with anyone pertaining to Will's early morning arrest, until approximately 12:30 p.m., when he was telephoned for the first time by Maurice Lowe a/k/a "Face." Call no. 09241 at little past 12:30 p.m. clearly reflects Lowe speaking to Curry and the following conversation occurring. Lowe asking Curry, "Did you speak to Hamid (Hamid Baskerville, Will's brother)? Curry, "No. What happened?"

Lowe advises Curry that he spoke to Hamid and was informed that "the boys with the three letters got Walee Cheeb (Will)". (The boys with three letters obviously meaning FBI). Curry then inquiries from Lowe "Where had William Baskerville been arrested". Lowe states, "That he did not know because someone else called Hamid and told him this, but Hamid did not know, where Will was arrested or what happened." (Emphasis added).

Despite conclusive proof in the government's possession that Young was manufacturing and contriving material facts, which may have inculpated multiple parties, they ignored this completely. They knew Young was not present with Rakeem in Curry's vehicle as he testified. They knew there never was a meeting between Curry, Hamid, Rakeem, Deidre, Hanif, Jemal McNeil and Jamal Baskerville nor anyone else on the morning of

November 25th and at the Baskerville residence. They knew Young never heard nor observed Curry contact Bergrin in the morning, nor was Young present with Curry and Rakeem or anyone else, to overhear any conversations between Bergrin and Curry. They knew that Young had to have learned facts from reading newspaper accounts and overhearing other conversations. They also possessed proof that Deidre never showed up, for any meetings, laughed and was chided by Rakeem.

With all these proofs, Prosecutor Minish summarizes the government's case to the jury and argues, "Then he (BERGRIN) said that Will told him the informant is a guy named K-Mo. Then what happens? Anthony Young and Rakeem Baskerville (corroborating and vouching for Young's contrived and false allegations that Curry, Young and Rakeem were present in Curry's Range Rover), overheard the Bergrin call and figured out who the informant was. (Emphasis added). Young tells you, said K-Mo no you mean Kemo, Okay, can you imagine Anthony Young making that up, that detail?" T. at pages 5713.

The government improperly and continually argued to the jury that they had to treat Young, because he could not have known certain facts, unless he was present and witnessed them; all the time having evidence that was false and that all these facts appeared in the newspaper, which Young acknowledged he had read. This tactic undermines the equity of seeking justice and

the truth, which is underlying foundation of due process. Again, by Young testifying to the process he used to identify Kemo with Rakeem, he was attempting to make innocent, defense attorney obligation of informing family members as to the substance of a Criminal Complaint, and all parties involved, into a nefarious motive; when all parties assistance his creditability of learning facts from the parties. When all parties know this could not be true.

On November 25, at 1:22 p.m., call no. 1339406, places Curry, still inside his home and having never left. He also advises the caller that he plans on attending a New York City concert that evening and that he is leaving for North Carolina tomorrow (November 26) for the remainder of the Thanksgiving holidays (Emphasis added).

Call no. 711475 at 1:31:26 Hanif Baskerville as the caller and, another one of Will's brothers, whom was allegedly at Young's contrived morning strategy meeting. This call is important, not only because it again proves Young lied about Hanif also being at the meeting, but Hanif is informing Curry of Will's arrest and Curry is surprised to learn the details.

Even though these calls are clear, the government through their direct examination of Young, encouraged him to perjure himself about having an important strategy meeting on November 25, in the morning at the Baskerville residence, about Curry's

and Rakeem's reactions, plans and comments upon hearing from Bergrin and about Young's connections to all the alleged integral parties. T. 4350 - 4360, Baskerville.

The government knew from interceptions that Curry not only remained home past 1:00 p.m. but that he was not even in possession nor driving his Range Rover vehicle on this date. Call no. 09266, at approximately 1:00 p.m., call no. 09272 at 1:37 p.m. and calls 09273-09282, ending at 1:50 p.m. all prove Young was never in Curry's vehicle and driving around with him, from the time of the morning meeting to Bergrin's approximate 4:00 p.m. call. As a matter of fact the calls reflect that Curry left his home and drove to his store in Union, New Jersey where he awaited Pray to pick him up.

Calls 09302-09343, commencing at approximately 2:40 to 3:44 p.m. also proves Young was not truthful when he testified he was sitting in Curry's Range Rover, on 17th Street and Avon Avenue, Newark, by the Baskerville residence and had spent the day with Curry. T. 4350-4353. Young was fabricating and exaggerating the closeness of his relationship to Curry, the Baskerville's and this cause. This way he could establish credibility when he lied about his vast knowledge of Kemo plans and him being the assassin of Kemo. The government knew all this evidence was untruthful and with almost 40,000 interceptions, not one contained any party conversing with Young nor even mentioning

his name; they knew he was not close to the Baskerville's nor Curry and they would never confide in him, unless they created this aura of nexus Young began with Curry and the Baskerville's.

Despite the government's proof that Curry was obtaining a hair-cut at a barber shop, next to the Boston Market on Central Avenue, East Orange, New Jersey (Calls numbers, 09302 to 9943, commencing at 2:40 p.m. and continuing to almost 4:00 p.m.), they continue to promote and endorse Young's lies and blatant perjury. They know, with certainty that Young was not with Curry during his conversation with Bergrin at approximately 4:00 p.m. The government had these conversations, their transcriptions and even summaries in the palm of their hands; but they continued in their suborning of Young's perjury. Young vehemently and unhesitatingly swore before jury after jury that he was seated in Curry's Range Rover with Rakeem when Bergrin called Curry, upon leaving federal court. That he was heard Curry repeating Bergrin's explanation of the allegations, the name Kemo, the figuring out the informant was Kemo, etc. Bergrin brings up this point in excruciating detail again because it took Bergrin's confrontation with Young, during cross-examination and Young's viewing of a call summary, before he admitted it was <u>not</u> Rakeem in Curry's Range Rover but Jamal. Young never acquiesced in inculpating Rakeem, until Bergrin proved he was lying. Call numbers 09351-09365 from 4:02 p.m. to 4:21 p.m., prove he was

contriving his story about Rakeem. This government knew this fact was false but did nothing about Young's perjury and actually solicited it, through their examinations and arguments. They further knew that call number 09354 at 4:10 p.m., minutes after the alleged conversation with Bergrin, evinces a conversation between Curry and Pray, with Curry waiting to be picked up by one Norm, aka Howard Sanders, They knew Curry was with Young on November 25 late afternoon.

Further recordings of the wiretap, concluded that Young also fabricated Hamid Baskerville's presence at the fictitious early morning meeting. It further enforces the crucial fact that neither Curry not the Baskerville brothers of Will, had any clue whom Kemo was; Proving Young never figured out whom KEMO was with either Rakeem or anyone else that all Young's testimony about him and Rakeem knowing Kemo was false. At 4:24 p.m., Curry is intercepted conversing with Hamid and telling him, "I have not seen nor heard from you all day." (Emphasis added). Most importantly, Curry tells Hamid he has no idea who this Kemo is, thus dismissing Young's testimony that he and Rakeem advised Curry as to who the informant was; after hearing Bergrin's call at 4:00 p.m. Specifically, Curry states: "Who the FUCK IS KEMO OR SOME SHIT." Hamid replies, "I don't know who the fuck is that." Curry most importantly states; "I AIN'T TALK TO NOBODY. I talk to Roc (Rakeem Baskerville) for a hot minute. Curry then

states: Paul Bergrin read me five dates of sales and surveillance, it’s like five different dates he seen the guy. The guy (Kemo) started with 5, then 16, then 28 and then something else." Curry then continues, (MOST VITALLY CRUCIAL), I'M SITTING HERE IN MY CAR BY MYSELF, thinking about shit just waiting...for Norm to come. (Emphasis added._) Curry also recounts his whereabouts and what he did on this critical day of 25 November and until the call with Hamid; which occurred minutes after Bergrin. Curry informs Hamid he left his jacket in PRAY'S RENTAL CAR (NOT THE RANGE ROVER and then got a haircut. (Emphasis added). (Call number 4461206 at 5:34 p.m. Young just cemented everything he did, heard and witnessed on November 25.

Bergin cannot begin to accentuate the significance and magnitude of these last several conversations. They conclusively prove Young's perjury and the government's subornation. The problem is the government's international misconduct and outrageous use they made of this false evidence. They wrongfully used these facts to not only incriminate Bergrin but to misleadingly convince the jury of Young's special relationship with the Baskerville's and Curry. They also used it to lead the jury to believe Young's presence with the Baskerville's and Curry and especially Rakeem and his hearing of these communications, enable him to decipher Bergrin's intent.

Finally, as it pertains to the data of 25 November and in a succession of calls, number 09396 at 4:53 p.m., Curry specifies that he was driving a blue HONDA ACCORD motor vehicle, and not a Range Rover, as Young just completely contrived. What may appear insignificant is important because it shows that Young just consistently made up facts and was never checked by the prosecutor. For instance, call 09298 at 1:24 p.m., is magnanimous in that Bergrin advises Curry that bail is not a possibility for Baskerville, in these kind of cases; thereby discrediting their theory and Young; that Bergrin promised to get Will bail and win the case. This call also not only informed Curry of his cousin Will's complaint allegations, but the statutory maximum of LIFE in prison; and the overwhelming evidence against Will for conviction. Again, the compelling materiality of this call confronts Young with rampant perjury and the government's subornation. Young swore at every Bergrin trial that he and all the alleged participants of this Bergrin meeting, were shocked and awed that Will faced life in prison until Bergrin informed them at this street meeting. This was the first time they became aware of the consequences; but the recordings conclusively prove otherwise. The government then used this perjury to establish Bergrin's involvement to save Will from life in prison.

This Court must view the nature of this recording and its effect on Young's verdict and the government's proofs. The government firmly contended that once the participants of Bergrin's meeting learned Will was facing life, they decided to kill Kemo. This decision was reacted upon Bergrin leaving the session when Young swore in 2007 that Curry advised him Will faced life on 25 November in Curry's auto and on this same date he decided to kill Kemo. The dichotomies are just too great and contradictory. This Court must also consider the fact that Bergrin advised Curry during the recordings of the overwhelming evidence verses Will and, thus, that the case could be easily proved independent of Kemo. It is just one incident after another of falsities and a trial process that was contravened.

Other calls succeeding Curry's conversation with Bergrin never considered the truth searching process. Call 3496671 at 5:05, has Curry contacting Rakeem to ask him "Who is some guy named Kemo?" This call occurred within minutes of the second and final communication on 25 November between Curry and Bergrin. It again supports the proposition that the government knew and permitted Young being in Curry's vehicle when Bergrin called (2) about Young and Rakeem deciphering and knowing KEMO's identity as Kemo McCray. A story Young gave during all his proffer sessions and sworn testimony in 2007. Repeatedly, the government had "actual knowledge." Young was lying because Gay, referred to

conversations between Curry and Rakeem in a 2004 motion to recuse Bergrin's representations of Will. There was no confusion that Rakeem never knew me determined who Cam was. Rakeem made it clear in this interception that he did not know KEMO nor KEMO, when he tells Curry. "I DON'T KNOW HIM. I THINK HE'S FROM IRVINGTON." Rhetorically, how can the government permit Young to testify that Rakeem knew Kemo, identified him along with Young in Curry's Range Rover on November 25, while possessing this recording.

Curry contacts other family members of Will and informs them of the change and statutory maximum of life on November 25, not at some street with Bergrin.

In the government's intentional abandonment of seeking justice, they used Young to create the false impression that it was Bergrin whom intimidated, coerced and influenced this group to take action against Kemo and save him from a commitment of life in prison; when this was purely fiction.

Additional intercepted telephone conversations, are known by federal prosecutors corroborate Bergrin's accusations of outrageous government misconduct.

On 26 November, at 4:30 p.m. (approximately), call number 231475 between Al - Hamid and Curry confirms that Curry is on his way to Bergrin's OFFICE (emphasis added), to find out what is happening with Will and his case. It is Will's first cousin

and closest blood relative Curry whom is seeking information for Will's mother, wife and brothers.

This call is less than 24 hours from the time of Will's arrest and clearly depicts that it would be absurd for Bergrin to hold any other meetings, besides this one and at his office; especially one in the middle of a high narcotic, heavily patrolled by law enforcement area, as described by witnesses. (17th Street and Avon Avenue) Call 12778, at 5:00 p.m. is of Bergrin advising Curry he will be at his office in 15 minutes.

Curry met Bergrin in his office, 572 Market Street, Newark, New Jersey and they discussed Will's case; especially Bergrin expert opinion as to the sentencing exposure of Will; the subsequent recordings conclusively discrediting Young as to any street meeting, subsequent to December 4, wherein Bergrin informed this alleged group, Will would receive life in prison and to not let Kemo testify. This Court must also accept the fact that Bergrin, as an experienced former State and Federal Prosecutor and distinguished defense counsel, and would understand the magnitude of that Will make 5 hand to hand crack sales, to an informant, under constant surveillance by police and wearing a recorder. Moreover, the transactions were set up with recorded conversations and videotaped. Consequently Kemo's lack of testimony would have absolutely no impact on the resolution of Will's case.

Call number 995926, at approximately 5:40 p.m., Curry informs his confident and ally Jarvis Webb, an alleged organization superior, that he has just left Bergrin's office where he discussed Will's case. Jarvis asks Curry, what did Bergrin say and Curry responds: "I asked him what kind of time Will faced and he said 20 years." Curry then said to Bergrin, "What's he really facing and Bergrin states about (12) twelve years." Bergrin then explained that Will sold a total of about 100 grams of crack cocaine. Jarvis informed Curry, "that Will would only have to serve about 10 total years on a 12 year sentence. No one ever expected, anticipated nor ever discussed Will doing life, as reflected in the "spoken word" of the recording. Only the devious, scheming mind of Young and the government.

This Court cannot see how not only did Young fabricate, contrive and perjure himself about the entire chronology and progression of what took place on November 25; but also as to a meeting on 17th Street and Avon Avenue with Bergrin, hearing for the first time at this phantom meeting Will was going to be sentenced to life in prison, that without Kemo there would be no government case for prosecution, that Bergrin intended to go to trial in this case and that the meting occurred 4-5 days after Will's arrest or on December 4, alternatively.

The government was cognizant of 244,900 at 6:56 hours wherein Curry is on his way to North Carolina for the Thanksgiving holiday; yet they never queried Young as to his proffer assertion and sworn trial testimony of this Bergrin meeting 4-5 days after Will's arrest.

In an attempt to cover up Young's blatant and incessant perjury and their own misconduct, the government had the audacity to plead with the jury, during summation in Bergrin's case to accept December 4, 2003, as the date of this meeting with Bergrin; and just forget about Young's one and a half years of proffers and cooperation statements that it occurred 4-5 days after Will's arrest; and also his sworn trial testimony in Baskerville. They then continued in their outrageous misconduct argued in summation, that the telephone records confirm the 4 December date; knowing this was absolutely inaccurate and relying on Bergrin's ignorance as to the substance of the recordings.

December 4, 2003, was the date of Will's detention hearing, and several hours after the hearing, Bergrin was recorded telling Curry Will was detained and all bail applications denied. The call to Curry was at 7:15 p.m. and Bergrin stated: "the evidence is very strong against Will and Will was realistically looking at one approximately "13 years plea deal"; (in which he would only do about 10 years in custody). The same

as previously discussed between Bergrin and Curry. Bergrin also tells Curry he would call him tomorrow. Additionally, in post-trial motions, the government conceded and stipulated that no meeting occurred on 4 December, as they wrongfully argued during summation.

Henceforth, only one conclusion can be reached as to why Young completely charged his proffered statements and prior testimonies, to the new 4 December date; that logical conclusion is wrongful coaching and suborned perjury by the government. This was a deliberately calculated by prosecutor's to cover-up the proofs which establish that Bergrin had the proofs to discredit Young's 4-5 day after Will's arrest and December 4 date.

Additional recordings dated 7 December 2003, 18 February and 20 February 2004, were possessed by the government as intercepted conversations and expressed the following:

(a) That Rakeem was disappointed and disgusted at Bergrin sharing information on his criminal file, with a third party. As a matter of fact on this date 7 DECEMBER 2003, (emphasis added), Rakeem is interrupted emphatically advising Curry that "he ain't using nor fucking with Bergrin anymore." Rakeem is very upset. What is pertinent is if the government conceded there was no meeting on December 4 and absolutely no evidence of any meetings on the 5th or 6th of December, then Bergrin's excoriation and

alienation by the parties, further facilitates the fact there never was a Bergrin meeting. Additionally, this Court can assume there is no chance of Curry and Rakeem breaking all ties with Bergrin if he had knowledge of a murder conspiracy.

On February 18, 2004, two short weeks before Kemo's murder, call 1032806, reflects Curry advising an unidentified black male not to use Bergin as an attorney because Curry, "AINT FUCKING WITH BERGRIN ANYMORE; HE DOES NOT TRUST HIM." The icing on the case as to Bergrin's innocence and the never being any meeting is an intercepted wiretap call on 20 February 2004, call number 1203305. In this call, Curry is infuriated with Bergrin and berates him for taking money from clients and doing nothing but "PLEADING GUILTY." (Emphasis added). Also, that Curry wants "BERGRIN OFF WILL'S CASE."

There can be no greater proof of outrageous government misconduct, suborned perjury and constitutional violations against Bergrin. The word of Curry is crystal clear. Bergrin would never advise anyone to murder or get rid of Kemo under these circumstances; nor would Curry trust him. It is inconsistence with logic and unrealistic. This is firm proof Bergrin always intended that a plea of guilty was in Will's best interests, that he was never trusted by these individuals and there was never any secret plans and meetings, to do violence to

Kemo; there would be negative consequences and absolutely no benefits.

The government's outrageous misconduct and violation of Bergrin's Due Process Constitutional rights were highlighted by their failure to investigate the causation and existence of an inordinate amount of atrocious material inconsistencies in Young's proffers and then trial testimonies Bergrin implores this Honorable Court to be cognizant of the fact that Young met with the FBI for the first time in January, 2005 and wrongfully misidentified Jamal McNeil as the murderer of Kemo. Furthermore he positively identified him through a photo and expressed a willingness to testify against him, even if it meant McNeil receiving the death penalty or life without parole in prison. Young was steadfast in this fabrication for about a year and through multiple proffer session (estimated at from 8-12). (To date only Will Baskerville and Bergrin have ever been indicted for the murder). Young then gave a second fabricated various on incriminating Rakeem Baskerville of being at the scene and part of the murder and exculpating himself; even going so far as stating he was informed of facts from Rakeem and was never even present at the crime scene. His final version was an admission that he - Young was the actual murderer; again giving multiple versions of who paid him, how much he was paid, the motivations and why he has come forward.

At the time Young contacted the FBI in January 2005, he was arrested and charged with serious weapon offenses, and was a career criminal with approximately 17 prior felony convictions. His fiancé, at the time, was a Newark Board of Education teacher named Rasheeda Tarver. She testified at Bergrin's trials, swearing that Young pleaded with her to enter witness protection with him, and advising her he is going to receive money and a home from the government and not have to serve any jail time, for his open crimes. Additionally, he gave her multiple versions of the Kemo shooting and inculpated several different individuals as the shooters.

From the date of the Baskerville trial in 2007 to Bergrin's in 2011, 2013 the government kept changing their theories for Kemo's murder. Compare, T. 3265, 3275-3276, 3291, Baskerville; with Bergrin, 10-17-11, T. at 4-7, 16, 17, 19, 29-30. This is extraordinarily important, because Young's testimony also differed; his testimonies changes, as did the testimonies of other witnesses to corroborate the government's changed motives and only after so-called trial preparation sessions with prosecutors.

During the Baskerville trial in 2007, the government firmly argued to the jury that Will would never under any circumstances, cooperate with law enforcement. They implored the jury to believe it was never a consideration because it would

never happen. They argued that it was Will whom ordered and demanded Kemo's killing because he feared that Kemo would testify against him and that Will was the only individual who would ever benefit from killing Kemo.

At Bergrin's trials Minish completely lied and deceived the jury by suggesting that Bergrin had Kemo killed, because of fear that Will would cooperate against him and Curry and expose the drug organization. This point is important because, low and behold, in 2007 Young testified that no one every believed, under any circumstances, nor suspected ever, that Will would cooperate. Will would never do this and everyone knew this to be an undisputable fact; and so the government argued consistently with this. The government's coaching of Young was clearly apparent, when he dichotomously changed his testimony for Bergrin's to Curry and Bergrin fearing Will's cooperation against them. The strength in the belief Will would never cooperate and no parties ever believed he ever would, was apparently in the words and arguments by federal prosecutors. But, they had to fabricate a theory of why Bergrin would get involved in Kemo's murder; especially since not a scintilla of credible evidence was ever presented of this fact and the intercepted conversations, unequivocally prove, Bergrin never believed this case would be tried. He strongly believed Will would never serve more than (10) TEN years in prison that the

evidence was indefensible against Will and Bergrin knew that Kemo was not an essential witness to convict Will. The governments evidence depicted that they observed and surveillance every drug transaction, had strong recordings setting up the deals, recorded the accrual meetings and drugs being exchanged, videotaped the transactions, searched Kemp prior to meeting with Will, arched him meet Will, get handed the drugs and immediately turn it over to law enforcement, with them never losing surveillance. Bergrin always believed that if he was prosecuting Will, he would never even call Kemo to testify. No prosecutor would. He was not needed.

The recordings subsequent to the November 25th R. 5 Initial Appearance, are vital to this Court's determination of whether Bergrin's Due Process rights were violated; especially taking into consideration that the government knew Bergrin had no opportunity to review them.

A. Exculpatory Recordings from the DEA's Curry investigation.

(1) November 25 recordings evince:

(a) Call number 1339406, 1:22 p.m.

Curry was going away to North Carolina for thanksgiving, which was Thursday. Will was arrested on Tuesday, November 25. They know Young lied about the Bergrin meeting occurring 4-5 days after Will's arrest as Curry was in North Carolina until the 2nd of December, as recordings prove. Yet, the government

suborned his perjury and Young swore to this fact in 2007. This was also the only date he used (4-5 days later), during years of proffers and pre-trial preparations.

(b) Call number 711475, 1:31 p.m.

Hanif Baskerville notifies Curry, whom was ignorant of this information that Will was arrested that morning. Curry is stunned.

They know Young lied about being with Curry and the Baskerville family (Al Hamid, Jamal, Rakeem, Hanif and Deidre), the morning of Will's arrest, about Young having a private meeting with Deidre and Rakeem in Rakeem's can, that Deidre was laughing, that Curry was frightened and worried that Curry immediately called Bergrin and that Curry, Rakeem and Young drove around in Curry's Range Rover, eventually parking on 17th Street and Avon Avenue, Newark. All facts fabricated by Young, which the recordings proved never happened; yet Young was suborned to commit perjury and lie.

(c) Call between Curry and Bergrin, at 5:01 p.m.

They knew Bergrin advised Curry of the facts in Complaint, (5 hand to hand sales-transactions of crack cocaine, to an informant whom Bergrin believed was named Kemo), that the evidence was overwhelming and the statutory maximum Will faced was life in prison.

Despite this recording, they suborned Young's perjury and through their examination permitted him to testify he was with Rakeem in Curry's Range Rover, that Curry placed the call on speaker telephone, or that Curry repeated what Bergrin was stating, that they were parked by 17th Street and Avon Avenue, that Rakeem and Young knew Kemo and deciphered whom the informant was, that Young at this time decided to kill Kemo, because you get rid of informants whom turn against the Baskerville's, that Curry informed him Will faced life, at this time. Being cognizant of all the recordings, telephone records and proofs, they presented testimony; but drastically altered it at Bergrin trial to include that they were shocked to learn for the first time only when Bergrin informed that at the street meeting that Will faced life in prison, that not until Bergrin left the meeting did they decide to kill Kemo, that Bergrin informed them, at this meeting that without Kemo Will would get bail and he would win the trial.

(e) Call 346671 at 5:02 p.m. (One minute after the Bergrin call with Curry)

Curry telephones Rakeem to ask him, who is some guy named "KEMO", to which Rakeem responds he does not have any idea.

Based upon this interception the government knew Young lied about being with Rakeem, about them collectively determining

whom Kemo was; and despite this they suborned Young's continued perjury testifying facts that were blatantly false.

(5) Call 4461206 at 5:34 p.m.

Curry telephones Al-Hamid Baskerville and confirms that there was no meeting that morning with all the other facts Young lied about. Curry tells him, I have not seen nor spoken to you for a long time. Curry tells him his brother was arrested and that no one knows whom Will's informant is. What is very important is in a preceding call, when Curry spoke to Hamid at about 4:30 p.m., he informs him that the Criminal Complaint charges Will with offenses carrying life in prison. So why would they let Young testify, Curry and he had no idea Will faced life until the street meeting with Bergrin.

These recordings prove the government sponsored Young's perjury pertaining to Bergrin, the "shocking" effect of Bergrin's group meeting and their alleged continued motivation to kill Kemo; that Bergrin inspired them by telling them at this alleged meeting, for the first time, that Will faced life in prison. The recordings clearly prove they know all the facts for a month.

(2) November 26, 2003

These other recordings clearly prove government sponsored perjury.

(a) Call numbers - 231475 and 127781

Curry is meeting Bergrin at his office, not on some street corner.

(b) Call number 995926

Curry has just left Bergrin's office and was advised by Bergrin that at worst Will would serve approximately 10 years in prison; not life as fabricated by Young.

(c) Call number 244900

Curry is on his way to North Carolina, for the Thanksgiving holidays; consequently, no street level meetings could have ever occurred 4-5 days post Will arrest.

(3) December 4, 2003 Very critical call

(1) Bergrin confirms to Curry, after Will's detention hearing and arraignment on indictment that, again, at worst Will would only serve approximately 10 years in prison; and that Bergrin will contact Curry telephonically tomorrow. The government audaciously argued and Young testified the meeting with Bergrin and the parties occurred this date and Bergrin allegedly advised the group Will would get life, knowing they possessed this recording which clearly disproves these Young lies.

(4) December 7, 2003

Curry and Rakeem are very upset with Bergrin for permitting another client to read Rakeem's criminal case file, at Bergrin

office. Rakeem calls Bergrin a "dump motherfucker" whom he wants nothing to ever do with again nor deal with.

Bergrin is not someone you will let guide, advise and counsel to do anything with, especially a murder, of an FBI informant.

Also, Bergrin is alienated, demeaned and obviously not someone whom you will trust your liberty. Bergrin is not a trusted confident as this recording proves and this alleged street meting has yet to occur.

(5) (a) February 18, 2004, call number 1032806

Two weeks pre-Kemo murder Curry and unidentified black male, wherein Curry is advising him to not use Bergrin; thereby alienating and frantically harming someone where you allegedly place your life and liberty in.

(b) Call number 1143277

Curry informs black male that he Curry, is not fucking with Bergrin anymore. That he does not recommend him.

(6) FEBRUARY 20, 2004 Two weeks pre-Kemo shooting (Emphasis added). Call number 1203305.

Curry is very angry and upset at Bergrin and classified Bergrin as an attorney whom plead all his clients guilty - Curry wants Bergrin off of Will's case.

This recording absolutely proves the government was cognizant that Bergrin was not a party to Kemo's murder, never

intended for Kemo to get killed or hurt, as he desired and only was intended in Will pleading guilty and was not a trusted member of any Curry organization.

The diametrically inconsistent and dramatically changed testimony of Young, wholly opposite to the recorded word and intercepted conversations, always occurred after Young met with federal prosecutors for trial preparations and especially subsequent to the government being cognizant that the wiretap conversations were never received. Ramon Jimenez, another government cooperating witness against Bergrin, summarized trial preparation and proffer sessions with the prosecutors of Bergrin through a letter he composed and sent to the New Jersey's Ethics Committee. He wrote that the government "intimidated" "coerced" "unethically" and improperly influenced his testimony against Bergrin; they yelled suggested, coached and asked the same question repeatedly until he responded with the answer they wanted to hear. The government was obsessed with willing at all costs and abandoned their integrity, mortality and any semblance of dignity. They mortified a prosecutor's mandated code of conduct, yet attempted to portray righteous indignation.

Cooperating witness, Yolanda Jauregui, whom also received a downward department from the United States, Sentencing Guidelines due to her substantial cooperation, was interviewed fifty (50) times before she was accepted as a cooperator. This

is just a minute example of what Bergrin had to confront at trial.

Young testified in Baskerville, 2007 that Will's wife, Deidre Baskerville, was present at a meeting on November 25, 2003, (Baskerville, Tr. 4343) but left her out in Bergrin 2011, T. 10-27-11 at 122-129, but then included her in the 2013 re-trial. The government never even attempted to interview her, if they did they would have learned she never even met Young and was never present at any meeting. Just another person, another meeting, another event, that Young contrived.

The government knew that they had seized all (emphasis added) Will's and Deidre's motor vehicles on 11-25 in Westfield, New Jersey when they arrested Will and that telephone records in their possession confirmed that Deidre called Bergrin FROM HER HOME LAND-LINE TELEPHONE during the time this Young meeting was testified to had occurred. They just never cared.

In 2007, Young swore that he first learned of Will's arrest through the mouth of Deidre and Rakeem Baskerville, at the morning meeting. T. 4341. At Bergrin's trial Rakeem informed him alone. T. 10-27-11, at 122.

I remind this Honorable Court, that Young was absolutely certain Rakeem was sitting in the front seat of Curry's Range Rover on 11-25. He never equivocated to this fact, when he and Rakeem allegedly overheard, what they discussed and decisions

they both made. T. 3450. Young never changed his proffered statements and trial testimony, until a call chronology proved he perjured himself; the same telephone records and recordings the government held in their hand when Young first lied proved that he manufactured evidence. Only after confrontation with this absolute evidence did Jamal end up in the front seat of Curry's Range Rover and not Rakeem; a fact Jamal profusely denied. The telephone recordings and recordings clearly evidenced all these facts were fabricated by Young. This is why A.U.S.A. Gay screamed for Jamal to be given his 5th Am. rights, appointed counsel and refused him immunity -- a means the government consistently used to suppress the truth.

In 2007, and pre-trial proffer sessions, Young was positive the alleged Bergrin street meeting occurred **four or five days after Will's arrest**. {Emphasis added}. He swore to the truth of this fact without hesitation. The meeting was ALWAYS during this time frame.

Only subsequent to the government's magical trial preparation, does Young (coincidentally) change his sworn testimony of the meeting date with Bergrin from 4-5 days post Will arrest, to December 4, the date of the detention hearing. The government was well aware that evidence proved there was no meeting four to five days after Will was arrested or even on December 4. The recordings conclusively confirmed this. This

Court must inquire as to why they elicited these responses by sworn testimony before separate juries, in 2007, 2011, and again in 2013. The government knew the testimony was false and fabricated.

During trial in 2007, Young swore to the jury that there was never any agreement nor decision made as to whom was going to kill Kemo, if he was located T. 4362-63. At Bergrin's trial in 2011 and for the first time ever, he remembered that immediately after the group met Bergrin, four to five days after Will's arrest, he was offered and accepted $15,000.00 to kill Kemo. A fact of great consequence, which could never be forgotten, except by Young. T. 10-27-11, at 147.

For the very first time at Bergrin's trial in 2011 and, after Bergrin accentuates the lack of physical, forensic and scientific evidence in his opening statement does Young have a drastic change in memory and recollection. He, for the very first time, remembers that he had put on a pair of gloves to retrieve the murder weapon and that he removed every single bullet and wiped them clean of all possible DNA and prints. The facts introduced at trial consisted of a government eye witness named Johnny Davis, whom was so close to the killing of Kemo that he was burned by the gun powder spray. At the scene and within minutes of Kemo's murder, Davis, Kemo’s stepfather, described the shooter as a black male with shoulder length

dreadlocks. Young had a bald head on March 2nd, 2004 (and was wearing a NY Yankee cap, according to Young). Furthermore, Davis was threatened and an attempt to intimidate him against identifying the shooter, was made within 48 hours of the murder, by the shooter himself. Davis gave a sworn statement that he was 100% positive Young was NOT the shooter nor the person whom murdered his son Kemo (emphasis added). Davis identified a photo of one Malik Lattimore as the shooter AND person whom threatened him the next day, which reconfirmed his positive identification.

For the very first time and at Bergrin's trial, Young swore that every gun he used, owned and that Curry and members of the Curry Organization used, were converted to automatic. That the weapon he killed Kemo with was an automatic handgun; a great big difference from a semi-automatic and fact a shooter would have revealed at his first proffer session in 2005, and certainly testified to in 2007. The government had knowledge that Young was again perjuring himself, as they charged him with a federal weapons offense involving a SEMI-AUTOMATIC HANDGUN and he plead guilty to possessing and killing Kemo with a semi-automatic weapon - a 9mm. Additionally, Lachoy Walker another government witness was allegedly holding weapons for Curry and all these were handguns ALL SEMI-AUTOMATIC. Several Curry associates were arrested for weapons offenses and weapons were seized; all SEMI-

AUTOMATIC'S. NOT ONE WEAPON THE GOVERNMENT EVER SEIZED FROM YOUNG or a Curry Associate, was a semi-automatic or even modified. T. 225-28, 11-2-11. Furthermore, physical evidence, shell casings located at the Kemo scene depicted a pattern of being fired from a semi-automatic weapon, according to the government's own expert.

While Bergrin cross-examined Young, Prosecutor Minish stipulated that Young never mentioned any gun being "automatic," nor altered. T 11-2-11, 225-28. (Multiple emphasis added). The government had absolute proof of Young's fabrications, but elicited the responses anyway.

In 2007, Young swore that Curry drove past Kemo's deceased body, and never exited his vehicle. T. 4408-09. At Bergrin's trial, Young swore that he observed Curry stop his vehicle, get out and check to make sure Kemo was dead. T. 10-27-11, 174-75. The government again had to have known these facts were fabricated as Young had previously sworn he left the scene imminently and Curry was a drug kingpin, well known in the area and would have been identified; It would be absurd for him to or never risk being seen next to Kemo's body and law enforcement responded within seconds of the murder; and no one ever observed any of this, not even Johnny Davis.

For the very first time at Bergrin's trial, Young remembered that there was Kemo's blood on his jacket and that he

placed his gloves inside the jacket; and rolled it up, into a ball. Another fact a cooperating witness interviewed meticulously and incessantly would have revealed. T. 10-27-11, at 205-07. Yet Young testifies and lies about this at Bergrin's trial with the government's blessing.

In 2007, Young described, ad nausea how he killed Kemo, including how he fired his handgun three (3) to four (4) times while pressing it against Kemo's head. In 2011, his testimony preposterously changes for the very first time, revealing both the automatic nature of the weapon and him pulling the trigger only one time. The government knew from physical, forensic and expert ballistics that this was highly unlikely. T. 10-27-11, at 192. They also knew Young lied about Young, Curry and anyone associated with Curry possessing or using automatic weapons, as stated.

During Baskerville's trial, Young was certain that after he shot Kemo, he jumped over his body and Rakeem drove the getaway car up to the body. T. 4400-01. The government knew this fact to be false from Johnny Davis' recollection and other scene witnesses; whom denied the shooter jumped over the body and that the getaway car ever moved from a stationary position; nor did it ever pull up to Kemo’s body. Davis even remembered the exact location where the getaway car was parked. Completely inconsistent to Young's new version. Coincidentally, during

trial preparation his new testimony in 2011 and 2013 was that he never jumped over the body and ran to the car. T. 10-27-11, at 199.

In 2007, Young swore he went to Ben's Body Shop to melt the murder weapon on the night of the shooting, and only drove there one time. An extremely pertinent admission that one would surely remember. T. 4413-18. During government proffer sessions, Young stated he went to Ben's the day AFTER the Kemo killing and in Bergrin's 2011 trial he testified for the first time how he made several trips to Ben's. T. 10-27-11, at 212-213, 215-18. The government just smiled as Young continued to lie.

While testifying against Baskerville, Young incriminated Ben's nephew and an unidentified black male, as the people whom melted the murder weapon with a torch. T. 4416-19. At Bergrin's trial, when the government believed Ben was unavailable as a witness, to prove Young was lying, Young incriminated Ben as the gun melter. Ben testified via stipulation that was a complete lie. T. 10-27-11, 217-18.

After years of proffer sessions, trial preparation and sworn trial testimony in Baskerville 2007, wherein Young never mentioned throwing away articles of clothing;. Young finally recalled in Bergrin 2011, that he threw his bloody gloves and the actual partly melted murder weapon in a dumpster close to Ben's Service Station; a fact no one would ever forget and that

should have been known and disclosed for years and testified to in 2007. T. 10-27-11, 216-18. (If it had occurred)

Subsequent to Young incriminating Will in the trial of 2007 as the one whom "DEMANDED" Kemo be killed; he then completely changed his testimony in 2011 to: "only after Bergrin left the street meeting was a decision made to kill Kemo." His testimony drastically changed on behalf of the government and wherever need to assist their theories.

This Court could envision that the government sponsored and suborned this perjured testimony. Young and the government had to focus on Bergrin and make it appear his actions resulted in Kemo's death. If Will had ordered and demanded Kemo's murder on 25 November, as Young originally swore and proffered and testified in 2007, then it would prove Bergrin was innocent. T. 11-2-11, 107-16. Young changed his testimony, with the government's assistance to help them wrongfully convict Bergrin.

For the very first time and only subsequent to Bergrin's vigorous cross-examination, did Young admit that Bergrin never told the "street" group to kill Kemo or that he wanted him dead. He was adamant in his 2007 Baskerville testimony that the exact words Bergrin used was, "If Kemo was dead, that Will Baskerville would definitely come home from jail." T. 4361. There was neither hesitation nor equivocation as to what Bergrin allegedly said in 2007. Rhetorically, how could the government permit

testimony of this magnitude, that jeopardized the entire natural life of another human being, without demanding the truth, and meticulously scrutinizing it only after SIX (6) years subsequent to commencement of Young's cooperation, did he finally admit Bergrin never used these words. (Emphasis added). But, the government, in reckless disregard for due process elicited these words from Young in 2007. T. 175-179, 11-2-11. Most importantly, when Young admitted he lied as to what Bergrin said, why didn't the government take any action.

Devoid of redundancy, Bergrin was provided with a "call chronology, prepared by lead case agent Shawn Brokos, FBI. This chronology evinced that Bergrin was contacted by Deidre and not Curry, to assist Will. This is important because it defied logic that Bergrin would be an instrumental link to Curry when in fact Curry never contacted him and it was Bergrin whom actually called Curry. It also proved Deidre was at home when she called Bergrin and without transportation on 11-25 and never attended any morning meetings; all as falsely alleged by Young. The point, is the fact that the government elicited all these facts improperly on direct examination of Young, knowing they were false and fabricated. T. 4342-48, 4350-53 (2007). Bergrin. T. 10-19-11, 154-68; 10-28-11 at 149-161.

Material conflicts in Young's testimony were shown as to when Young allegedly ascertained Will was facing a term of life

in prison and made the decision to kill Kemo. It ended up being crucial and the government's coached testimony on this issue to create a motive for Kemo's murder. If the motive was determined prior to this phantom Bergrin meeting, then there would be no liability or culpability of Bergrin. The evidence clearly delineates that on November 25, and prior to any alleged meeting with Bergrin, this decision had been made according to Young's own words in 2007; and Bergrin had no involvement.

As a matter of fact in the Baskerville case opening statement, the government instructed the jury: "What Kemo did not know was BACK IN NOVEMBER, three months earlier, when the defendant was arrested (obviously Will Baskerville and on November 25, 2003), HE (Will Baskerville), hatched a plan to have Kemo killed...What you will learn during the course of this trial is that NONE of the members, these or others of the conspiracy could hope to gain anything from Kemo's murder. EXCEPT the DEFENDANT (Will Baskerville) T. at 3265 (Emphasis added).

This is one of the most pertinent proofs that Bergrin was innocent and the government had studied the recordings of the Curry wiretap. They knew that Bergin had nothing to do with Kemo's murder, that it was Will, if anyone, and that the alleged decision was made on November 25, 2003; the date Will was arrested. Most importantly, no other individual had any reason

to harm Kemo, especially Bergrin. The government must argue in good faith and what the evidence depicts. This statement from the mouth of Prosecutor Minish, proved that in order to convict Bergrin, testimonies had to change, witnesses coached and coerced to testify falsely and differently from Baskerville's 2007 trial and evidence fabricated. Exactly what they did and all in violation of Bergrin's due process.

In 2011 and 2013, the government wrongfully and illegally created a new theory for Kemo's murder for Bergrin; and never considered seeking justice through the truth. They argued to the jury a new motive wholly dichotomous to their 2007 theory. The government opened Bergrin's trials stating: "Kemo was killed because he had provided information to the government about a drug-trafficking organization that the defendant was associated with. You will hear that because Kemo had infiltrated this organization, he posed a threat not only to the organization that was on the line, it was Paul Bergrin himself and because of that, in Paul Bergrin's world Kemo had to die". T. 10-17-11 at pages 4-5, same as falsely alleged in 2013.

This fabricated, meritless and baseless accusations, in the government’s Bergrin opening was non-existent in the credible evidence submitted to the jury, and could not be even close to the truth; if one considers the wiretap interceptions and government's 2007 Baskerville opening. If Will made the decision

in November to kill Kemo as the government argued in 2007, because Kemo was a witness against him and the decision to kill Kemo was made by Will on the date of arrest, and no other co-conspirator had any motive, then Bergrin could not be involved. (Emphasis added). These words came out of the mouth of the federal government.

Moreover, the prosecution cannot explain nor reconcile their 2007 summation, in Baskerville, with their fictitious arguments against Bergrin. They cried out to the jury to convict Will Baskerville and even sought to sentence him to death "because Will DEMANDED KEMO DIE ON NOVEMBER 25 AND THERE WAS NO CONCERNS THAT WILL WOULD EVER COOPERATE. T. 5724-25 specifically, the government instructed the jury that Will, Rakeem and Curry had no motive to kill Kemo, other than to keep him off the witness stand." THEY (Curry and Rakeem) were NOT concerned that they were going to be in trouble because THEY KNEW THAT WILL WOULD NEVER RAT THEM OUT, NOT IN A MILLION YEARS. YOU JUST DO NOT DO THAT... The only motive for Rakeem Baskerville and Hakim Curry was to help Will in his request and his demand to get Will out of trouble. THEY WERE NOT CONCERNED THAT WE BETTER KNOCK THIS GUY OFF BECAUSE WILL WAS GOING TO COOPERATE, and get them in trouble. T. 5724-25 (Emphasis added). The government knew that Will Baskerville WOULD NEVER cooperate against anyone.

I implore, plead and beg this Honorable Court to realize the magnitude of these prosecutorial statements. The prosecution knew to an ABSOLUTE AND INFINITE CERTAINTY (emphasis again added) that there was no chance Will would cooperate and turn against anyone; Anyone. That means ANYONE. It was not even a matter of thought and consideration. There was never any indication, evidence or even though concerning this for the prosecution to argue so precisely and vociferously in 2007. If this is the case, then their entire theory about Bergrin's complicity was contrived, fabricated and non-existent. They acted in bad faith in making the case and motive argument against Bergrin; that Bergrin feared Will would turn against him and the organization, after Kemo penetrated it. A fact that they and Bergrin knew would never happen.

NEVER - NOT IN A MILLION YEARS – as Minish told the jury in 2007. They knew Bergrin was innocent and had to fabricate or create some justification for his complicity.

In lieu of the government's strenuous arguments and the PROOFS in 2007, this Court must be disturbed and appalled by their arguments to the Bergrin juries, about Will cooperating. During Bergrin's trials the government also suborned the perjury of FBI Special Agent Brokos, when she falsely testified that upon Will's arrest, on November 25, 2003, he was willing to cooperate, but Bergrin convinced him not to. T. 11-14-11 at 16-

17. Same testimony and arguments in 2013. Brokos perjured herself to support their absurd theory of Will cooperating against the Curry organization, including Bergrin. Is this Due Process of Law that our Founding Father's envisioned? Absolutely not, it is repugnant to everything this Country stands for. Brokos actually swore, "He (Will Baskerville) was given time to consider his options. And after he had sufficient time to think... he said he is interested in talking . . . but after he spoke to his attorney, Mr. Bergrin, he said Paul Bergrin told him not to cooperate. T. 11-14-11, 16-17 and 2013. This Court must realize that the government would not have made the adamant opening arguments about Will never cooperating in 2007, if this was true. Also, that a career criminal like Will would never accept the word of Bergrin and no one could ever convince him not to come fourth if that is what he was willing to do. Will vehemently denies Brokos' perjury.

The government's proof concerning Young never changed, yet Young's testimony, their theories and motives, did, like the weather. This is not a case of mere failed memories, which created vast inconsistencies or misspeaking. On every major element, material fact, theory, motive, testimonies changed and words twisted.

You could see the pattern of misconduct which is outrageous, upon reading the transcripts. For example, Brokos

was ardent in her 2007, testimony that she had no leads in the Kemo murder, until Young came forward; (T. 3887) when she knew Malik Lattimore had been identified by Johnny Davis and confessed to an informant, named Roderick Boyd. When she testified against Bergrin and in an attempt to bolster Young's veracity (since he was the exclusive witness against Bergrin), she testified there were several leads that Young murdered Kemo. T. 10-18-11, 160-63; 10-19-11, 215-221. Testimony relevant and critical to this question could have only been answered one way. Either you have leads or you do not. In Baskerville, she swore "we did not know Young was involved in Kemo's murder." T. 3890.

Brokos further testified that both she and Melissa Hawkins-Taylor, Young's attorney instructed Young on several occasions to tell the truth; during his multiple proffer sessions. Yet, when Young was asked this question on the witness stand, he stated that his attorney's never counseled, instructed nor advised him to tell the truth and if they had he would have; instead of all the lies he told and different versions on Kemo's murder he gave. The government never corrected this, nor went to side bar so the Court could instruct the jury Young was lying.

When Rasheeda Tarver, Young's fiancé testified as to all the different versions of Kemo's murder Young gave her, and also that Young set her house on fire and threatened to kill her with a gun; the prosecution laughed at her and ignored Young's

perjury and denials; even though Tarver further testified Young has no credibility because he expects to go free, receive a new house and money, as part of witness protection; the government laughed and never even attempted to decipher the truth. T. 11-9-11, 37-51.

When prosecutor Minish deliberately lied to the jury, with the specific intent to deceive them, and bolster Young's credibility against Bergrin, you have flagrant and material due process violations. Minish falsely argued to the jury during the Bergrin case summation, that the street meeting with Young and Bergrin took place on 4 December 2003. Inferring the government had evidence of this fact, when they knew this was false. Minish further argued that during this meeting on 4 December, the group for the first time shockingly learned Will was facing life in prison, you become cognizant of the dire prosecutorial misconduct and constitutional violations. It is the same as when Minish argued that no one would kill Kemo, if Will was only facing TEN (10) years; when this was exactly would Bergrin stated in wiretap interceptions. The flagrant instances of outrageous government misconduct caused constitutional Due Process violations. They were in total disregard of the truth seeking process. It represents a concise pattern of outrageous misconduct by the government. It also occurred with a multitude of other witnesses:

B. Yolanda Jauregui

Yolanda Jauregui was a cooperating government witness who received a downward departure motion for her substantial assistance to the government. What is disturbing is the fact that she was compelled to proffer approximately fifty (50) times with the government, not including her trial preparation. There were promises made to her such as a new home, money and cars in exchange for her cooperation, which were never memorialized in the plan agreement. Moreover, she made a sale of a kilogram of cocaine to fellow cooperating witness, Maria Correia. Prior to the transfer of cocaine, Yolanda had Correia searched by her mother, Gladys Bracero and niece, Alejandra Jimenez; none of whom were ever charged as a benefit for Yolanda's cooperation. Yet all these facts were never disclosed to defense counsel and purposely concealed. Moreover, Yolanda agreed to forfeit her residence, a one family residence at 348 Little Street, Belleville, New Jersey; but this house was never forfeited nor did title ever exchange hands nor change to the government for this property or her other property at 710 Summer Avenue, Newark, New Jersey; which she also agreed to forfeit. As a matter of fact her entire family, including her mother and niece, Alejandra Jimenez, continue to live in Belleville. These were benefits of cooperation the government never revealed nor did they truly intend to execute.

Yolanda gave a statement declaring that she made a (7) seven kilogram cocaine transaction, with co-operating co-defendant Abdul Mutallic Williams; while Yolanda was free on bail in the Bergrin case and Williams incarcerated at the Hudson County Jail, Kearny, New Jersey. Yolanda confirmed in her statement that the transfer of cocaine was made to William's and his cousin, on the command of Williams and as agreed. When Williams testified against Bergrin he perjured himself and denied any such deal and the government knew that, he in fact was lying; as they vouched for Yolanda's truthfulness with their 5K1.1, United States Sentencing Guidelines motion. Moreover, the government had evidence that Williams and Yolanda were romantically intimate, which was one of the motivations for their lies against Bergrin, yet they failed to reveal this. Additionally, when Brokos was on the witness stand she denied Yolanda ever consummated the 7 kilogram cocaine deal with Williams; because Brokos knew it would impeach Williams credibility. Yet, Brokos interviewed Yolanda and clearly contained within her FBI 3O2, was Yolanda's statement that the transaction occurred; and that it even involved William's father.

Williams perjured himself against Bergrin and Yolanda, testifying that he was hired as a courier-taxi driver, by them, to deliver multi kilograms of cocaine to their customers. This

was a complete fabrication, which resulted in Bergrin being sentenced to life in prison for these charges. Yolanda vehemently denied these fabricated allegations and the government had her on their witness list. At the end of the government's case they revealed that they decided not to call her; it was only because she would have discredited and impeached the credibility of William's and co-operators Rondre Kelly and also Eugene Braswell; and exculpated Bergrin of drug charges which caused him to suffer immeasurably with life sentences. Bergrin wanted to call Yolanda as a defense witness but was informed by her counsel, she would assert her 5th Amendment privilege and refuse to testify. Furthermore, Williams was a career criminal and suspect in an open Newark, New Jersey murder, he had 17 prior felony convictions and was facing life in prison. The government possessed evidence of Williams' involvement in the murder, but withheld it, so Bergrin could not investigate.

Rondre Kelly, another cooperating witness, testified that he dealt cocaine with Bergrin, Yolanda and Mexican Cartel members. He further swore Bergrin was their leader, all decisions of any relevance about drug trafficking were made by Bergrin, including the settling of any disputes or controversies. Bergrin submits this testimony involving his drug trafficking was a complete fabrication. Yolanda gave a

statement in her proffer with the government, which was included in an FBI 302 that; she contacted Kelly behind Bergrin's back and without Bergrin's knowledge. She would have completely repudiated and disputed Kelly's testimony. Although the government informed defense they were calling Yolanda as a witness, they never did. In the interests of justice, Yolanda would have impeached the veracity of Williams and Kelly and due process would demand her being called now at a hearing. Furthermore, Kelly contrived the facts that Bergrin was selling and transferring multi kilograms of cocaine to him from his law office, at 572 Market Street, Newark, New Jersey, and that Yolanda's brother Ramon Jimenez, was personally delivering these multi-kilograms to him, for Bergrin. Both Yolanda and Ramon knew this to be complete perjury. Yet, during the supposedly truth seeking process, both Yolanda and Ramon were never called as witnesses; nor would immunity be given to them by the government, in the interests of justice and to ensure their testimony.

Again, the government vouched for both Yolanda and Ramon's veraciousness, in their motions for a reduced sentence.

C. Thomas Moran

Thomas Moran was a cooperating government witness whom testified against Bergrin. He swore that he traveled to 710 Summer Avenue, Newark, New Jersey, to a building-restaurant, co-

owned by Bergrin and Yolanda. While at this building, Moran alleged that Bergrin called co-conspirator and Mexican Cartel member, Alejandro Castro, to open the basement doors which were locked and so the building could be inspected, by a Subway Franchise representative; because Bergrin was going to open a Subway Sandwich Franchise at this location. The government also wanted to prove Bergrin maintained this facility as a narcotic storage building because on May 21, 2004, the day after Bergrin was arrested, 57 kilograms of cocaine was placed in the building's basement, while under DEA surveillance, by Castro. The government knew that Moran completely fabricated this fact because Yolanda had informed them Moran was lying.

The government, further knew, that neither Bergrin nor Yolanda ever contacted Subway's and there were no doors nor locks prohibiting entry to the basement. Nonetheless, the government enticed, procured and suborned Moran's perjury. The jury found Bergrin guilty of maintaining a narcotics facility, the possession of the cocaine in the basement and the government knew it was based on false and manufactured evidence. An independent investigation by simply contacting Subway's Franchise Management would have proved the falsity of this evidence; yet to pervert due process, the government never placed any of Moran's alleged knowledge in any report so Bergrin could disprove.

Bergrin learned of Moran's testimony pertaining to these lies, as he was on the witness stand; thereby divesting the defense of any opportunity to prove the falsity.

The government further allowed Moran to falsely testify pertaining to Bergrin's interests in Moran becoming a law partner of his; when they possessed evidence through their investigation and interview of law firm employees that Bergrin was in the process of terminating his relationship with Moran; due to Moran's alcoholism and drug addiction.

D. Ramon Jimenez

Ramon Jimenez is the brother of Yolanda Jaureui and was serving a sentence in state prison, on a crack-cocaine trafficking charge, when he contacted the FBI in Newark, New Jersey. He desired to cooperate against Alejandro Castro and the Mexican Drug Cartel. Jimenez met with agents of the FBI and they informed him of the following: (Brokos), "We need a witness against Paul Bergrin and you are our man." Jimenez contacted the FBI and was willing to enunciate all the information he knew and even willing to inculpate his own sister in a major narcotic trafficking conspiracy; as well as himself. The government, represented Gay and Brokos, promised him he would not be prosecuted for drug dealing, as long as he incriminated the right people.

For multiple proffer sessions, meetings and after exclusive de-briefings, Jimenez never incriminated Bergrin in any drug dealing; to the contrary, Jimenez exculpated Bergrin and swore he had neither knowledge nor involvement. Jimenez was appointed an attorney pursuant to the Criminal Justice Act (CJA). That attorney was John Azzarello, one of Gay's best friends and a former comrade at the Newark, New Jersey Office of the United States.

Gay and Jimenez's attorney brought Jiminez into the Office of the United States Attorney, Newark, New Jersey and, according to a letter Jimenez sent to Gay and the Office of Attorney Ethics, Professional Responsibility Unit; the prosecutor Gay and attorney Azzarello intimidated, coerced and coached him to fabricate evidence incriminating Bergrin.

They took turns screaming at Jimenez, calling him a liar and asked him the same question so many times and repeatedly, that he knew exactly what they wanted to hear. Jimenez continued in his adamant denial that Bergrin had no involvement in drug dealing and was then, unexpectedly and shockingly indicted; and as a career criminal, he was now facing life in prison. Immediately after indictment, Jimenez implicated Bergrin. **What benefits he received?**

Jiminez was on the government’s witness list and Prosecutor Gay announced he would testify. At the last minute, Gay

refused to call Jiminez and Jauregui and Bergrin was informed that they would both invoke their 5th Amendment right.

E. Rondre Kelly

Rondre Kelly was a former client of Bergrin's who was represented by attorney Richard Roberts. Initially, upon being sworn in as a government witness, Kelly was wrongfully coached to perjure himself and testify that Roberts refused to represent him, because he wanted to cooperate against Bergrin -- a complete lie. Both Kelly and the government knew this claim was false, as Roberts had represented more cooperators then any attorney in the history of New Jersey.

Moreover, in Bergrin's case alone, Roberts consulted and visited more than half of the government's cooperating witnesses and had contact with many more of Bergrin clients. In addition to Kelly, Roberts visited Yolanda Jauregui in detention and implored her to cooperate. The government's major cooperating witness Maria Correia retained Roberts to represent Albert Castro who Roberts then arranged to become a cooperating witness against Bergrin. Roberts also represented cooperating witnesses Abdul Williams. He was consulted by cooperator Eugene Braswell, whom he recommended to cooperate.

The government has legal, ethical and moral obligations to the American people to follow the rule of law in pursuing any prosecution. Yet, instead of doing so in Bergrin's case, the

government suborned perjury during its direct examination of Kelly. The government had "actual" knowledge that Roberts contacted the government for Kelly to meet with them for the exclusive objective of proffering for cooperation against Bergrin and a sentence reduction. Roberts set up the proffer meeting at the Allegheny County Jail, Pittsburg, Pennsylvania, drove (8) eight hours to be present at the proffer session and also was intricately involved in Kelly's cooperation and de-briefings. Roberts was the catalyst for Kelly's cooperation.

The government copiously debriefed, at least (50-fifty) times Yolanda Jauregui and Ramon Jimenez, relevant to Kelly. In doing so, it had conclusive evidence that Kelly was fabricating evidence against Bergrin; especially inflammatory evidence of Bergrin drug trafficking in multiple kilograms of cocaine from his Newark, New Jersey law firm; Jimenez being his courier to Kelly; and Bergrin's involvement with Yolanda, Castro and others as the leader, manager and organizer of a drug distribution organization. All this testimony was false, to an absolute certainty and the government knew it; especially since they vouched for Jimenez and Yolanda's credibility as truthful cooperators.

E. Albert Castro

Alberto Castro is another government cooperating witness who the prosecution, along with Roberts, was complicit in

fabricating evidence, suborning perjury and outrageous misconduct; clear and unequivocal Due Process violations.

Subsequent to an extensive and exhaustive investigation by the Essex County Prosecutor's Office, Narcotics Task Force, Newark, New Jersey, Castro was arrested and charged with a multitude of very serious narcotic trafficking offenses, weapons charges and the attempted murder of a Newark Police Detective. Additionally, while on bail, Castro was re-arrested on serious robbery charges.

Bergrin represented Castro and worked out a plea of guilty before the Honorable Judge Stephen Bernstein, Essex County Superior Court, Newark, New Jersey. Castro was a career criminal facing life in prison and a very favorable plea was negotiated by Bergrin. Also, seized from Castro was approximately $750,000 in United Sates currency, multiple kilograms of cocaine, a handgun that he placed beneath the vest of an arresting Detective and attempted to pull the trigger, as well as other property. The plea negotiated for career criminal Castro was 15 years with 5 years of parole ineligibility.

Maria Correia was a cooperating government witness who knew attorney Richard Roberts. She was also acting in a pro-active cooperation role for Brokos and the federal prosecutors. Correia stole undercover money which was given to her by Brokos and retained Roberts to represent Castro. Correia stole the

money and falsely alleged she was bribing Bergrin. The objective of the government and Roberts was to convince Castro to cooperate against Bergrin, federally, and then receive a state sentence reduction; Roberts scheduled a proffer session with Castro and the government prior to Castro meeting the government. Correia and her boyfriend Carlos Tavares visited Castro, at the Essex County Jail and coached him what to say. Castro was to fabricate a version of facts against Bergrin and testify that Bergrin offered him $10,000 to kill Kemo--pure fabrication of which both Correia and Roberts were well aware. Correia has now admitted to all this contrived evidence.

The lies were so blatant that, while Castro was testifying, the Honorable Judge William Martini interrupted trial and scolded the government for Castro's false testimony. He saw right through it. **Da**

During Bergrin's cross-examination of Castro, Castro admitted that during a proffer session with the government and in trial preparation, the government coerced Castro to lie under oath, before Superior Court Judge Bernstein and agree to accept the facts of his plea, which Castro swore were false. The government threatened Castro that they would not accept him as a cooperating witness and he would forfeit its benefits if he told the truth. In other words, the government suborned Castro's perjury.

What is paramount is that the government possessed the Essex County Jail visitation records, delineating Correia's and her boyfriend Carlo Tavares' connection and visits with Castro,(which Bergrin had no idea about), immediately before the first proffer session; but concealed these. Gay did not turn them over until after Bergrin's 2011 mistrial verdict; apologetically and cowardly, Gay informed Lawrence Lustberg, Esq., that he inadvertently forgot to turn these records over. Gay's dubious claim of forgetfulness denied Bergrin the ability to cross-examine Castro during trial and clearly violated Bergrin's due process rights. But most significantly, the records could have meant the difference between Bergrin being acquitted or the jury being hung on the Kemo allegations.

Bergrin wanted to call Correia as a trial witness, but was informed by her attorney she would assert her privilege against self-incrimination; since the government; refused to resolve her open charges until after the Bergrin trial was over; Even though Correia was not going to be used as a government witness. The government did this with all witnesses. They wrongfully, withheld and postpone resolution of their cases, so they invoked the 5th Amendment and then refused immunity. The government did this in bad faith and in violation of Bergrin's Due Process Rights, as they never intended to offer "use immunity.'

Additionally, Correia was informed by Bergrin that he knew Oscar Cordova, a government cooperating witness, was an informant. Correia informed the government of Bergrin's knowledge about Oscar, but they concealed this fact. The government was cognizant that if the jury was aware Bergrin had knowledge about Oscar being an informant then the credibility of their entire case for the attempted murder of a witness, would require dismissal. The government used these charges to inflame the jurors' passions and create disdain and distaste for Bergrin. As a matter of fact Gay and the government repeatedly prejudiced Bergrin by continuously using the phrase, "make it look like a home invasion and not a hit," a phrase Bergrin allegedly used, during these charges.

G. The Corrupt Government:

1. Subornation of Oscar Cordova's Perjury and false claim of death threats.

During the government's rebuttal and last word to the jury, in Bergrin 2013, the government had actual knowledge Oscar Cordova committed perjury, but continued to elicit responses to questions, thereby suborning it. As referenced, supra, Cordova was a cooperating witness who falsely informed the government he had knowledge about 13 murders,[23] had been solicited by cooperating witness Vincente Esteves to kill witnesses, had been

[23] None of which had anything to do with Bergrin.

involved in the sexual assaults of females and witnesses and a multitude of other violent crimes; all complete lies.

Quite shockingly, after putting Cordova on the stand, the government elicited testimony from him that his life currently was in jeopardy, thus requiring around the clock law enforcement protection; and that he had recently received viable and violent threats against his life. Their sole purpose was to have the jury infer that it was Bergrin who created and caused these threats and protective measures; and to significantly prejudice Bergrin. The FBI, U.S. Marshalls and the government provided Cordova this protection for weeks, costing tax payers' extraordinary dollars.

Without any attempt to corroborate the threats alleged by Cordova --a man with serious psychiatric illness, delusions, addiction and substance abuse problems --the government took Cordova's word and never investigated these suspicious allegations. They never reviewed Cordova's phone records, nor did any investigation whatsoever to verify Cordova's claims. The government was well aware that Cordova was shown to have perjured himself multiple times during cross examination and the government did not want Cordova's credibility and truthfulness to be placed into issue any more than it already was.

After Cordova testified, the United States Marshall's Protection detail ordered him to turn over his telephone

records--something Agent Brokos failed to do when Cordova made these allegations. The Marshalls' investigation rather quickly ascertained that Cordova completely made up these alleged death threats, etc., to make it appear that Bergrin was attempting to intimidate him and to make Bergrin appear more dangerous than the government's propaganda had already portrayed Bergrin to be.

The government knew and should well have known Cordova was not telling the truth. All it would have taken was minimal time, effort and a simple investigation. Instead, they chose to ignore all signs of Cordova's lying and refused to discover the truth. Instead, they fostered and suborned perjury. The government never counted on the U.S. Marshalls exposing Cordova's lies for the obvious lie it was.

Once the lie was exposed, Gay argued to the jury that Cordova faces perjury charges for lying, well knowing they had no intention to ever charge him with anything; which they never did. Instead, Cordova was paid thousands of dollars for his misconduct and perjury.

2. Lying in Closing Argument Rebuttals that Bergrin did not know of the discovery detailing Esteves' early-on cooperation with law enforcement prior to Oscar

Vincente Esteves was a very important cooperating government witness against Bergrin. Esteves was the leader of a

large scale, complex, multi-national and international multi-million dollar drug organization. He was under State indictment as a drug kingpin and facing a sentence of 25 to life. Esteves had a prior drug conviction.

Esteves retained Bergrin as his lawyer. On the date of Esteves' arrest, Esteves made the informed decision to cooperate with State and Federal Task Force authorities and give a sworn videotaped statement and confession.

As a convicted drug trafficker who had already served State imprisonment, Esteves knew the criminal justice system well. During the recorded interview, Esteves meticulously and copiously outlined and gave details, ad nauseam of his history, his drug organization and even incriminated his beloved wife and his brother in law, Cesar Cubiero. He delineated the roles of every member of his organization, connections to obtain drugs, nationally and internationally, drug distribution routes, places of distribution, financial data, money laundering, tax evasion and all his methodology. The details were exhaustive. He incriminated major organized crime figures, in dangerous international cartels and Bergrin knew about everything Esteves said to law enforcement authorities. After all, Bergrin was his attorney and was representing Esteves for almost two months when the Oscar Cordova, attempted murder of a witness cases commenced.

Esteves admitted on cross-examination that Bergrin knew everything he confessed and cooperated about, and all its details; and had reviewed the discovery on his case; prior to the Oscar case. What is crucial is that these facts, in conjunction with Bergrin's innate awareness, as expressed to Correia, that Oscar was a known-informant, made it factually absurd and ludicrous that Bergrin would agree to either deal drugs with Esteves or kill a witness in complicity with Oscar and Esteves. It would never happen as the government falsely alleged. Esteves gave up his own brother, Cubiero and the wife of his infant son. Neither Bergrin, nor anyone else, would ever trust Esteves or Cordova.

With Esteves' trial admission that Bergrin and him reviewed his confession and were cognizant of all evidence against him, the government had to scramble to attempt to hide this fact and hope the jury did not remember Esteves testimony and admissions. The government had the last word in trial rebuttal summation and Gay intentionally, knowingly and deliberately lied to the jury. He argued in rebuttal that Bergrin got involved in the attempted murder of a witness because he never saw Esteves' discovery or knew about his confession. All the time knowing this was **ABSOLUTELY UNTRUE** and praying the jury would not remember Esteves' testimony in a long, complex and drawn out trial.

This was just another perversion of justice by the government. A blatant lie to the triers of act, in a win-at-all costs trial, for the prosecution.

What is also very disturbing is the government's coaching and suborning Moran to perjuriously testify, that he was co-counsel on the Esteves case with Bergrin and that Esteves' confession was not known. Complete perjury, as proven through the mouth and words of Esteves himself and logic. There is absolutely no way an attorney is not going to know his client cooperated and confessed. The government knew this. Moran knew this!

These factual depictions cannot be neither disputed nor controverted. The government sought to win "AT ALL COSTS" and never considered the Constitutional rights of Bergrin, nor their professional ethics responsibilities. This case must be reversed.

3. **Lachoy Walker Impeachment Evidence Withheld**

Lachoy Walker was the main cooperator against Curry and, although a career criminal facing life in prison, Curry's District Court Judge sentenced him to time served.

The government called Walker as a witness in Bergrin's case. Although Walker dealt an extraordinary amount of cocaine and heroin for Curry, he never had contact with Bergrin pertaining to drugs. Walker had been a material witness and the

primary cooperator against Curry and was considered an upper echelon member of Curry's alleged drug organization.

Walker had not only been a cooperator since March 2004, but had been debriefed and proffered, with the government, hundreds of times. Despite these many meetings, no statements, 302s, proffer session summaries were provided to Bergrin by the government.

Walker swore at Bergrin's trial, that while he was located at an apartment known as "the dungeon," he assisted Curry in counting money and that Curry made a passing remark, "that he is giving the money to Paul's connect, to purchase cocaine." Although Walker was intricately involved with Curry and the entire drug operation, he had never heard of, witnessed, nor known of Paul being involved in drugs.

Most importantly, Walker testified that since March, 2004 and until Bergrin's trials in 2013, he had never informed, told, nor even mentioned Curry's statement about Paul's alleged connect to anyone, especially law enforcement. This is again subsequent to methodical, copious and meticulous cooperation sessions, debriefings and testimony at the Curry trial, wherein Walker was on the witness stand during direct and cross examination, for weeks. The government used this as the "ONLY" evidence to link Bergrin to the Curry drug organization.

Walker never heard the last name of this PAUL and had no other involvement, connection, nor testimony pertaining to PAUL.

There was serious contentions as to Walker's role in the Curry organization, his role in an "open Essex County murder case" that coincidentally and mysteriously was never prosecuted, the level of his own narcotic activities and Walker's credibility. "The dungeon" was allegedly a stash house or flop house for Curry and his organization and alleged records of drug transactions were seized there. The government possessed records that Walker had been previously convicted of kidnapping and aggravated assault which they never disclosed. Additionally, there were records of a lease for the "dungeon apartment" that was executed by Walker. They were also aware that Walker's fiancé had informed them that Walker lived there and it was actually his apartment; all of this evidence seriously placing Walker's credibility in question and devoid of it, dismantling any chance of Bergrin receiving a fair trial.

They withheld the lease evidence and information on all these critical convictions and credibility issues--all in violation of Bergrin's constitutional rights.

4. **Eugene Braswell**

Eugene Braswell was a New Jersey State Correctional Officer, employed at Northern State Prison, Newark, N.J. He was involved in a fatal shooting and, just, coincidentally the victim was a drug dealing inmate Braswell guarded at the prison. Bergrin represented Braswell on the shooting allegations retained as the Patrolman Benevolent Association (PBA) attorney for New Jersey Correction Officers. Additionally, Braswell was intercepted by New Jersey State Police in possession of multiple kilograms of cocaine, he had purchased in Texas.

Braswell had been under extensive investigation by the New Jersey Attorney General's Office and State Police. He was arrested and charged as a drug king pin, facing a minimum sentence of 25 years and potentially life. While released on bail, Braswell negotiated a major drug deal and was arrested and charged federally, facing a 10 year statutory minimum and maximum of life in prison. He was lodged at the Hudson County Jail, Kearney, New Jersey together with Abdul Mutallic Williams, and after a period of time, decided to cooperate with the government. He was released on bail and committed a third federal drug offense.

After being federally indicted, Braswell made allegations that he purchased kilograms of cocaine from Bergrin; who stored them in the ceiling of his law office. Furthermore, he accused Ramon Jiminez of introducing him to Peruvians who sold him

cocaine; a fact Jiminez profusely denied. The government knew Ramon's wife Julia was Peruvian, and that, in 2011, she had called the Chambers of the Honorable William J. Martini, United States District Court, N.J. and during Bergrin's trial; Julia accused the government of misconduct against Ramon.

Abdul Williams also knew Julia since he worked with Ramon at Bergrin's law office. The government knew that Ramon, (a credible cooperator, according to the government), denied Braswell's allegations, but concealed this fact from Bergrin. No Peruvians were ever located, investigated nor identified. The government refused to provide Bergrin with any evidence, reports, or investigation concerning Braswell's shooting; although they knew it was actually a murder and that Braswell shot and killed this individual over a drug debt, accumulated while Braswell was working as a C.O. at Northern State and dealing with the victim. Most importantly, the government knew Bergrin was cognizant of the shooting facts and Braswell was motivated to destroy Bergrin's credibility or face potential murder charges. There was not an iota of evidence, by the way, to substantiate Braswell's allegations against Bergrin—only the uncorroborated word of Braswell. Just another shining example of subverting Bergrin's due process and any hopes of Bergrin receiving a fair trial.

ARGUMENT

In the case, sub judice, the government had an abundance of objective facts which proved that their material and key witnesses lied; especially Anthony Young, their sole and exclusive witness in the murder of "Kemo" allegations and trial of United States v. Paul W. Bergrin. The government had to know or should have known that Young's accusations and allegations were baseless, meritless and incredulous and most importantly required further scrutiny. They had an obligation, both morally and professionally, to further investigate.

More importantly, the Government had actual notice that testimony in United States v. Baskerville was inherently false and that in Bergrin's trials was diametrically opposed to prior statements. Yet, despite this plethora of signs, the Government failed to do anything about it, nor even attempt to search for the truth. Most disturbing is the proven fact that the government conspired to obstruct justice and suborn perjury on many occasions. A fact that is well proven and has become obvious.

The fundamental principles of justice upon which we rely to protect the liberty of the accused as well as the welfare of society, are to ascertain the factual truth and to do so in a manner that comports with due process of law as defined by our Constitution. It is not to "obtain a conviction" at all costs. This important mission is utterly derailed by permitting

witnesses to lie, failing to scrutinize or investigate accusations that appear incredulous and allowing law enforcement officers or prosecutor's to continue thinking they are above the law; and not accountable to anyone because they find it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation. United States v. Wallach, 935 F. 2d 445 (2d Cir. 1991). Indeed, if it is established as has been done in Bergrin's case that the government knowingly permitted the introduction of false testimony reversal is virtually automatic.

The Supreme Court has historically been vigilant in the Constitutions "overriding concern with the justice of finding guilt." United States v. Agurs, 427 U.S. 97, 112 (1976). The due process clause guarantees that every American- every defendant-every accused have the right to a trial that comports with basic tenets fundamental fairness. Lassiter v. Department of Social Services, 452, U.S. 18, 24-25 (1981). Most importantly, our Supreme Court has recognized that the prosecutor is in a peculiar and very definite sense the servant of the law, whose primary objectives which are that the guilt shall not escape nor innocence suffer…, it is the prosecutor's duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate method to

bring about one. Berger v. United States, 295 U.S. 78, 88 (1935).

Lawyers representing the government in criminal cases serve truth and justice first. The prosecutor's job is not just to win, but to win fairly, staying well within the rules. See United States v. Kattar, 840 F. 2d 118, 127 (1st Cir 1988). A prosecutor must honor the truth, not subvert it, as in the case sub judice. This is so because "society wins not only when the guilty are convicted, but when criminal trials are fair. Our system of justice suffers and fails when any accused is treated unfairly. See Brady v. Maryland, 373 U.S. 83, 87 (1963).

In Bergrin's case, the prosecution was the architect of a proceeding that did not comport with our ingrained standards of justice. The prosecutor eviscerated and trampled Bergrin's due process rights and presented knowingly false evidence-testimony, by presenting fabricated testimony and facts- - that went to both the merits of the case and to bolster a witnesses credibility or their theory of the case. See Thompson v. Calderon,

120 F. 3d. 1045, 1058 (9th Cir. 1997); citing Napue v. Illinois, 360 U.S. 264 (1959); Mooney v. Holohan, 294 U.S. 103 (1935). More importantly, the prosecutor has a constitutional duty to correct evidence he knows is false, even if he did not intentionally submit it. Giles v. Maryland, 386 U.S. 66 (1967).

Because of the gravity of depriving a person of liberty on the basis of false testimony, the Supreme Court and the United States Court of Appeals have fashioned over the years, a workable set of precise rules designed not only to remedy egregious wrongs that have already occurred, but also prophylactically to prevent damaging false testimony from happening in the first place. Mooney v. Holohan, at 104. The Government may not use false or perjured testimony that bears upon the reliability and credibility of a witness to obtain a conviction. Giglio v. United States, 405 U.S. 150, 154 (1972); Napue v. Illinois, 360 U.S. 264, 271 (1959); Mooney, 294 U.S. 103 (1935); See also, Lambert v. Blackwell, 387 F. 3d 210,242 (3d Cir. 2004).

Upon this honorable Court's scrutiny of the recordings, which are crystal clear and devoid of the government's distorted interpretations and nefarious twisting of words, as well as the proven fabrications of Young, as well as the other witnesses delineated; you must find that the Government encouraged, enticed, coerced, intimidated and knew that the testimonies were false, perjured and molded into the prosecution's theory. The evinced facts and what was done in the Bergrin case is nothing short of outrageous and reprehensible. Reversal must be the only remedy. Most importantly, the Government's use of evidence they knew and should have known through an objective and

thorough investigation would have proven to be false, resulted in a manifest denial of justice, liberty and due process of law, to Bergrin. This court must not permit such an injustice. You cannot sit idly by and watch Bergrin die in prison, when he never received a fair trial, nor due process of law.

Accentuating limited facts in the Kemo case alone and to avoid rampant redundancy and repetition, Bergrin presented the following: The government's case against Bergrin rested upon one witness, Anthony Young. The government met with Young in approximately eight to ten proffer sessions, Young swore to the government for almost this entire period of time that Jamal McNeil was the murderer of Kemo. Young positively identified McNeil multiple times as the shooter and was anxious to falsely testify against him at trial and the death penalty stage. He also informed the government during these proffer sessions and even falsely swore, that Bergrin appeared at a meeting, four to five days after Will Baskerville was arrested on November 25, 2003, at approximately 9:00pm on 17th Street and Avon Avenue, Newark, a high crime area, heavily patrolled by police; and that Jamal and Rakeem Baskerville, Curry and McNeil, were present with him. That Bergrin informed this group that Will would receive life in prison if Kemo testifies, that they cannot let Kemo testify and if Kemo does not testify, then Will would receive bail and Bergrin would win the case; that at this

Bergrin meeting they all learned for the first time that Will was facing life in prison. They were all shocked. All facts that no defense counsel, with any knowledge of the criminal law, would ever utter. Blatant lies that we know are fabricated and contrived, in accord with the objective recorded evidence.

Young also testified and was proven to have committed perjury when he said that Rakeem Baskerville was sitting in the front seat of Curry's car, during telephone conversations with Bergrin, the he and Rakeem knew the informant, and that jointly they deciphered that "Kemo" was Kemo DeShawn McCray. This determination, according to Young, occurred on November 25, 2003, and that Bergrin used the words "Kemo dead," that Bergrin told this group that the only sentence they can anticipate for Will was life in prison.

Even when Young changed his testimony, they should have known it was perjured, when he subsequently swore that the meeting occurred not four to five days after Will's arrest, but on December 10, that Young met the morning of November 25, at the Baskerville residence with Deidre Baskerville, Curry, Al Hamid, Hanif, Jamal and Rakeem Baskerville, that he was riding around since morning with Curry and Rakeem in Curry's Range Rover, that Curry parked his vehicle on 17th Street and Avon Avenue, that he was informed of Will's arrest by Deidre…Every

word that came out of his mouth was false, perjured, contrived and manufactured.

Besides Young misidentifying McNeil as the shooter for almost two years, regardless of the consequences to McNeil, the government never attempted to interview McNeil, nor any person whom was allegedly at the Bergrin meeting. They abdicated their professional, statutory and constitutionally mandated responsibilities.

Young believed that no matter what he stated he would never be prosecuted; but instead, he would receive witness protection, a house, a car and money, from a desperate government team that encouraged him to change his testimony a second and third time and commit perjury. His excuse for changing his testimony was because Brokos was lying to him by promising his prison release.

Young's second version of the story was that he was not present at the Kemo murder scene was just another deliberate, purposeful and knowing lie; as well as just another false incrimination of multiple individuals in capital murder. His words, accusations and allegations should have been seriously and methodically investigated. It is absurd that they were not. Additionally, he should have been given an investigative polygraph, which Bergrin's stand-by counsel Lawrence Lustberg pleaded with the government to do; and volunteered Bergrin for one to prove his innocence. But the government KNEW Young would

fail and be proven deceptive and that Bergrin would pass, so they denied this reasonable request.

Young's perjury and lies could have been revealed if the government interviewed prominent attorney's Melinda Hawkins Taylor and Paul Feinberg, whom Young swore never told him to tell the truth to the FBI and during proffer sessions; Hawkins Taylor did so in the presence of Brokos, as Brokos so testified. Feinberg swore he did also. What is very troubling is Young's perjury that if he was told to tell the truth he would have .RANK PERJURY. Failure to even attempt to interview these attorney's shows the government's lack of concern for finding the truth and utter disregard for undertaking a thorough, competent and unbiased investigation, as required by law; and their sworn duties as law enforcement officers. Utter disregard for the recordings and never confronting Young with them along with their blatant failure to bring them to the attention to the Court and Bergrin, when they knew Young was fabricating evidence and perjuring himself, makes the government complicit in suborning perjury.

Young's perverted representation and sworn testimony that his attorney's malfeasance inspired him to wrongfully inculpate McNeil, should have shocked the government into immediately contacting these two actively practicing attorneys, through a simple phone call; to determine where the truth lies. It was

the basic foundation upon which Young's contrived and manufactured evidence was built. It would have immediately discredited him and convincingly proved he was a liar who should not be believed.

When Young testified and provided evidence and information concerning a meeting with Bergrin and during a proffer session gave inconsistent statements, as to when and where it was held, identified whom was allegedly present and what Bergrin supposedly stated; the government knew exactly where Jamal's McNeil and Baskerville were and although they never arrested nor charged any of them with anything, they never even attempted to interview them. Additionally, Young falsely accused both of these individuals with the killing of an innocent female bystander in Irvington, New Jersey and that this was his motive for originally contacting the FBI. To date, eleven years subsequent to Bergrin's alleged meeting and the Irvington killing, these men have not been interviewed, charged nor ever arrested for any of Young's allegations for any of Young's allegations. A cursory interview and investigation would have proven Young not only contrived his motive and inculpated/incriminated innocent men, but that Bergrin never met these individuals in his life.

Affidavits submitted in the Will Baskerville, 28 USC 2255 motion emphatically represent this. The fact that both these

men are still walking the streets of our community, after committing, according to Young, two murders makes Young's accusations incredulous. The government just never cared about the truth seeking process. The government should have also known that Young was lying about McNeil and him being the shooter when Johnny Davis swore that McNeil and Young never shot his son Kemo. Furthermore, Young falsely incriminated Horatio Joines in Kemo's murder, when the government knew that this fact also was fabricated. Young went so far as swearing that Joines was at the Kemo murder scene, in March of 2004, and identified Kemo, so he could be killed -- an absolute proven lie.

Subsequent to Young's proffered testimony and him taking the witness stand in the Baskerville trial, detailing his ex-fiancée, Rasheeda Tarver's intricate relationship in Young's motivation for contacting the FBI in or about January, 2005; in that Young allegedly confessed to her Jamal McNeil and Baskerville's killing in Irvington, New Jersey and her informing the Baskerville family of Young's statements; the FBI never queried Tarver as to whether Young ever informed her of his motive for seeking FBI assistance. The Honorable Judge William Martini, Judge District Court of New Jersey found this fact unbelievable and, if true, deplorable. He personally queried Brokos as to why she never investigated this fact, which supposedly established Young's motive for cooperating. It is

clearly an example of the government usurping due process and deliberately seeking to hide the truth.

Tarver is a Newark elementary education teacher, with an impeccable reputation and no criminal record. Young accused and implicated her of obstruction of justice; yet, this was never investigated. Yet, Tarver was interviewed about these facts, according to Tarver.

In the 2007 U.S. v. Baskerville trial, Young swore that Tarver, unbeknownst to her and devoid of knowledge, drove both Young and Rakeem, one time, to Ben's Garage to melt the murder weapon, on the day Kemo was killed; although in his proffer session he said he melted the gun, the day after the Kemo murder.

In 2011 and 2013, Bergrin subpoenaed Tarver and compelled her testimony at trial. When Young took the witness stand, his coached and fabricated evidence took a dichotomous route on this material fact; and it was obvious from the direct examination of the government, that their plan was to attempt to impeach Tarver as a witness, before she testified, even if it meant suborning perjury. Young now swore that Tarver knew exactly why she was driving Young and Rakeem to Ben's Garage; in order to melt the gun. Moreover, Young now testified and revealed for the first time that Rakeem had the Kemo murder weapon on his lap as they drove to Ben's, that Tarver saw it and that she even drove them

twice. Young also falsely swore that he never threatened Tarver with a gun nor set fire to her house.

A cursory investigation would have proven that Young falsified his testimony against Tarver, in that she never drove Rakeem anywhere in her car and that Young did in fact assault her with a deadly weapon and set fire to her home. There were independent witnesses to corroborate these facts.

Young also swore in proofer sessions and at Bergrin's trials, that he never expected any benefits from the witness protections program, nor to receive a deal that did not include prison. The government knew and should have known that Yong's pre-deal expectations, as he relayed them to cooperating witness Hassan Miller, whom they debriefed and who wore a recording device, while at the Hudson County Jail, Kearney, N.J. Even though the government had made no binding promises, a witnesses attempt to obtain a deal before testifying was material because the jury "might well have concluded that the witness had fabricated testimony in order to curry the prosecution's favor." It undermines the jury's verdict, especially as it relates to Jauregui, Young and others. Smith v. Cain, 565 U.S. 73, ___ ___ (2012) (slip op., at 2, 3).

With witness Johnny Davis, the government foresaw a witness whose description of the murder and shooter of his son, Kemo, was diametrically opposed to Young. Davis identified William

Malik Lattimore, whom also fit his description. Approximately two months subsequent to the Kemo shooting, Davis identified Lattimore through a Newark Homicide Division photo identification procedure. Davis, who is uneducated, used the word that Lattimore "resembled" the individual who killed Kemo. Davis was under the belief he made an absolute and unequivocal identification, as he testified in Bergrin's trials. The government made sure that they removed the homicide investigation from the Newark Police Department and the Essex County Prosecutor's Office who clearly who had far more experience investigating homicide cases than the FBI.

The government NEVER queried Davis, as to what he meant by "resembled." {*emphasis added*}. What is deplorable, deliberate and a travesty of justice, is the government concealed the fact that they had shown Davis a photograph of Young; and he swore that Young was not the shooter. They also failed to inquire with Davis as to him ever seeing Lattimore subsequent to the Kemo murder on March 2, 2004.

An objective and sincere homicide investigation would have revealed that twenty-four hours after his son's murder, Davis was confronted by Lattimore, who threatened him about cooperating with the police and identifying him for shooting Kemo. During investigation for Bergrin's case, Davis identified

a photo of Lattimore, stating he was 1000% positive Lattimore was the shooter and that he was 1000% sure Young was not.

Additionally, on March 6, 2004, four days after Kemo was killed, Christopher Spruill an FBI informant, was at Kemo's make shift grave site, when he was mistaken for Johnny Davis and threatened by two men, "to keep his mouth shut about what he witnessed." To date, law enforcement have never shown Young's or Lattimore's photos to Spruill. These examples, although horrifying, would have eviscerated Young's credibility. It was a deliberate reaction by the government to subvert any witnesses and evidence impeaching Young; in clear derivation of Bergrin's due process rights. Simply put, the government never sought the truth, the whole truth and nothing but the truth. There is no other way to explain their inaction and lack of diligence.

Also, witnesses to the shooting who were present at the Kemo murder, Fred Lowry and Stacey Williams, were never shown photos of either Young or Lattimore; even though Williams had informed police that he may be able to identify the shooter. Now Williams is deceased and unavailable and the government's incessant failure to seek out the truth, significantly and detrimentally affecting Bergrin.

In Ex Parte Dale Adams, the police improperly coached a witness to identify a different person accused of murder. 768 S.W. 2d 281 (Tex. Cr. App. 1989). The police said, "This is the

man," after the witness identified someone else. The Court, citing Stovell v. Denno, held that a conviction which results from a bad identification is a gross miscarriage of justice. 388 U.S. 293,297 (1967). The government's abysmal actions and apathy resulted in a gross injustice to Bergrin.

It is inconceivable that the Government would seek to administer capital punishment upon William Baskerville, if they did not believe both of the statements allegedly made by these jail house informants; Erick Dock and Troy Bell. Both of these witnesses unequivocally stated that William "Malik" Lattimore was the person whom was searching for Kemo to kill him. They even wrote this in a diary they kept.

Moreover, they stated and testified that Lattimore was the only one tasked with carrying out the shooting. This is the same Lattimore that eye witness Johnny Davis had the confrontation with the day after the shooting and whom was positively identified with 1000% certainty by Davis; and the individual Davis identified to law enforcement as "resembling" the shooter, when shown 6 photo arrays by Newark Police. This Court must take notice that when Troy Bell testified in Bergrin 2013, he was coached and coerced by the government to initially swear, during direct examination, that Will was speaking about Lattimore doing the killing of another witness in another case, named Derrick Berrian. It was the government's deviousness and

sleazy way to slip the Berrian murder into Bergin's trial; as Berrian was a witness in another case and Bergrin represented the defendant, to whom he cooperated against. It also was an attempt by the government to wrongfully corroborate Young. (No one was ever charged with Berrian's murder.)

Most importantly, is the fact that, upon further examination and on cross-examination, Bell admitted he did not tell the truth on direct examination and that it was the murder of Kemo, that Will Baskerville referred to, when discussing Lattimore. It would be an insult to the intelligence and honor of this Court to assume, infer or suggest the government had no involvement in suborning Bell's perjury.

Bell admitted in Bergrin 2013, that he did not tell the truth about Lattimore; he would not have known about nor testified concerning Berrian and Lattimore without the government's influence. **Da**

The aforementioned government misconduct exposes the use of perjured testimony to substantiate Young's involvement in the Kemo murder; and enabled the government to mislead the trier of fact and Court; that Lattimore was not the shooter. This resulted in a violation of Bergrin's due process rights and an unfair trial.

In Pyle v. Kansas, the Supreme Court emphasized due process violations when prosecutor's deliberately suppressed evidence

favorable to an accused and subverted justice, 317 U.S.213 (1992). This factual synopsis is equivalent to the government's argument in Middle v. Pale, that red paint stained shirts were riddled with blood. 386 U.S. 1 (1967).

In Napue v. Illinois, a seminal case on government misconduct, Chief Justice Warren, reinforced the Constitution's impact by quoting from the New York Court of Appeals, "A lie is a lie no matter what it's subject and if it is in any way relevant to the case, the prosecution has a duty to disclose it and correct what he knows to be false and elicit the truth." 360 U.S. 264 (1959).

When Young swore, without hesitation in Baskerville and Bergin's trials, that he denied being at the homicide scene and was devoid of any knowledge of what occurred; because Agent Brokos promised him he would be released from jail and go home, the government had a sworn duty to make this lie and perjury known to the District Court and jury, immediately. It should have also sounded an alarm and warned the government, that Young's false accusations are intolerable; and that they needed to objectively corroborate Young's allegations against Bergrin. The government did neither. Instead, they did nothing. They simply permitted Young to commit perjury under their direct examination.

The prosecutors represented a sovereign whose obligation was to govern impartially and whose interest is not to win at all costs, but to seek justice. The Government had a sworn duty to ensure that Bergrin enjoyed a fair and impartial trial; not one riddled with contrived, fabricated, perjured and wrongfully coached evidence. United States v. La Paige, 231 F. 3d 488 (9th Cir. 2000).

The government's venom against Bergrin stems from its embarrassing and unacceptable negligence in failing to protect Kemo DeShawn McCray. Clearly, it blurred their impartiality and has resulted in egregious due process violations and nefarious conduct. They had to divert attention and consideration away from the fact that they never prosecuted and imprisoned a violent convicted felon like Kemo, who possessed a sawed off shotgun; and then, while working as an FBI informant, stole under-cover funds and was dealing heroin, cocaine and marijuana under the eyes and guise of his handler Agent Brokos. Kemo was an informant whom sought help and protection from the government but, instead, was castigated and ignored. Bergrin paid the inexcusable price for Brokos and the Government's policy violations and had due process rights trampled upon.

The manner in which the government turned a blind eye to blatantly contradictory evidence because it would have shattered and destroyed Young's credibility, is just an abomination of due

process. The due process violations resulted in Bergrin's wrongful conviction that must now be remedied. Miller v. Vasquez, 868 F. 2d 1116, 1120 (9th Cir. 1989), relying on Arizona v. Youngblood, 488 U.S. 51 (1988). Courts at all levels and in all jurisdictions have made it abundantly clear that due process requires law enforcement, not just to preserve evidence already in hand, like the recordings, but to also gather and collect evidence in which the police themselves by their conducts indicate that the --- court form a basis for exonerating the defendant. Miller, 868 F. 2d at 1121 (citing Youngblood, 488 U.S. at 58). Cf, Kyles v. Whitley, 514 U.S. 419, 437 (1995). The threesome prosecution team had a "duty to learn of any favorable evidence known to others acting on the Government's behalf in the case, including the police."

The Government worked in tandem with the Newark Police Department Homicide Section in the Kemo murder case. For the first several months witnesses were shown photos of black males with shoulder length dreadlocks and not bald males, as contrived factually by Young. These were experienced homicide detectives whom had hundreds of investigations between them. When the government and FBI decided exclusivity in the investigation, witnesses interviewed such as Stacey Williams, Fred Lowry, and many more never were shown Young's photograph. Additionally,

Lattimore and Young's photos were never shown nor canvassed in the area of the crime.

The government also leaked information to the media, such as the conversations Bergrin had with Curry and its substances in detail. Henceforth, Young had meticulous details of the Kemo incident from the news accounts, prior to his initial contact and proffer with the government; as did Thomas Moran and all the others. The government further concealed the fact, that their cooperating witness Moran, was being sent newspaper clippings on the Kemo murder and Bergrin; prior to his proofers with the government, as Moran revealed during cross in 2013. **Da**

The prosecution has an obligation to collect potentially exculpatory evidence, to prevent fraud upon the court and to elicit the truth by investigating thoroughly, impartially and meticulously. They must not ignore evidence they do not investigate nor potential evidence that would undermine their case. Napue, 360 U.S. at 269, 270, requires a prosecutor to act when put on notice of the real probability that there may be false testimony. This duty is not discharged by attempting to finesse the problem and pressing ahead without a diligent and good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remaining ignorant of the facts. This applies not only to Young, but to Moran's fabrications concerning his travelling to Summer Avenue

and his presence when Alejandro Castro allegedly opened locks to the basement doors; which the government knew never existed; or his witnessing a meeting with a Subway Franchise executive and Bergrin, when they knew, if verified, it would prove false. Additionally, Moran's fabricated allegations of Bergrin making him a partner, when Bergrin loathed his drug addiction and alcoholism and was on the verge of terminating his employment. Lastly, Moran's absurd and contrived allegations concerning Baskerville and Kemo, when he admitted he read the Star Ledger article and was familiar with it. If the government had merely reviewed Moran's telephone messages, e-mails or communications, they would have known his evidence was perjured.

The same applies to Williams, Kelly, Braswell and other witnesses whom were contacted or represented by attorney Richard Roberts. Their material inconsistencies and the actual assertion of perjury, by other cooperating witnesses, would have proven fatal to the government's prosecution of Bergrin.

In the case, sub judice, the prosecution pressed ahead with Young, as their key witness against Bergrin and failed to investigate evidence and witnesses critical to determining his truth and veracity; as they continued to do in a pattern of misconduct, with all their cooperators. For instance, Bergrin provided the government with affidavits from Syed Rehman and Drew Rahoo, whom were incarcerated with Williams at the Hudson

County Jail and had no relationship whatsoever to Bergrin. They would have both confirmed that William's allegations against Bergrin were contrived, schemed, manufactured and perjured. They were witnesses with actual knowledge of perjury, governmental and attorney misconduct and Bergrin's injustice. But the government intentionally ignored them. Better yet, Bergrin requested them as witnesses and of course, had no control of their court attendance, as they were both in federal custody. The U.S. Marshalls failed to get them to court on time and they were precluded from ever testifying. The government knew their proffered testimony, was elated and never sought their admission. Despite this, absolutely no investigation of these two witnesses was ever undertaken.

Other documented incidents wherein the government knowingly failed to even attempt to interview critical, exculpatory Bergrin witnesses, were not limited to eye witnesses at the Kemo murder scene such as Webb, Lowry, Spruill and McPhall; but include Young's attorney's Melinda Hawkins-Taylor and attorney Paul Feinberg, members of the Baskerville family, Jamal, Deidre, Hamid, Al-Hanif or even Rakeem. Also, Tarver, Curry and a plethora of others. They failed to scrutinize the physical, forensic or scientific evidence competently and expertly compare it to Young's warped and disturbed incident versions. The government must be precluded from arguing that Young was subject

to full cross-examination at trial, because that point would evade their free standing constitutional duty to protect the system against false testimony. The government's mindset is that the ends justify the means and that all accomplices are responsible anyway. This attitude and path to injustice is also incompatible with ordered liberty. See Rochin v. California, 342 U.S. 165, 169 (1952). When the government becomes a lawbreaker, as in the case at hand, it breeds contempt for the law, it invites every man to become a law unto himself. Olmstead v. United States, 277 U.S. 438, 485 (1928).

The government must verify the credibility of its witnesses. {emphasis added} Due process demands protective safeguards against system corruption, caused by fraud and insensitive schemes that deprive a man of his life and liberty. The government was mandated to investigate, pre-trial, Young's veracity; and once he testified at trial there should have been additional scrutiny. They circumvented due process of law. Commonwealth of the North Marianna Island v. Bowie, 243 F. 3d 1109 (9th Cir. 2001).

The prosecution has a duty to investigate when they have a strong suspicion that a witness has committed perjury. Bergrin has espoused with ad nausea example upon example of "actual", not only suspected, perjury. But the government just ignored it, because it would detrimentally impact their case. This

Court, in good conscience, cannot ignore and overlook it. See Morris v. Y1st, 447 F. 3d 735-744 (9th Cir. 2006), Bowie, Id. at 117. "A trial is not a mere 'sporting event' it is a quest for the truth in which the prosecutor, by virtue of his office, must seek truth even as he seeks victory. Monroe v. Blackburn, 476 U.S. 1145, 1148 (1986). The government miserably failed on all account.

Brady v. Maryland, 373 U.S. 83 (1963), claims are especially cognizable in habeas corpus proceedings, like this. See also, United States v. Biberfield, 957 F. 2d 98, 103 (3d Cir 1992); United States v. Pellullo, 110 F. 3d 117, 122 (3d Cir. 1997). The abundance of Brady violations alone requires case reversal. Especially the government's withholding the Essex Jail visitation records of Albert Castro until after Bergrin's trial, concealment of the recordings which evince "actual innocence, the information from cooperating witness Hassan Miller, that he informed the government that Young admitted to him he was manufacturing Bergrin's guilt, the evidence from cooperating witness Maria Correia, that Bergrin was cognizant Oscar Cordova was not the son of Latin King leader Lord Gino and was himself an informant acting on behalf of the government, the various conflicted attorney representation, Attorney Richard Roberts' conflicted interactions, connections and involvement with the government, as the agent and New Jersey Ethics pending

actions, as well as his criminal conduct, Lachoy Walker being the lessor of "the dungeon" and having a prior conviction for kidnapping and aggravated assault and the government's decision not to prosecute Jamal Baskerville, Jamal McNeil nor any other party for the death of Kemo. Lastly, the fact that government informant Christopher Spruill positively identified William "Malik" Lattimore, as the individual whom confronted him on March 6, 2004, at Kemo's make shift grave and threatened to kill him if he was to incriminate him for Kemo's murder.

As enunciated supra, the Government's theory of motive for the McCray-"Kemo" murder was wholly dichotomous between Baskerville and Bergrin's trials, in violation of Bergrin's due process of law. It is absolute lunacy for the government to audaciously assert that they merely stressed and focused on the target of the trial. Bergrin and Baskerville faced the exact same scenario, in the murder allegations. The conspiracy to murder a witness in violation of 18 U.S.C. § 1512(k). Courts have recognized and held violative of due process such inconsistencies. See Thompson v. Calderon, 120 F. 3d 1045, 1058-59 (9th Cir. 1997), a case wherein the prosecution was rebuked for arguing different motives, theories and distorting or disingenuously lying about facts. In the Bergrin case, the government had already strenuously argued in 2007 that no one could hope to gain anything from murder of Kemo except William

Baskerville. That Kemo would never have been killed if Will was only facing ten years and that there was absolutely no chance whatsoever that Will Baskerville would ever cooperate with the government. All parties knew this and it would never happen under any circumstances and was never to even be contemplated or considered. T. Baskerville, 3265, 5724-25. How can the government get away with telling the Bergrin juries that Kemo was killed by Bergrin because he had infiltrated a drug trafficking organization, that Bergrin and Curry feared Will Baskerville cooperating against them and then suborning perjury through their witnesses, to support motives they knew were fabricated, contrived, false, manufactured and blatant lies. Rhetorically, how can Brokos and Young get away with perjury by telling the Bergrin jury Bergrin feared and convinced Will not to testify? The government would never have opened and argued in Baskerville the way they did, if there existed a scintilla, shred or iota of facts to support this argument. They also knew that Bergrin was recorded and intercepted vehemently stating, "Will would never receive more than ten years and this was understood by Curry and members of Curry's organization, because Curry was intercepted repeating this. T. Bergrin I., 10-17-11, at 4-5, 6-7, 29 also 11-14-11 at 16-17, 25, 144-45.

The government's use of factually contradictory theories and false and fabricated arguments and testimony, is what

violates Bergrin's due process rights. Napue, Id., Brady, Id; Giglio; Id; Commonwealth v. Bowie, Id., Northern Marianna Islands, Id. In Darden v. Wainwright, 477 U.S. 168, 181 (1986), the Supreme Court held that, "unethical behavior or improper methods by the prosecutor may result in a reversal of a conviction, when, as here, it infects the trial with unfairness as to make the resulting conviction a denial of due process."

Commonwealth v. Bowie, 243 F. 3d 1109 (9th Cir. 2001), is an example, analogous to Bergrin's dilemma wherein the Appellate Court emphatically held intolerance for deceptive, misleading and unprofessional prosecutorial conduct. Mooney v. Holohan, 294 U.S. 103, 104 (1935), emphasized the gravity of error in depriving a person of liberty on the basis of false and misleading arguments and testimonies. Bergrin's imprisonment has resulted from perjured testimony. It cannot be tolerated. It must not be permitted. Pyle v. Kansas, 317 U.S. 213 (1942). See also, Smith v. Goose, 205 F. 3d 1045, 1052 (8th Cir. 2000), "the use of inherently factually contradictory theories violates the principles of due process." The inconsistencies Bergrin has clearly set forth undermine the CORE of the prosecutor's case, making the only remedy reversal. Clay v. Bowersox, 367 F. 3d 993, 1004 (8th Cir 2004).

For the aforementioned reasons, Bergrin implores reversal of his convictions.

IX. THE GOVERNMENT FAILED TO DISCLOSE FAVORABLE EVIDENCE VIOLATING BERGRIN'S RIGHTS TO DUE PROCESS UNDER THE UNITED STATES CONSTITUTION.

Bergrin re-alleges all facts, arguments and evidence previously asserted in this motion and incorporates them by reference as if set for in their entirety. He also incorporates by reference all facts and arguments contained in the motion in accord with 28 U.S.C. 2255, submitted by William Baskerville.

The Fifth and Fourteenth Amendments requires the government to disclose specific types of evidence to defendants. In Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, the Supreme Court held that due process requires the prosecution to disclose evidence favorable to an accused person when such evidence is material to guilt or punishment. Evidence favorable to an accused includes not only exculpatory evidence, but evidence that impeaches a government witness. U.S v. Bagley, 473 U.S. 667, 676 (1985) (quoting Brady, 373 U.S. at 87). A Brady violation occurs when: 1) evidence is favorable to the accused because it is exculpatory or impeaching; 2) evidence was suppressed by the prosecution, either willfully or inadvertently; and 3) prejudiced. Strickler v. Greene, 527 U.S. 263, 281-282 (1999); Cone v. Bell, 566 U.S. 449, 469 (2009). When the prosecution withholds from a criminal defendant

evidence that is material to his guilt or punishment it violates his due process right, and reversal of his conviction must be ordered, in accord with the constitution; "A reasonable probability under Begley is a "probability" sufficient to undermine confidence in the outcome." 473 U.S. at 678, 682. (Evidence is material when there is a reasonable probability that the withheld evidence would have altered at least one juror' assessment of the case. Kyle v. Whitley, 514 U.S. 419, 434 (1995). Bergrin is prepared to specifically delineate a plethora of Brady violations pertaining to material evidence; and there is not a logical, credible nor believable argument that could be adduced which is convincing to negate the fact in that the withheld evidence would not have affected at least one juror. Most importantly, when assessing materiality, the issue is "reasonability" of a different result….The question is not whether the defended would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial; understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial". Lambert v. Blackwell, 387 F. 3d 210, 252 (3d Cr. 2004).

Bergrin cannot accentuate enough that when assessing evidence's materiality; this court must take into account the cumulative effect of the suppressed evidence, in light of other evidence, not merely the probative value of the suppressed evidence standing alone. See Kyles, 514, U.S. at 436; U.S. v. Tykarsky, 446 F.3d 458, 478 (3d Cir. 2006). The compelling nature of the consistent and incessant pattern of abuses by the government subverted and prejudiced any opportunity Bergrin had of receiving a fair trial. Moreover, it undermined any ability of one reviewing these substantial and overwhelming amount of constitutional violations, to find that they would not have influenced a jury. The inordinate, extraordinary and plethora of Brady, Giglio and their progeny violations is beyond comprehension. The government fervently ignored their obligations in a deliberate attempt to prejudice Bergrin's ability to defend the charges and to "win at any and all costs."

Material witness Vincente Esteves, Eugene Braswell, Maria Correia, Ramon Jiminez, Alejandro Castro, Yolanda Jauregui, Rondre Kelly, Thomas Moran, Abdul "Mutallic" Williams, Oscar Cordova, Anthony Young and Lachoy Walker all cooperated with the government and were wrongfully induced, solicited and coerced to incriminate Bergrin. They were offered a multitude of concealed and hidden benefits; never revealed to defense, the finders of fact nor the public. Promises, inducements, favors and

motivation to contrive, fabricate and falsify material evidence was deliberately hidden from Bergrin in a knowing and intentional plan and scheme by the government to deprive Bergrin from impeaching witnesses' credibility. Even though several witnesses were not called to testify by the government, such as Jiminez, Correia, Jauregui and Castro; Bergrin was prohibited from their testifying on his behalf by the government's refusal to resolve their cases and or grant them "use immunity". Henceforth, they would have invoked their Fifth Amendment privilege against self-incrimination and refused to testify. What is most important is because of the government's failure to reveal material and essential Brady evidence, concerning all individuals, it stymied and hampered Bergrin's ability to examine other testifying witnesses and resulted in extreme prejudice to the defense. These individuals composed the core of the government's case against Bergrin, who was prepared to call all witnesses the government failed to, in order to prove Brady, Giglio, and Napue issues.

The government witnesses depicted, supra, were all offered the secured witness program and informed by prosecutor's to accept it, whether they desired the program or not; so if Bergrin was to cross-examine the witness it would make him seem dangerous and the witness could mention this fact to the jury. Witnesses, such as Williams and Kelly who received time served,

never intended to use the programs' protections. Additionally, these witnesses were offered benefits such as relocation monies and expenses, family relocation fees, and incarceration in institutions that had lower classification restrictions; thereby offering a better environmental condition of imprisonment. The government never revealed any of those factors to Bergrin. For instance, in Jauregui's case, they relocated her sister Maria Jiminez and nephew Jose Jiminez, gave them $20,000 for expenses, housing and income and never revealed any of these facts; all in exchange for Jauregui's testimony. Additionally, they made promises of benefits to every witness and to date have not disclosed what was offered.

A. Witnesses involved in the Deshawn "Kemo" McCray case and drug trafficking and their Brady violations:

1. Yolanda Jauregui

This cooperating government witness proffered with the government an admitted 35-50 times, not counting pre-trial preparation periods. During the extraordinary amount of conferences spent with the prosecution team, she denied Bergrin's involvement in narcotic trafficking. The government also compelled her to forfeit, on paper only, her home located at 348 Little Street, Belleville, New Jersey and investment property (restaurant with rental apartments) at 710 Summer

Avenue, Newark, New Jersey as part of her plea agreement. To date, no property has ever been forfeited and her family, consisting of her mother Gladys Jiminez, niece Alejandra Jiminez, nephews Michael Jiminez, Joshua and Jeremy Wicks and others continue to live there. The prosecution never intended for her to forfeit these properties and she guaranteed that. All this information was withheld from Bergrin, in violation of Brady. (Jauregui plead guilty in 2010 and has been cooperating ever since.) Furthermore, Jauregui's mother Gladys Bracero and niece Alejandra Jiminez strip searched for recording devices, a government cooperating witness, when Jauregui sold her a kilogram of cocaine, clearly making them complicit in a serious narcotic offense. In exchange for Jauregui's cooperation against Bergrin, they agreed not to prosecute her mother and handicapped niece and failed to reveal any of these facts to Bergrin. They actually intimidated Jauregui from revealing these facts to Bergrin; Bergrin desired to have her called as a witness on his behalf thereby impeaching the veracity of the government's case.

Jauregui also had evidence that Abdul Williams, Rondre Kelly, Ramon Jiminez and Eugene Braswell wholly fabricated, contrived and manufactured Bergrin's culpability in drug trafficking, which she informed the government of. But this evidence purposely was concealed from Bergrin. As a matter of

fact, the FBI 302, prepared on Jauregui's behalf which summarized all alleged meetings with her, was wholly devoid of any statements she proffered, denying Bergrin's culpability.

2. Ramon Jiminez:

The government promised Jiminez they would not prosecute him if "he was to be a witness against Bergrin." They made an undisclosed promise to not bring any criminal charges for the sale of hundreds of kilograms of cocaine, he was involved in. {Emphasis added}. They also threatened him with jail for the rest of his life, unless he inculpated Bergrin and agreed to be a witness against him. Another factor never disclosed. Additionally, they ordered him to the Office of the United States Attorney, Newark, N.J. and intimidated, coerced, threatened and demeaned him using the tag team efforts of a federal prosecutor, along with his Court appointed attorney. Again, never disclosing this meeting at the prosecutor's office and that they informed him he would be indicted if he did not only cooperate, but incriminate Bergrin. Lastly, Jiminez was on Pennsylvania State Parole for life. The government never disclosed that they intended to contact the State Parole Board and request leniency of his behalf, {emphasis added}; or recommended any concurrent terms of imprisonment.

3. Anthony Young

This sole and exclusive witness to the alleged most serious and heinous crime known to humanity that substantially prejudiced the entire jury and inflamed their passions against Bergrin; and, ultimately affected all counts against him, was under psychiatric care since a juvenile. His fabricated testimony concerning the murder of Deshawn "Kemo" McCray was influenced by his mental and psychological instability. Young had been treated in penal institutions for his psychiatric condition and the government knew it. The government knew he was under medical care for his mental illness and disability, had seen Department of Corrections and Bureau of Prisons mental health personnel and was even taking medications to cope with his psychiatric problems. Despite this actual knowledge and records evincing it, they purposely withheld this paramount Brady materials from Bergrin. The government should have also suspected that there was something mentally wrong with Young from all the different versions he gave of the Kemo shooting.

The government investigated Young's false incrimination of Bergrin, Joines McNeil, Curry, Rakeem and Jamal Baskerville and possessed intercepted recordings that proved his version of meetings during the morning house of November 25, 2003 and events of the day were fabricated. They also knew he lied about Bergrin attending a meeting and announcing, "No Kemo, no case",

that William Baskerville would receive life in prison if Kemo testified and that Bergrin intended to litigate the case; from facts in their possession they knew or should have realized Young was ill. They were aware that he falsely incriminated Rakeem Baskerville for identifying Kemo on November 25, 2003, that he was never in Curry's Range Rover and overheard material conversations, yet they never specifically disclosed these facts and the recordings. They also had evidence relevant to accusations Young committed aggravated assault with a deadly weapon against Tarver and arson of her home; which they never disclosed. This evidence would have eviscerated Young's credibility.

The government had specific evidence that Young falsely incriminated Horatio Joines in conspiracy to commit murder, along with the murder of Kemo and that Joines was at the hospital with the mother of his child. The government withheld conclusive evidence of Joines alibi, which would have deleteriously impeached Young's credibility.

The government had specific knowledge that Young falsely contrived his motive to contact the FBI and falsely incriminate Jamal's McNeil and Baskerville, yet they withheld this crucial Brady evidence. The government knew that there existed no killing of a "nuts" girlfriend by these two men and that Rasheeda Tarver, vehemently denied Young ever telling her this;

or her informing anyone of this shooting. S.A. Brokos had travelled to the Irvington Police Department and confirmed that Young had been deceptive and that there was no evidence inculpating Jamal McNeil or Baskerville.

The government possessed evidence that Young confessed to their confidential informant, Hassan Miller, that Bergrin was innocent, but that he was manufacturing incriminating evidence against him, to obtain benefits from the prosecutor's. This critical and astronomically powerful evidence would have resulted in vindication to Bergrin of the Kemo murder and all other charges in the indictment.

The government had evidence that on March 2, 2004, Young did not either possess the Kemo murder weapon or take it to Ben's garage; but they secreted this evidence and failed to meet their Brady obligations. This evidence consisted of conclusive expert polygraph results of Ben Hohn, the owner of Ben's Garage, and other witnesses, who confirmed that Young was never there in March, 2004.

The government possessed specific evidence that both Special Agent Brokos and attorney Melissa Hawkins-Taylor had both instructed Young to speak the truth to the government during one and a half years of false incriminatory proffer sessions. They never revealed these instructions. Instead, they allowed Young to continue with his deceptions and perjuries

and falsely testify and swear under oath he was never informed of this vital fact; and if he would have immediately followed his attorney's advice, told the truth, never falsely incriminated McNeil for murder if he was instructed. This evidence would have clearly and unequivocally impeached Young's veracity, resulting in Bergrin's acquittal of all charges.

The government possessed evidence of Domestic Violence Complaints and sworn affidavits identifying Young as the perpetrator of aggravated assault with a deadly weapon against Tarver and arson investigation reports identifying and incriminating Young for setting fire to Tarver's home; although he falsely and perjuriously denied both incidents. The government withheld all these incident and investigative reports from defense and Bergrin could not effectively impeach Young's credibility at trial; when he lied and denied these facts.

All this evidence existed against Young, was Brady material and, if rightfully turned over to Bergrin, would have resulted in a different verdict.

4. Johnny Davis

This government witness was within inches of his step-son "Kemo" on March 2, 2004 when Kemo was murdered. He was, in

fact, so close he received powder burns from the gunshot residue.

Within minutes of the shooting, police arrived at the scene and Davis gave a brief description of the shooter; that he was a black male, with shoulder length dreadlocks. A day subsequent to the shooting, the shooter looked Davis directly in the eyes and threatened him. (Davis swore at Bergrin's trial he could never forget this face or person.)

Additionally, several months after the shooting, Davis identified Kemo's shooter from a photo array. Davis was shown 6 black males, ALL with shoulder length dreadlocks. The person identified was one Malik Lattimore. The exact same individual William Baskerville had informed two jail house cooperating witnesses, Eric Dock and Troy Bell, was looking for Kemo to kill him. The exact same person whom confessed killing Kemo to Roderick Boyd, at the Passaic County Jail and a law enforcement known hit man.

Davis was shown a photo of Anthony Young by law enforcement officers, after Young became a cooperating federal witness and informed them that Young was NOT the shooter. Young was a bald, black male at the time of the shooting with different skin tone coloring than Lattimore.

Bergrin vehemently argued at trial that Young was not the shooter.

The government NEVER revealed that Davis informed them, in 2004, that Young did not shoot Kemo. Extraordinarily, important Brady material, that would have impeached Young and resulted in Bergrin's acquittal. The lack of any police report made it virtually impossible for Bergrin to effectively and completely impeach testifying law enforcement officers; or to prove through the use of a prior consistent statement, Davis' veraciousness.

2). Christopher Spruill:

Christopher Spruill was a cooperating government witness, whom began living with Kemo's mother, Delphine Smith, upon her break-up with Davis. He also considered himself a surrogate father to Kemo.

On or about March 6, 2004, approximately four days after Kemo's murder, he was praying at a make-shift street memorial where the shooting occurred and tribute to Kemo. As Spruill was leaving the location where Kemo was killed, he was confronted by two individuals; black males with shoulder length dreadlocks. One of the black males mistook him for Johnny Davis, as their appearances are similar, and threatened to kill Spruill if he identified him as Kemo's shooter. The second black male at the scene, who accompanied the male with the handgun, was identified as Lee McPhall. There remained at large, the black male who threatened Spruill with the handgun.

Spruill identified a photograph of Malik Lattimore as the second individual whom threatened him with a gun and fled the scene. This fact was purposely hidden from Bergrin whom was unable to avail himself to this vital impeachment material at trial; suffering enormous prejudice and due process violations.

5. Alejandro Castro

Alejandro Castro was allegedly a non-cooperating government witness, indicted co-conspirator in the narcotics violations, and was represented by attorney David Glazer, CJA counsel. Castro had a prior drug distribution felony conviction, and consequently, faced a 20 year minimum period of incarceration, pursuant to 21 U.S.C. § 851. Castro would have exculpated Bergrin on all drug trafficking allegations, maintenance of a narcotics facility at 710 Summer Avenue, Newark, N.J. and impeached Moran's credibility about Bergrin being paid by Castro to store drugs at 710 Summer Avenue, Newark, New Jersey. He would also deny that Bergrin ever appeared with Moran at this location and summoned Castro to open the locks of the basement for a Subway Sandwich Franchiser. This was the government's main evidence attempting to link Bergrin to the cocaine seized at this location on May 21, 2004. (57 Kilograms)

The government contacted Castro and his attorney and informed them that they would NOT file the 851 enhancement, if Castro inculpates Bergrin during his plea and sentencing colloquy. This fact was never disclosed as Bergrin wanted to compel Castro's testimony at trial, but was informed Castro will not testify since he was yet to be sentenced and he would assert his 5th Amendment rights. This Brady violation curtailed Bergrin's ability to defend his case and must result in reversal.

This is why Bergrin has asked, pleaded, implored and begged for an independent investigation, the Office of Professional Responsibility and Inspector General to get involved at this time and prove, Bergrin never received a fair trial.

6. Hassan Miller

Hassan Miller was a crucial cooperating witness on behalf of the government; who did not testify at trial, but had extraordinarily exculpatory evidence on behalf of Bergrin that the government never disclosed.

Miller was an inmate of the Hudson County Jail, Kearney, New Jersey, and confined to a cell with Young. He was Young's closest friend and confidant, by Young's own admission. Young confided in Miller that he was framing Bergrin and manufacturing incriminatory evidence against him; and that Bergrin was

INNOCENT of having anything to do with the murder of Kemo. Miller, as a paid government informant informed the government whom squelched this evidence of paramount consequences; in derivation of Bergrin's due process rights and Brady. This evidence should reverse Bergrin's convictions alone.

7. Ben Hahn

Ben Hohn was the owner and operator of Ben's Garage, Newark, New Jersey and was interviewed by the government pertinent to the melting of the alleged Kemo murder weapon. Ben initially denied any involvement and knowledge of the gun being melted; and especially ever personally holding the torch to melt it. Although the government vehemently denied, in accord with a specific discovery request by stand-by counsel Lustberg, ever giving any witness a polygraph exam they lied. Ben Hahn was given a polygraph exam that he voluntarily submitted to, a pre-test interview and statement and a post-test interview and statement. There also existed expert polygraph charts of the actual exam. The government withheld all this evidence from Bergrin, which would have enabled him to impeach Young's credibility on important points of examination, query law enforcement personnel on the use of this investigative technique. Most importantly, Brokos ambushed Bergrin during his cross-examination by testifying Hahn was administered a

polygraph and failed it. She failed to reveal the questions poised that would impeach Young's position; especially, as to the time frame when Hahn interacted with Young. Bergrin should have been provided all this impeachment material. It was also extraordinarily important as to when the gun was allegedly brought to Ben's and who was involved; as Ben alleged that Young brought a gun to his shop in October 2004, not March. His employee Devon Jones testified that he personally melted a gun when it was bitter cold and freezing outside. Not 60 degrees as it was on March 2, as Bergrin obtained national weather service reports. This evidence was critical to impeach Young's credibility on whether he was the shooter of Kemo, as he alleged. It would have affected the jury's verdict and been favorable to Bergrin.

5. **Horatio Joines**

Anthony Young falsely informed federal agents that an individual named Horatio Joines, was present at the alleged early morning meeting, on November 25, 2003, and met with Young, Curry, the Baskerville brothers and Will's wife Deidre. That Joines was part of the Curry Organization and even searched for "Kemo" with them; with the intent to kill him. He further advised the government that Joines was at the Kemo murder scene

and in fact identified Kemo for Young and Rakeem so they knew who to kill. Additionally during Young's R. 11, Fed. R. Crim. P. hearing and plea of guilty, Young swore Joines was his co-conspirator and accessory to Kemo's murder. **Da**

The FBI particularly investigated Joines participation in the Kemo murder based exclusively on Young's fabricated statements. Agents interviewed Joines, his fiancé and mother of his son, and checked out his alibi. Joines adamantly proclaimed that his wife/girlfriend was experiencing pregnancy difficulties and he took her to the emergency room at the hospital where he remained until late the night of March, 2, 2004; thereby making it virtually impossible for Young to be telling the truth. Agents confirmed Joines rock solid alibi but never revealed to Bergrin these critical investigative facts, which conclusively impeach Young's credibility, were clearly Brady and would have had to have impacted the government's sole witness in their case against Bergrin. As a matter of fact, the government never revealed any Joines investigation they conducted, including the attempts to record him.

6. **Rasheeda Tarver**

a. ***Motive for Young contacting the FBI and cooperating.***

As previously written, Young contrived and fabricated his motivation for allegedly contacting the FBI and volunteering to

cooperate in the Kemo murder case. Young asserted that he feared retaliation by Jamal McNeil and Jamal Baskerville for allegedly informing his girlfriend/fiancée Rasheeda Tarver, that they shot and killed a young woman in Irvington, N.J. "Nuts" girlfriend. During cross-examination Brokos denied ever asking Tarver about whether Young made this admission to her and if she informed the Baskerville's. Tarver testified that she was in fact interviewed by Brokos and stated that Young lied about the facts and never had any such discussion, nor did she ever tell anyone such things. The government wrongfully failed to reveal this Brady material, which would have proved Young even fabricated his motive for contacting the FBI. Most importantly, Brokos swore at Bergrin's trial that she investigated the fact with Irvington, New Jersey Police Department; that she reviewed reports. None of this impeachment material nor facts were ever provided to the defense.

7. Abdul "Mutallic" Williams

Abdul "Mutallic" Williams was a key and material cooperating witness on behalf of the government. The government had investigative knowledge that he was involved in the sale and distribution of 100s of kilograms of heroin and cocaine and promised they would not prosecute him for commission of these

offenses; carrying life in prison for a career criminal like Williams. They never revealed this Brady material to Bergrin.

Furthermore, Williams was under investigation and a prime suspect in an Essex County murder, involving revenge for the execution of one Maurice Lowe. The investigation ceased once Williams began cooperating and this benefit was never disclosed. As a matter of fact, there was conclusive evidence murder was committed by Williams, never prosecuted because of his cooperation, but never disclosed to Bergrin.

Additionally, Williams conspired and set up (along with his father Earl Williams) the distribution of 7 kilograms of cocaine with Yolanda Jauregui, while he was incarcerated at the Hudson County Jail, Kearny, N.J. The government gave him the benefit of not investigating any of these charges nor prosecuting them in exchange for his cooperation against Bergrin. None of these facts were ever disclosed.

Lastly, the government was cognizant through investigation that Williams, with the assistance of fellow inmates Syed Rehman and Drew Rahoo; while in the Hudson County Jail, manufactured, contrived and fabricated the entire scenario of Bergrin's involvement in his drug distribution; but failed to disclose this Brady evidence; thereby resulting in Bergrin's wrongful conviction for drug distribution.

8. Yolanda Jauregui

The government failed to disclose that Yolanda Jauregui informed them, that Williams was contriving evidence against Bergrin and falsely testifying that Williams acted as a drug courier, delivering large amounts of cocaine for Bergrin and Jauregui's clients; then collecting money and returning it to them. All in violation of Brady.

9. Alejandro Castro

Also, the government failed to reveal exculpatory evidence given by Alejandro Castro disproving that Williams acted as Bergrin's drug delivery courier and then returned funds to Castro, Bergrin or Jauregui. All in violation of Brady.

11. Eugene Braswell

This former Correctional Officer, at Northern State Prison, Newark, New Jersey, was consulted, interviewed and counselled by attorney Gerald Saluti, whom was the partner of Richard Roberts, the compromised, conflicted and corrupt attorney. The government knew this fact and that Saluti advised him to "fuck" Bergrin and cooperate against him, even if you have to lie. The government was aware of this yet never advised Bergrin.

Most importantly, while employed and working as a Correctional Officer, at Northern State Prison, Braswell forged a relationship and made a deal with an inmate wherein Braswell would receive large amounts of drugs on consignment and sell them. When the inmate was given parole-release, he would share the proceeds. The inmate was paroled from prison, contacted Braswell. Braswell invited him to his home to pick up the money he was owed. When the inmate observed Braswell sitting on the porch of his home and in possession of a handgun he knew Braswell had ulterior motives. The inmate also possessed a weapon and there was a shoot-out, with Braswell killing him. Bergrin was retained by the New Jersey State P.B.A (Police Union) to represent Braswell in the shooting and it was eventually declared a justified shooting. Braswell knew that he had to destroy Bergrin whom possessed knowledge that he actually murdered the inmate. The government possessed witness statements, investigative reports and serious impeachment material in accord with Brady, that would have clearly established Braswell's motive for framing/manipulating Bergrin; who had no way of obtaining this discovery to cross examine and impeach Braswell. The government deliberately withheld this impeachment material from Bergrin.

a). Braswell falsely alleged that Ramon Jiminez conspired with him to provide cocaine with the intent to distribute it.

Ramon Jiminez had disclosed to the government Braswell was lying about Ramon introducing him to Peruvian drug dealers and Bergrin's involvement. Despite having this instrumental impeachment material, under Brady, the government never revealed it.

12. Lachoy Walker

This cooperating witness was the main informant and primary witness against Curry and Rakeem Baskerville. He was used extensively by the government in their trial and interpreted a multitude of Title III intercepted conversations; henceforth Gay and the federal prosecutors of Bergrin, were inherently cognizant of the substance of the recordings.

Mr. Walker commenced his cooperation in March, 2004. During a search of his apartment, in Newark, New Jersey the government seized multiple handguns that both Walker alleged and the government argued, he possessed for Curry. Not one of the weapons had been modified to an automatic handgun. The government also possessed, through warrant seizure, multiple weapons from other alleged and assumed Curry Organization members; they also had verified that Anthony Young, as a career convicted felon and armed career criminal, had been arrested in possession of a handgun-**a semi-automatic**; {emphasis added} none of the seized weapons from Walker, nor any Curry organization

member, were ever modified in any manner whatsoever; especially to be fired automatically, as Young alleged. Yet, the government failed to provide any of this impeachment evidence against Young, to Bergrin. Bergrin had no way to investigate this crucial issue, involving the murder of Kemo because Young made this claim for the first time on the witness stand.

The government had firm evidence consisting of ballistic expert reports, which examined a multitude of weapons from Curry himself, Young and other organization members and by the time Young testified in Bergrin 2013, knew there were no automatics or semi-automatic weapons altered. They knew Young committed perjury and lied in a very critical and material component of the trial; one hotly and vigorously tested. The allegation that he was the actual shooter of Kemo. The blatant, fragment, perjury in his description of how he shot Kemo was monstrous to a credibility determination; yet they intentionally withheld firm evidence of his lies- in the ballistic reports and seized weapons. Bergrin was left with a grave disadvantage in impeaching Young's credibility because he never proffered nor testified previously about this fact and it came out during direct examination by the government in the heat of the trial. Clear Brady violations.

Walker was the individual who leased the apartment, known as the dungeon; wherein a multitude of books, ledgers and

records of drug transactions were seized. This was an important factor as the government portrayed Bergrin as a member of the Curry drug organization and wrongfully alleged that this location was where Curry allegedly informed Walker, "This money is for Paul's connect." This is important in that Walker testified he had never mentioned this to anyone dating from his arrest in 2004, until he testified in 2013; his Bergrin trial testimony was his first revelation. Consequently, his credibility was of catastrophic importance and to be able to impeach him with the actual lease for the apartment, which depicted it was Walker's residence and he lied about it being Curry's, was very grave.

Additionally, the government possessed evidence that Walker's fiancée, during interrogation of her by federal agents, had informed them that the apartment was Walker's. They deliberately withheld all this Brady material from Bergrin.

Most importantly, the government deliberately withheld information of Walker's convictions for kidnapping and aggravated assault and the fact that through his cooperation, with the government, they gave up the investigation of him as a prime target and suspect in a serious murder.

Individually, these Brady violations mandate Bergrin's reversal. Collectively they are mountainous.

13. Thomas Moran

Thomas Moran was an important cooperating witness against Bergrin, as he shared office space at Bergrin's law firm and was extensively involved in the Oscar Cordova, Vincente Esteves, attempted murder of a witness, tampering charges. His testimony detrimentally affected Bergrin and Moran falsely corroborated crucial factors in the government's case.

Bergrin recently ascertained that the government possessed and was cognizant that there was evidence pertaining to Moran's mental, emotional, psychological and psychiatric disabilities at the time he commenced cooperation against Bergrin and testified. The government had firm evidence that Moran attempted suicide while in pre-trial detention, this his psychological condition made him desperate to be accepted as a cooperator, especially once he was placed in the Special Housing Unit (SHU) at the Hudson County Jail, Kearney, New Jersey. Moreover, they knew that Moran made statements to his attorney and others, since all his communications were recorded that, "he would do or say anything to get out of the SHU." More importantly, although Moran was placed in an isolated and safe environment in Hudson County, the government used their influence, contacted the Court and United States Marshall's and had Moran transferred to the Bergen County Jail, Hackensack, New Jersey; as an undisclosed benefit for his cooperation against Bergrin; especially since Moran and his family lived and were from Hackensack; and Moran

knew many of the officers at the jail. Additionally, Moran's father was a C.O. and Moran was given preferential treatmen.t Furthermore, they gave him the benefit of his choice of detention and the Bergen Facility was five minutes from his home and family. There was no way for Bergrin to ascertain this impeachment material.

Additionally, Moran was arrested in both Bergen and Monmouth County, New Jersey and had serious open and pending Superior Court felony charges. In Bergen County, he was indicted for second degree eluding the police, after he refused their command to pull over while driving drunk and erratically. He then got into a high speed chase with speeds, according to police, exceeding 95mph. In Monmouth County, while extremely intoxicated, Moran struck a van occupied with a father, mother and their children, causing injuries. The government was in possession of the reports of these incidents, had been in contact with the County prosecutors of Moran's cases and knew their respective positions in resolution of the cases. The government was clearly cognizant of all the facts of the Hudson case and the statutory presumption of seven years imprisonment, for second degree eluding.

They also knew Moran was highly intoxicated. In Monmouth, the government was well aware that due to Moran's intoxication and the injuries the victim's sustained, he was looking at

imprisonment. The government failed to make any revelations of their contacts, discussions, and preferential treatment promises they made with the County Prosecutors and Moran, in exchange for his cooperation against Bergrin.

During cross-examination, Moran perjuriously testified that he was not highly intoxicated in the Hudson County case and denied a high speed chase. In the Monmouth County incident, he denied anyone sustained injuries. He also lied and said he was offered probationary-non-incarceration, in both cases. Most importantly, the government assisted Moran in extensively delaying the disposition of both County cases, until after the Bergrin trial testimony so Moran would not have felony convictions for impeachment purposes and so the state dispositions, would not affect his United States Sentencing Guidelines assessments. All these benefits were concealed from Bergin, as the government continued their evisceration of his due process rights and their Brady violations.

Finally, the government was cognizant that friends, family and counsel of Moran were providing him internet, newspaper and other information, to be used against Bergrin. They also knew through their exhaustive interviews of Jauregui, and federal agents, that Moran contrived and deliberately fabricated his visit to 710 Summer Avenue, Newark, New Jersey and his entire testimony concerning The Subway Sandwich Franchise, Bergrin

telephoning Alejandro Castro to unlock the basement doors and Bergrin's knowledge of drugs at the location. Despite this awareness, they secreted their knowledge from Bergrin and purposely solicited this perjured testimony. They failed to meet their Brady obligations and if they had abided by their Constitutional obligations, Bergrin would have been vindicated from his charges.

Bergrin was inhibited from effectively cross examining Moran due to the government's failure to provide critical discovery materials for impeachment.

14. Maria Correia a/k/a Grace Cruz:

Maria Correia, a/k/a Grace Cruz, was a significant government cooperating witness whom covertly recorded Bergrin and Jauregui. She allegedly stole government funds and retained attorney Richard Roberts to represent Albert Castro. She then wrongfully coached Castro, while visiting him at the Essex County Jail, Newark, New Jersey to lie during his proffer sessions with the government and, eventually when he testified at Bergrin's trial in 2011. Castro perjuriously swore Bergrin offered him $10,000.00 (ten thousand dollars) to kill Kemo. Both Correia and Roberts were involved in this scheme; which the government had knowledge of but violated Brady and never revealed.

The government also possessed Essex County Jail visitation records depicting that both Correia and her boyfriend, Carlos Tavares, visited Castro prior to his government proffer sessions and also subsequent to them. Most importantly, the records reflected Correia's nexus to Castro and Roberts, which Bergrin never knew about it. Prosecutor Gay deliberately withheld this material until after a mistrial was declared, in Bergrin's case in 2011. They have never revealed the suborned perjury and Roberts-Correia scheme. The records would have enabled Bergrin to prove governmental misconduct and constitutional right violations. It prejudiced Bergrin extraordinarily.

Correia was sexually-intimately involved with cooperating witness Oscar Cordova and she informed the government of this fact and, most importantly that Bergrin and Jauregui knew Cordova was not the son of Latin King Leader Lord Gino, as he alleged and that Bergrin was cognizant he was a government informant. These factors were vital to impeach the entire charges involving Cordova, Esteves and the serious felonies involving attempted murder of a witness. Because Bergrin knew Cordova was an informant and Esteves a government cooperator and confessor, then it would prove Bergrin never intended to kill anyone and work with these cooperators and conspirators. The government failed to meet their Brady obligations and effectively diminished any chance Bergrin had to defend these

serious allegations. Bergrin vehemently submits he would have been acquitted of all charges had these facts been revealed. Also, Correia's intimate involvement with Cordova is impeachment material, Bergrin could have used for bias, prejudice and motive during his cross examination of Cordova.

15. Abdul Williams

This cooperating witness sold thousands of kilograms of heroin and cocaine and led a major narcotics distribution network that trafficked and controlled narcotics distribution, in the Bradley Court's Housing Projects. The government negotiated a cooperating plea agreement with, Williams, wherein they would not charge him nor further investigate his drug dealing and his suspected murders, in exchange for cooperating against Bergrin. None of which was disclosed to Bergrin and in violation of Brady. They were also aware that Williams had confessed Bergrin's innocence and the fact he was manufacturing drug trafficking allegations against Bergrin to receive the benefits of cooperation. They knew this information from Syed Rehman and Drew Rahoo, fellow inmates of Williams at the Hudson County Correctional Facility. They also knew that Williams had retained Roberts as his attorney and the conflict this created and affected credibility issues. They failed to meet their Brady obligations and concealed all these facts. Bergrin

submits that the Brady violations severely prejudiced his defense and must result in reversal of his convictions.

16. Rondre Kelly

Rondre Kelly was a cooperating government witness, represented by the corrupt, conflicted and compromised attorney, Richard Roberts. Although he transferred and sold thousands of kilograms of heroin and cocaine, in the District of New Jersey and faced life in prison, he was never charged.

His indictments encompassed Pennsylvania and New York, to which he received a sentence of three year's time served. The Office of the United States Attorney, District of New Jersey negotiated with Kelly, that in exchange for cooperating against Bergrin they would forego prosecution in their jurisdiction; although this was never written, revealed nor disclosed to Bergrin. Bergrin was only provided a copy of the Pennsylvania plea agreement and never even received the New York plea agreement, nor any requested governmental debriefings in Pennsylvania or New York; which could have been used to impeach Kelly's veracity. Prosecutor Minish conceded he had been in contact with federal authorities in New York and Pennsylvania, yet Bergrin was not provided with any rough notes, FBI 302's, DEA 6's nor one word of what Kelly cooperated about in either New York or Pennsylvania, not even background information.

Bergrin submits that Kelly never mentioned Bergrin's name as being involved in his drug business and as a leader of a narcotic organization, as he falsely testified at Bergrin's trial. Consequently, the debriefings from other jurisdictions would have been instrumental in impeaching him and was important Brady evidence; as was the negotiations and deal New Jersey struck with Kelly, but concealed from Bergrin.

B). **Special Agent Gregory Hilton, Newark Field Division of the Drug Enforcement Administration (DEA):**

The government wrongfully and falsely alleged that Bergrin conspired with one Alejandro Castro, to distribute cocaine. They even used cooperating witnesses Williams, Kelly, Moran, Jauregui, and Jiminez to corroborate this falsity; although Jauregui has recanted. The government presented fabricated evidence that Castro was a Mexican Cartel associate yet they theorized Bergrin was his supervisor, leader; and his boss. It was simply absurd.

The government's lead agent for the DEA, wiretap and investigation of the Curry case, was Special Agent Gregory Hilton. On May 20, 2009, the date of Bergrin's arrest, the government seized Bergrin's cellular telephone, the government possessed the seized telephone and the numbers in Bergrin's cellphone memory. One of the listed phone numbers was of Agent

Hilton. Bergrin did not know it by heart and the government never provided this essential Brady evidence.

The government knew that Jiminez introduced Castro, from the Mexican Cartel, to his sister Jauregui, who commenced an intimate sexual relationship with him unbeknownst to Bergrin; and then a business relationship with both Jimenez and Jauregui distributing cocaine. Bergrin had no relationship with Castro but ascertained information about his major drug trafficking.

Bergrin provided evidence to Agent Hilton that Castro and his family were major cocaine traffickers in the New Jersey and Northeast United States. This powerful evidence would have completely and wholly proved the government's case against Bergrin for drug dealing ludicrous; as the government's witnesses alleged Castro was Bergrin's cocaine connection, his drug distribution partner and that they worked closely together; and that Castro assisted Bergrin in earning a fortune. Bergrin's contacting Hilton and providing information would have linked and connected him to a major drug trafficking network. It made no sense.

The records the government possessed of Hilton's telephone number on Bergrin's cellular telephone records, would have disclosed at least 57 contacts and calls, between Hilton and Bergrin and proven Bergrin was telling the truth about contacting the DEA on Castro. The calls to Hilton commenced at

about the same time Castrol was proven to have arrived in New Jersey from a foreign jurisdiction. Bergrin had no other means to prove this, as stand by counsel queried Hilton as to whether Bergrin contacted him and Hilton- coincidentally- stated he did not remember. You do not forget FIFTY SEVEN CONTACTS AND CALLS. That is no coincidence. This Brady evidence was never turned over by the government, nor any reports of Bergrin contacting Hilton. If they had, no reasonable jury could have found him guilty of the drug offenses to which he received multiple life sentences. Furthermore, the government had a Brady responsibility to provide Bergrin's contact information and DEA telephone records and memorandums proving Bergrin contacted the DEA and provided reliable information on the Castro drug Network.

C. **Oscar Cordova**:

Oscar Cordova was a cooperating witness from Chicago, Illinois, who posed as the son of Latin King Leader Lord Gino, who was sentenced to life in prison, and incarcerated at the Federal Supermax Facility, ADX, Florence, Colorado.

During cross-examination of Oscar Cordova, he became emotional and accused Bergrin of attacking his father, Lord Gino, unnecessarily. The District Court precluded Bergrin from

asking additional questions on cross that concerned Lord Gino. The government had evidence Cordova was not Gino's son, was contriving this fact, but never revealed this evidence. This Brady material would have affected the jury's ability to believe Bergrin's theory, that he never believed Cordova and knew he was fraud and confidential informant.

Additionally, Cordova testified that he was under 24 hour protection because of death threats to his life. Although he did not testify they were from Bergrin, his impression wrongfully permitted this inference from the jury. Subsequent to Cordova's testimony, the United States Marshall's seized his cellular telephone and, upon a *de minimis* investigation, it was discovered that Cordova contrived the evidence of the threats and actually telephoned them in himself.

The government recalled him to the witness stand when Bergrin found out about Cordova's perjury and demanded he be put on the witness stand for additional questioning. The government made a clandestine and unrevealed deal essentially immunizing Cordova. Cordova knew he would not face any perjury prosecution. This deal was never revealed to Bergrin and the jury was left with the wrongful impression that Cordova may be prosecuted. This would have impeached his credibility and resulted in a different verdict on the attempted murder of witness, tampering charges.

The government possessed evidence that Cordova was downloading child pornography on his home computer, had been a suspect in sexual assaults, murders, drug distributions that he confessed to upon initial interview by government agents, but provided no evidence for impeachment other than a one sentence cursory statement in a debriefing report. All in violation of Brady. Bergrin asked for any investigative notes, reports of evidence contained in Cordova's briefing report, but was never; provided with any information. The government also made all kinds of payments to Cordova and Brokos intervened when Cordova was stopped for Driving while Intoxicated in Illinois. None of this was ever disclosed in violation of Brady.

D. **Attorney Richard Roberts**:

Corrupt and suspended attorney Richard Roberts committed tax fraud, money laundering, tax evasion and was under investigation by law enforcement for all these crimes. The government knew Roberts was intricately connected and the impetus behind Albert Castro, Rondre Kelly, Maria Correia, Yolanda Jauregui, Eugene Braswell and Abdul Williams' cooperation against Bergrin; yet they concealed the fact that Correia paid Roberts with stolen FBI informant funds to represent Castro, that Roberts had been retained with a $5,000

retainer by Williams, that Roberts had consulted Braswell, with his partner Gerald Saluti for representation and cooperation.

Additionally, the government was well aware that Roberts had Supervisory Assistant United States Attorney, Grady O'Malley, Newark, New Jersey, United States Attorney's Office attend his "*American Gangster*" movie premier. They shared a special relationship that essentially protected and immunized Roberts. Facts that, along with Roberts' extraordinary misconduct and conflicts of interest, should have been revealed as Brady material. As written previously, Roberts convinced witnesses to cooperate against Bergrin, for benefits and favors of non-prosecution. He wrongfully, corruptly and criminally suborned perjury and coached witnesses to lie against Bergrin in order to ingratiate himself with federal prosecutors.

F. The New York Confidential Prostitution Allegations and Related Charges.

The government used two witnesses to prove these allegations-charges. James Cortopassi and Natalie McClendon. Cortopassi was a paralegal employed by the Law Office of Paul Bergrin and later attended law school. Natalie McClendon, known as the number one escort and highest paid prostitute in America, was employed at New York Confidential, as an escort. McClendon earned over a million dollars as an escort, was dealing in

multiple types of drugs, committed acts of tax evasion, money laundering, and many other allegations; as did Cortopassi.

a). Bergrin was never provided with any agreements, plea deals, negotiated benefits and was unable to impeach the credibility of these witnesses, because the government violated their Brady obligations. What is crucial for this Court's consideration is the daily contact and joint agreement between New York State and New Jersey Federal authorities, to work together in prosecuting Bergrin. Henceforth, Bergrin was able to ascertain subsequent to the testimony of these witnesses, that all their criminal offenses and their indictments were dismissed, due to their cooperation against Bergrin.

Cortopassi had been indicted for conspiracy to promote prostitution, prostitution, money laundering and many other offenses. All his charges were dismissed, because of his cooperation against Bergrin and federal authorities were instrumental in this decision. Additionally, federal prosecutors promised and agreed to write a favorable letter to the New Jersey Bar authorities delineating Cortopassi's cooperation against Bergrin. None of this ever revealed, in blatant violation of Brady, as it created a motive for Cortopassi to fabricate evidence against Bergrin; as his bar admission was denied by the character committee and he yearned to receive his law license. .

For McClendon, not only did authorities dismiss her indictment, but she was barred by United States Immigration from re-entry into the United States from her Canadian country, after an unrelated heroin trafficking conviction. Behind Bergrin's back and without revelation to Bergrin, the federal government assisted her reentry into the United States to visit her family as a benefit for her cooperation against Bergrin. The dismissal of felony charges, non-custody for significant felonies and re-entry into the United States was the motivation behind McClendon's perjured testimony. The federally was intricately involved in the resolution of McClendon's case.

Bergrin firmly submits that if the government had not thrown his due process rights away and violated their Brady obligations, he could have effectively impeached the credibility of these criminals and been vindicated of all these charges. Furthermore, the nature of these offenses and allegations of Brady severely prejudiced Bergrin and tainted his ability to receive a fair trial. This crucified Bergrin and was the objective behind the government working so closely with New York authorities and making the misdemeanor offer; in order to convince Bergrin to resolve these New York charges. The Feds and New York County, worked hand in hand, and as New York City Detective Myles Mullady informed Bergrin, "I have been in touch with Agent Brokos every day for over a year to get you."

The government's flagrant suppression of these massive Brady violations, eliminated any chance Bergrin ever had of receiving a fair trial. The government's win at all costs mentality, caused them to burn the United States Constitution and Due Process of Law, against Bergrin.

Key factors Bergrin could have presented to the jury to impeach credibility and impugn the integrity of material witnesses was violated due to the government's misconduct. See Conley v. United States, 415 F. 3d 183,191 (1st Cir. 2005), United States v. Giglio, 405 U.S. 105, 154-55 (1972). Bagley, 473 U.S. at 678 (1985).

The "law makes it easier for [habeas petitioners] to obtain a new trial where the government has deliberately engineered an unfair trial by withholding material exculpatory or impeachment evidence, "as they have clearly done, sub judice. United States v. Joslyn, 206 F. 3d 144, 153 (1st Cir. 2000). The totality and cumulative error and delineated Brady violations, mandates Bergrin's reversal. Any other decision by this most Honorable Court would create a travesty of justice, a grave miscarriage of justice and trample upon the United States Constitution's Due Process Clause.

x. BERGRIN WOULD HAVE BEEN VINDICATED IF HE HAD EFFECTIVE ASSISTANCE OF HIS INVESTIGATION.

Upon Bergrin's arrest on May 20, 2009, he was detained and has remained in continuous federal custody since then. Bergrin incorporates by reference every fact espoused in points one to ten as if inserted here in its entirety.

In or about 2012, and subsequent to Bergrin's first trial, which resulted in a "hung jury" (mistrial), Judge Dennis Cavanaugh made the decision to consolidate all counts in a single trial (23 counts) and reversed the rulings of the Honorable Judge William J. Martini; who had been recused by The Third Circuit Court of Appeals and upon government motion.

Bergrin qualified for funds pursuant to the Criminal Justice Act (CJA) and retained New Jersey Licensed Private Investigator, Louis Stevens. The problem presented to Bergrin was the fact that, although Steven's was supposed to be paid intermittently, his submitted bills remained unpaid for almost a year. Steven's could not afford to pay his bills, run his office and afford his expenses or even survive; thus he failed to perform his duties, responsibilities and obligations. He even went so far as to falsify to stand by counsel and Bergrin that seminal investigation requests by wrongfully verifying he had done it; when he never did. This ineffectiveness and

incompetence destroyed and precluded any chance Bergrin had to receive a fair trial and due process of law. If Steven's had been effective and competent, Bergrin would have won at trial.

Bergrin hereby swears under penalty of perjury that the following facts are true. They could be corroborated through stand by counsel, Lawrence Lustberg:

1. I am *pro se* litigant, Paul W. Bergrin, and am fully cognizant of all facts contained herein.
2. Lou Stevens was my investigator for approximately one year leading up to the trial in 2013, before the Honorable Judge Dennis J. Cavanaugh, District of New Jersey.
3. At the time Mr. Stevens was retained, in accord with the Criminal Justice Act (CJA), I did not know he lived in Western Pennsylvania and approximately three hours distance from Newark, New Jersey and the Metropolitan Detention Center, Brooklyn New York; the two areas of operation, where the majority of work had to be done. In order to effectively and competently investigate major leads, which could lead to Bergrin's jury vindication, Stevens had to travel to these locations to investigate leads. He needed to find and interview material witnesses, many who resided in Newark, N.J.
4. While Bergrin met Mr. Stevens in person at the MDC, Brooklyn, New York, their primary means of communication was via email and telephonically. Since the case was extraordinarily complex,

required review of almost 10,000 pages of trial transcripts in United States v. Bergrin, 2011, review of thousands of pages of transcripts in United States v. Baskerville, 2007, and United States v. Curry; related cases to Bergrin as well as over 20,000 pages of discovery, the work or man hours to prepare for trial was inordinate. More importantly, it would require a team of investigators working full time for many months, to just read through materials and learn the intricacies of the case. Time was of the essence and there were no funds available; other than CJA, which, due to budgeting issues, bills were not being paid by the government and were delayed. Steven's and Bergrin could not fund the investigation and CJA was remiss in their obligations to pay on an interim basis.

5. Additionally, there were a multitude of witnesses in federal custody and out of State and to interview them and conduct a proper investigation required travel.

6. Mr. Steven's, whom is approximately 70 years old, had serious health problems as the result of stress on the case and became incapacitated for several months; jeopardizing the investigation. Additionally, Mr. Steven's wife suffered hospitalization and grave illness, mandating him to stay at home, care and assist her and thus precluding him from investigating further. He had the assistance of other

investigators, but since there were no funds to pay them, they refused to work.

7. Due to the psychological distress of the work on Bergrin's case, Stevens, a recovering alcoholic, began abusing alcohol again. All of this crippled Bergrin's investigation and prejudiced him substantially.

8. The Kemo investigation: Bergrin requested the following that was never done:

a. There were allegations that there were witnesses at the scene of the Kemo shooting, on March 2, 2004. One of these witnesses was a Stacey Williams; who actually witnessed the shooting. The evidence was abundantly clear that Young contrived his role as the shooter of Kemo. That the shooter was a black male, with a wholly different physical appearance than Young.

Steven's was requested to locate and interview Williams and take a sworn statement from him. Stevens located Williams who admitted that he was not candid with law enforcement, that the shooter of Kemo was not bald, like Young, and, in fact, had shoulder length dreadlocks. He also confirmed that the shooter was not wearing a New York Yankees cap, as Young described. Instead of Steven's taking a sworn statement, he left the interview. When he returned approximately two months later to have Williams sign a sworn statement, Stevens learned that

Williams had died. Bergrin thereby lost important objective evidence impeaching Young. What was also very important is that Williams informed Stevens that the FBI showed him a photograph of Young and he informed them that Young was not the shooter. A fact never revealed by the government. If Steven's had done his job effectively, Bergrin may have been able to use this crucial evidence.

b. Fred Lowry, was another witness at the Kemo murder scene and Stevens was ordered to locate him, re-interview him and show him photographs of Young and Lattimore. Stevens failed to even attempt this. He was allegedly interviewed by the FBI and relayed that he could not identify the shooter -- a suspicious response being he observed the act and was able to view the shooter standing over Kemo while firing a handgun.

c. In an FBI 302, there were allegations that an eye witness to the murder, a barber, whom worked at the barber shop on South Orange Avenue and 19th Street, Newark, New Jersey, witnessed the Kemo shooting, tackled the shooter whom fought him off then escaped. Stevens was asked to locate this person and interview him; he never even made an attempt to do so.

d. There was evidence that, while incarcerated at the Passaic County Jail, Patterson, New Jersey, Malik Lattimore confessed that he shot and killed Kemo to one Roderick Boyd. Stevens was asked to interview Boyd and confirm this fact. He never even

attempted this interview. Lattimore fit the description of the shooter, according to credible witnesses, and was positively identified by eye-witness Johnny Davis.

e. Jamal Baskerville, Jamal McNeil and Horatio Joines, all individuals never charged with any crimes related to the Kemo case, were material witnesses. Jamal Baskerville and McNeil were allegedly present at a meeting with Bergrin, wherein Bergrin allegedly stated, "No Kemo, no case," amongst other things. Bergrin knew that he had never met these individuals in his life and that no such meeting ever occurred. He also knew he never uttered these words. Horatio Joines was falsely inculpated in the Kemo murder by Young. Young swore Joines identified Kemo at the murder scene on March 2, 2004 for Young to kill him. Stevens was requested to locate and interview all three of these witnesses, take sworn statements and even determine Joines whereabouts at the time of the murder; and whether an alibi existed. If he had even attempted this and done his job, it would have been proven that Young fabricated Bergrin's role in the Kemo murder and that Joines had a credible and solid alibi, completely disputing Young's accusations against Joines, Bergrin and others.

f. Stevens was requested to interview Deidre Baskerville, Al Hamid Baskerville and Hanif Baskerville, as to an alleged meeting Young swore to on the morning of November 25, 2003-- a meeting

he fabricated and falsely manufactured. If Stevens had done this, it would have proven that Young lied again. More importantly, it would have proven Young fabricated all the events of November 25, 2003, a very important day.

g. Stevens was asked to subpoena all of the above witnesses for trial and failed to. He never even attempted to act, but fabricated the fact they had.

h. Christopher Spruill was accosted by Kemo's shooter on March 6, 2004, a few days after the murder. Stevens was asked to interview Spruill and get a description of the person who confronted him to see if he could make a positive photographic identification of Lattimore; as was reflected in the report of Essex County Detective Bzik. He failed to do this. This would have proven Young was not the shooter, thereby destroying Young's credibility for his allegations against Bergrin.

i. Shawn McPhall was arrested on March 6, 2004, at the scene of a make shift grave site of Kemo after he was identified by Spruill as one of two individuals who threatened him with a gun; for being a witness in the Kemo case. Spruill had been misidentified as eye witness Johnny Davis. Stevens was requested to interview McPhall and show him photographs of Young and Lattimore. This was never done. This investigation was critical to prove Young's manufacture of evidence and that Young

never shot Kemo. If Stevens had even accomplished half of these vital assignments, Bergrin would have been acquitted.

9. The allegations of drug trafficking:

a). During the course of trial in 2011, Julia Andrades, the wife of alleged co-conspirator and cooperating witness, Ramon Jiminez, contacted the chambers of the Honorable William J. Martini, on Ramon's behalf. Stevens was requested to contact Julia and make a determination as to the reasons for her judicial contact. Stevens telephoned Julia who informed him that the government is putting pressure on Ramon to fabricate testimony against Bergrin, especially about drugs and Kemo's murder. Stevens failed to take a statement from Julia and merely instructed her to have Ramon contact him. Julia knew Bergrin was innocent and that her husband Ramon lied about Bergrin's criminality.

Ramon called Stevens from the Monmouth County Jail, Freehold, and New Jersey on a recorded inmate line. Ramon advised Stevens that he feared retaliation if the government ascertained he spoke to Stevens. Most importantly, Stevens was advised by Ramon that Bergrin is innocent of drug trafficking and that, if he did not falsely incriminate Bergrin and state what he had been coached to say, by his attorney and the government, he would suffer the ramifications and consequences of increased

imprisonment; and end up serving life in prison. He also admitted that he manufactured evidence against Bergrin for the Kemo murder and drug dealing. That Bergrin was truly innocent.

Bergrin implored and begged Stevens to subpoena the telephone call from the Monmouth County Correctional Center and to take a statement from Ramon and his wife Julia. Stevens did none of this. As a matter of fact, by the time he went to the Monmouth Jail, the recording, according to Stevens, had been erased and he was ordered by Ramon's counsel, John Azzarella, not to interview Ramon. This devastated and prejudiced Bergrin's opportunity to defend his case. It also crushed Bergrin's opportunity to impeach Ramon's credibility. Bergrin would have compelled Ramon's testimony and played the recording and admitted the statement to the jury.

b). Eugene Braswell, a cooperating government witness testified that he met Bergrin at both his office as well as at specific hotel rooms, at the Robert Treat Center Hotel, 50 Park Place, Newark, New Jersey. All room rentals at the hotel are recorded, identification must be shown to lease (and a copy is made), pursuant to New Jersey Law and there are meticulous records. Additionally, there is intricate security videos of all areas of the hotel. If Braswell picked up cocaine from Bergrin at his office or in the hotel, or if it was in any way transferred to him, as Braswell falsely testified, it would be

contained on video. He would have been seen arriving empty hands and leaving with bags.

Braswell also falsely alleged that he received kilograms of cocaine from Bergrin, who had them stashed in the ceiling of his offices; which would require that the ceiling tiles be moved. It was requested that he subpoena and obtain copies of the hotel room records and security videos and to check the tiles in the ceiling to conclusively prove Braswell lied. Stevens did none of this. If Braswell was proven to be falsely incriminating Bergrin for drug trafficking, it could have resulted in full acquittal of Bergrin.

c). Abdul "Mutallic" Williams, manufactured evidence of working as a courier-taxi driver for Bergrin. He testified he would deliver multi-kilograms of cocaine to clients of Bergrin and Yolanda Jauregui, and pick up money; which he returned to either Bergrin, Jauregui or Alejandro Castro. He also wrongfully and falsely denied that he conducted a multi-kilogram (7) drug transaction, from his imprisonment at the Hudson County Jail, Kearney, New Jersey with Jauregui. The narcotic transaction involved members of his family he was trying to protect.

Bergrin obtained credible evidence that Williams schemed, planned, devised, manufactured and fabricated Bergrin's drug incrimination with the assistance of other inmates at the jail. The other inmates were willing to testify at trial on Bergrin's

behalf: Syed Rehman and Drew Rahoo. Stevens was directed to visit Rehman and Rahoo at their location of federal incarceration. He failed to do any requested investigation concerning Williams, to the detriment and prejudice of Bergrin.

Stevens was further requested to obtain the recorded call from Hudson County Correctional Center, of Williams cryptically setting up the drug deal, but he never did. He did nothing to assist Bergrin's defense of these charges.

He was further asked to interview Mr. Muhammad, who was represented by attorney Clifford Minor, and falsely exculpated Williams for gun possession. Muhammad would have to admit Bergrin was not involved and innocent. He did nothing.

d). Thomas Moran

Thomas Moran perjured himself when he materially testified that he went to the location known as 710 Summer Avenue, Newark, New Jersey, Isabela's Restaurant; wherein Bergrin telephoned Castro on his cell telephone, to come there and open the locks of the basement doors. Moran further testified that Castro came there, opened the locks to the basement doors, and Moran witnessed a meeting between Bergrin and members of Subway Sandwich Franchise. The government used these lies as a means to link and connect Bergrin to this location and drugs seized there on May 21, 2004; the date subsequent to Bergrin's arrest.

Moran also contrived a statement never made by Bergrin that (Alejandro) Castro was paying him $2500 per month for drugs to be stored in the basement of 710 Summer Avenue. This statement could have been proven false, with minimum investigation by contacting Subway.

Bergrin pleaded with Stevens to go to Isabela's, photograph the ingress and egress at this location to prove Moran was never there and lied. That there are no outside entries to the basement, that there are no doors nor locks on any doors to enter it. Additionally, Stevens was asked to contact Subway's who had to have recorded information to prove no meeting ever took place. As a matter of fact, to prove Bergrin never had any contact with them whatsoever. Stevens did nothing. He should also have interviewed Castro as to a back-door plea wherein the government would not file a 21 U.S.C. §851 enhancement, if Castro inculpated Bergrin.

e). Bergrin and Alejandro Castro did not have any contact with each other. Bergrin disliked, despised and had animosity toward Castro; whom was a drug dealer and Bergrin suspected of a relationship with the woman he loved, and lived with.

Bergrin got into a fight with Castro on Bloomfield Avenue, Newark, New Jersey which was witnessed by several individuals, including Newark Street Crime Detectives, also Jose "Khalif" Martinez, also N.J. State Correctional Officer, Melissa Askew

and others. At the scene of the fight and in the presence of all these people, Bergrin informed law enforcement that Castro is a major drug dealer and an illegal alien. Not consistent conduct with someone whom was alleged to have a cocaine business relationship with Castro; and could, completely destroy Bergrin's life if investigated.

Bergrin pleaded with Stevens to interview and take statements from Khalif Martinez, Askew and through Martinez determine whom the Newark Detective (a Hispanic male) was; that Bergrin advised about Castro. Bergrin intended to subpoena all of them for trial. Stevens did nothing. This evidence would have undermined the premise of the government's entire drug trafficking case against Bergrin. It would have proved that Bergrin was never receiving cocaine from Castro and that Castro was not his drug connect and associate; and that Bergrin was not the leader, organizer and manager of a narcotic organization and that Moran fabricated Bergrin's connection to Castro and the May 21, 2004 drug seizure. What is disturbing is Stevens informed Bergrin and stand by counsel that he accomplished these tasks when he never did. Bergrin could have also impeached Moran by proving he manufactured all the evidence concerning Subway's. Stevens prejudiced Bergrin enormously by his ineffectiveness.

10. Tampering with witness in Norberto Velez case:

a). Investigator Stevens was instructed to travel to Little Street, Bellevue, New Jersey and interview Julio Izquierdo, an independent and objective witness, whom testified in State v. Norberto Velez, Essex County Superior Court, Newark, N.J.; that he witnessed Norberto's ex-wife, Marylou Bruno-Velez, hiding a shiny object in her hands (indicative of a knife) when she exited Norberto's home and entered her vehicle. This evidence would have proved that Marylou and Caroline were not veracious, when they testified that Norberto attacked an unarmed woman. It was powerful impeachment material. Stevens was also asked to order a copy of the State trial transcript of Izquierdo to refresh his memory, from a testimony 10 years previous. None of this was ever done.

When Izquierdo testified in Bergrin's 2013 trial, he did not remember what he observed and Bergrin had nothing to refresh his recollection. Stevens was also requested to subpoena the Essex County Jail Admission records of Velez, to prove defensive injuries to his hands and interview medical personnel so defense could prove he received defensive injuries to his hands and dispute serious tampering allegations against Bergrin. None of this was done. Stevens did nothing to assist Bergrin in defending these charges.

b). **Theresa Vannoy, a/k/a Ashley Jauregui**

Theresa Vannoy, a/k/a Ashley Jauregui was the surrogate daughter of Yolanda Jauregui and Paul Bergrin. She knew that Yolanda engaged in a drug business and intimate relationship Alejandro Castro. Theresa was assaulted, intimidated and coerced by Jauregui to keep this information from Bergrin. She would have been instrumental in proving Bergrin's innocence by assuring the jury that Bergrin was unaware of the drug trafficking.

Theresa was also the best friend of Caroline Velez and she would have testified and proven Bergrin never tampered with Velez nor coerced her to fabricate testimony, as alleged.

Stevens was requested to interview Theresa, prepare her for trial testimony and subpoena her. Stevens became ill and none of this was accomplished.

Theresa lives in Louisiana. Bergrin subpoenaed her for trial but the United States Marshall's did not serve Theresa until after closing arguments. In fact, Theresa was not served until the jury returned a guilty verdict.

c). **Ofelia Velez-Rodriguez**

Ofelia Velez-Rodriguez was a material witness who observed Marylou Bruno enter Norberto's home, proceed to the kitchen and remove the knife; that was the instrumentality of the Velez prosecution; and a highly material and central issue. This essential fact would have crushed the allegations in this case

against Bergrin and impeached the testimony against him. Again, although requested, Stevens never interviewed her nor attempted to secure her trial testimony.

10. **Tampering with witness, victim or an informant, Conspiracy to Murder a Witness**

a). Oscar Cordova testified that he was the son of Lord Gino, the exiled and imprisoned leader of the Latin King's Organization. That he was sent by drug lords in Chicago, Mexico, Colombia and his father, to help Vincente Esteves on his drug trafficking case; and that Paul Bergrin was known to them and they wanted Bergrin on the Esteves case.

Bergrin knew this was absurd as Bergrin's life was threatened by the Latin King's for his aggressive defense of Jeffrey Castro in Essex County, Superior Court. Jeffrey Castro had killed New Jersey's Latin King Leader. During the trial, the Latin Kings threatened to kill him and kidnap his daughter Theresa Vannoy (Ashley) if he continued in Castro's representation. Bergrin recorded the threat and called the police. The incident was investigated by Detective Anton Badin, Newark P.D. and the recording turned over to police. Newark has it in evidence.

Bergrin pleaded with Stevens to subpoena the recording, interview Badin and have them at trial to testify. Stevens lied and said this was done. It was have shown the Latin King's hate

Bergrin, do not trust him, would never do business with him and still wanted to kill him. It would have also proven why Bergrin knew Oscar Cordova was an informant and why he never believed Oscar. Thereby impeaching serious attempted murder allegations against Bergrin.

During Bergrin's defense case, the Court assisted him in contacting Newark Police and securing Detective Badin's appearance; whom was never subpoenaed as Stevens falsely claimed, nor was the Latin King recording available.

Bergrin was embarrassed and humiliated when Badin showed up unprepared and without the recording. He was evasive on the witness stand and Bergrin neither had the recording nor his reports for testimony to either cross-examine Badin, nor refresh his recollection. It made Bergrin appear as a liar before the jury and crippled his defense.

Stevens did the exact same thing with Detective Joseph Conzentino, who also was an important witness. Conzentino was supposed to be interviewed, subpoenaed and prepared to testify, relevant to Bergrin's fight with Alejandro Castro. Conzentino, a street crimes detective, was on the scene of the fight. Stevens did nothing and Conzentino was ordered by Superior's to leave a funeral and proceed to federal court to testify, completely surprised and unprepared. You can just imagine his

disposition when he took the witness stand. It was a disaster for Bergrin; all because of Stevens' incompetence.

10. EDWARD PEOPLES' CASE-TAMPERING WITH A WITNESS

Bergrin was accused of being complicit with his client, Edward Peoples, who Bergrin was representing on a state murder case when Peoples' girlfriend, Anyea Williams, failed to appear in court and fled the jurisdiction. This allegation was derived from an intercepted letter Peoples sent to Anyea wherein he wrote, "Paul said you should leave after opening statement and not testify," or words to that effect.

Bergrin instructed Stevens to obtain the Peoples' file which the government had seized on May 20, 2009, when Bergrin was arrested. Within the file is a sworn certification from Peoples delineating Bergrin had nothing whatsoever to do with Anyea's failure to appear and that Peoples made up the fact about Bergrin to give it credibility with his girlfriend. The government never turned this certification over and argued Bergrin's complicity. Stevens failed to do anything on the Peoples case, severely prejudicing Bergrin's defense and credibility.

Anyea Williams is also a Newark resident and Bergrin actually advised her to tell the truth and appear in court, pursuant to subpoena. Stevens was instructed

Individually, each incident of ineffective investigative assistance prejudiced Bergrin to the magnitude requiring case reversal; collectively they clearly and unequivocally compel reversal.

ARGUMENT

The plethora of instances clearly delineating a failed investigation prejudiced Bergrin inordinately. The magnitude of the consequences are immeasurable, but would have resulted in extraordinary impeachment and proof of actual innocence. Moreover, the verdict would have been different if Stevens had been effective, competent and met his professional obligations and responsibilities. Stevens blatantly compromised and eviscerated any chance Bergrin had to receive a fair trial, in accord with Due Process of Law. For this alone, not even weighing all other points, Bergrin's conviction must be reversed.

Bergrin has copiously and meticulously espoused uncontroverted examples of requested, but failed investigation--investigation never attempted and to which any competent or effective investigator, would have undertaken. What must be significantly disturbing is that in most instances, Stevens never even attempted to accomplish the task and even fabricated the fact that it had been completed; because he understood the impact of the investigation. Regardless of whether Stevens' failure to

meet his due process mandates was because of alcoholism, the overwhelming burden and stress he was under, lack of compensation; or his wife's medical condition has; Bergrin never received effective investigation assistance. Bergrin relied to his detriment on competent investigation and it was he alone who suffered its consequences to the detriment of conviction and imposition of multiple life sentences.

The systemic failures of the Criminal Justice Act, compensating Stevens for expenses, travel and his work must also not prejudice Bergrin, but must also be considered by this reviewing Court.

Based upon the foregoing facts, Petitioner has convincingly established inherent ineffective assistance of his investigator and the extraordinary prejudice he suffered, as its result. Strickland v. Washington, 466 U.S. 668, (1984), United States v. Glover, 531 U.S. 198 (2001) and Williams v. Taylor, 120 S. Ct. 1495, 1512-16 (2000). The "multiplicity" of errors "denied Bergrin his Sixth Amendment Constitutional right to effective assistance of his investigator, during pre-trial and trial proceedings.

The Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. This extends to investigative assistance which is an extension of counsel; ability to meet Sixth Amendment violations. See Yarborough v.

Gentry, 540 U.S. 1, 5 (2003) (per curiam): See also Padilla v. Ky., 559 U.S. 356,364 (2010), McCann v. Richardson, 397 U.S. 759, 771 n. 14 (1970).

To obtain reversal of a conviction, the defendant must prove that 1) counsel's performance "fell below an objective standard of reasonableness" and 2) counsel's or the investigator's deficient performance prejudiced and resulted in an unfair outcome in the proceeding. In William v. Taylor, 529 U.S. 362, 396-99 (2000), counsel's failure to investigate and present mitigating evidence was prejudicial enough to reverse the case. Bergrin has presented and submitted one material, essential and extraordinary factual instance after another, unequivocally proving ineffectiveness and the prejudice he endured. Prejudice to the magnitude and significance of having affected the verdict.

The Third Circuit is consistent with reversal for failed, incompetent and incompetent investigation which prejudices defendant's right to a fair trial. In Grant v. Lockett, 709 F. 3d 224, 238 (3d Cir. 2013), counsels failure to investigate and attempt to impeach the prosecution's sole witness was prejudicial because the jury would have questioned witnesses reliability. The exact same thing happened to Bergrin and which was meticulously averred in these moving papers. The government must concede that Stevens' investigation was ineffective and the

facts prove Young was the material and sole witness against Bergrin in the Kemo murder case. Most importantly, the Kemo charges were so inflammatory, prejudicial and the instrument which controlled the verdict on all remaining counts of the indictment. Additionally, Bergrin has also evinced materially ineffective investigation on the remaining counts also, to his substantial prejudice. See Foust v. Houk, 655 F. 3d 524, 538-39 (6th Cir 2011), counsel's failure to do pre-sentence investigation was prejudiced and reversible error; Jones v. Ryan, 583 F. 3d 626, 646-47 (9th Cir 2009), counsel's failure to investigate and present mitigating evidence, was reversible error.

In deciding whether performance was ineffective, a court must consider the totality of circumstances. Strickland, 466 U.S. at 690. In the case, sub judice, not only did Stevens wholly fail to investigate essential facts, defenses and evidence, which would not only have destroyed the credibility of vital witnesses, and even exculpated Bergrin but he also contrived the response that he had. This compounded the issue, problem and precluded Bergrin from effective presentation of evidence and cross-examination. All in violation of his due process rights. Grant v. Lockett, 709 F. 3d 224, 238 (3d Cir. 2013), was a reversal because counsel failed to impeach prosecution witnesses and this was ineffectiveness.

Stevens eviscerated any opportunity Bergrin had at effective "cross-examination of crucial witness, due to his ineffectiveness" and is tantamount to failing to impeach witnesses. See also, Dugas v. Coplan, 428 F. 3d 317, 332 (1st Cir. 2005) (counsel's failure to investigate possible defense was ineffective assistance).

In Bergrin's case, he was denied "actual and constructive" assistance of his investigator altogether; which allows this court to presume prejudice. This is depicted in Stevens' lack of any effort to investigate material facts and evidence and then fabricating the fact that he had. Strickland, 466 U.S. at 692, see also Mickens v. Taylor, 535 U.S. 162, 166 (2002); Campusano v. U.S., 442 F. 3d 770, 775-77 (2d Cir. 2006). In Appelu v. Horn, 250 F. 3d 203, 217 (3d Cir. 2001), prejudice was presumed when counsel failed to make any investigation into the matter of defendant's competency. A case analogous to Stevens failure to conduct any investigation, resulting in severe prejudice to Bergrin.

Bergin vociferously submits that if Stevens accomplished his obligated investigative tasks, the verdict would have been an acquittal of all charges. The reasonable probability of a different verdict is overwhelming. Grant v. Lockett, 709 F. 3d 224, 237-38 (3d Cir. 2013).

For the aforementioned reasons, Bergrin implores reversal of his convictions. He has always pled for due process of law and the opportunity to receive a fair trial. This never occurred.

Enclosure I

The Supreme Court's most recent decision in Wearry v. Cain, 577 U.S. ___(2016), highlights the magnitude of Brady violation issues. The Court summarily reversed a state habeas petition that sought relief from a conviction based upon a Brady violation. The Court held that, "[t]he suppression by the prosecution of evidence favorable to an accused, upon request violates due process, where the evidence is material either to guilt or to punishment irrespective of the good or bad faith of the prosecution." Brady, supra, at 87. See also Giglio v. United States, 405 U.S. 150, 153, 154 (1972) (clarifying that the ruled stated in Brady applies to evidence undermining witness credibility).

Evidence qualifies as material when there is "any reasonable likelihood it could have 'affected the judgment of the jury." {emphasis added} Giglio, supra at 154 (quoting Napue v. Illinois, 360 U.S. 264, 271 (1959).

To prevail on Brady, the Court opined, that a defendant need not show that he "more likely than not" would have been acquitted had the new evidence been admitted," Smith v. Cain, 565 U.S. 73 ____(2012) (slip. Op. at 2, 3) (internal quotation marks and brackets omitted." He must show only that the new evidence is sufficient to "undermine confidence" in the verdict." Ibid. 56.

In, United States v. Agurs, 427 U.S. 97, 113 (1976), the Supreme Court espoused that, "[I]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt," which is clearly apply applicable to the verdict in Bergrin.

XI. PETITIONER'S DUE PROCESS RIGHTS AND FIFTH AND SIXTH AMENDMENT RIGHTS WERE EGREGIOUSLY VIOLATED BY THE GOVERNMENT AND THE COURT'S INTERFERENCE WITH HIS RIGHT TO PRESENT A DEFENSE.

The Government and the Court committed gross misconduct when they continuously bullied and belittled Petitioner and blocked him from presenting a defense. The trial judge prevented Petitioner from challenging the government's evidence at trial by permitting the government to make improper speaking objections, curtailing Petitioner's cross-examination, and vouching for the credibility and integrity of every government witness. Incredibly, the trial judge alone interfered, interrupted and interjected, *sua sponte* ***more than 300 times*** while Petitioner was presenting his case. And the prosecution did so ***400 times*** more.

A. The Government and the Court's Continuous Disparagement of Petitioner and Numerous Misrepresentations Mislead and Inflame the Jury's Passions Breeding Contempt for Petitioner.

The Court consistently refused Petitioner's requests for sidebar conferences and the prosecution strategically used it to their advantage; by airing their grievances before the jury. This commenced with opening statements and continued to the end of the case. The Court rebuked Petitioner's pleas to be heard

at sidebar in front of the jury with statements such as, "No, you can't be heard at sidebar. You are going beyond what an opening is supposed to do. I've been warning you."

Upon hearing the Court's improper sarcasm and venomous contempt toward Petitioner, Petitioner was immeasurably and irrevocably prejudiced.

The prosecution, fueled and encouraged by the court's blatant disdain and overt contempt for Petitioner and his inherently biased rulings excoriated Petitioner from opening statements through summations.

From the commencement of trial, the jury was misled to believe that Petitioner was wasting valuable time and resources, mischaracterizing and fabricating evidence. At every juncture, the government systematically and unjustly attacked Petitioner's contestation of the case. And, as detailed in this point, they acted with ill and malicious intent.

The government's improper actions, in conjunction with the court's encouragement, and the overall overwhelming hostility toward Petitioner was open, obvious and apparent. Such degrading comments and inappropriately adversarial demeanor toward Petitioner undoubtedly smeared him in the eyes of the jury.

This was especially so because Petitioner was representing himself and the nature of the allegations accused Petitioner of

illegal acts committed while he acted as a lawyer. The actions of government and court were, in effect, their own personal trial, cross-examination and conviction of the Petitioner, in a trial in which the Petitioner never testified. Their appalling treatment of Petitioner reinforced the "bad guy" image the government portrayed of Petitioner in the indictment.

Their actions adversely, prejudicially and immeasurably tainted the jury's perception of Petitioner, closing the jury's ears to anything Petitioner would say or do in his defense. Their actions clearly and unequivocally eviscerated Petitioner's constitutional rights; and denying him any semblance of a fair or just trial. Petitioner was not given a fair opportunity to refute the Government's accusations or present a defense. His convictions should be vacated and the indictment dismissed. Chambers v. Mississippi, 410 U.S. 284, 294(1973).

This motion will present what is just a sample of the conduct which violated Petitioner's Due Process rights, Sixth Amendment right to confront the evidence against him and Fifth Amendment right not to testify.

B. The trial judge and the government interrupted the Pro Se Petitioner more than 600 times starting with Speaking Objections and Derogatory Comments in Front of the Jury.

This was a massive and complex case, carrying mandatory and multiple life sentences if convicted. The opening was vital to Petitioner and his defense. The government had more than 8 years to build a case against Petitioner. There were approximately seventy-five witnesses who were anticipated to testify; thousands of pages of discovery and exhibits; thousands of recorded conversations; and twenty-three counts in the Indictment.

The myriad of interruptions, speaking objections and derogatory comments impugned Petitioner's integrity, competence and veracity (while acting as his own counsel presenting his case in court), and eradicated any credence he or his defense had going forward. It set the prejudicial tone for what was to come. The judicial and prosecutorial objections, influenced the jury to believe that the manner in which Petitioner was presenting his case was deliberately breeching the law; that he was acting with a nefarious intent and committing acts of misconduct *during trial*; clearly inferring that this was expected of a defendant charged with all these crimes.

Moreover, the Judge should have been sensitive to his comments and arguments and the magnitude of the impact it would have on the jurors' perceptions of Petitioner; but he never was and never sought to ensure a fair trial for Petitioner.

1. The Court Interrupted Petitioner's Opening Statement more than 7 times with Sua Sponte Improper and Derogatory Remarks that Set the Tone for the Entire Trial.

During his opening statement, Petitioner attempted to present, in an organized and methodical manner, an outline of what he expected the evidence to prove. In front of the jury, the first objection was made by prosecutor Gay:

Gay: "Your Honor, is there going to be evidence of that?" (T105)

Court: "What's the relevance?" Id.

Both objecting parties knew that the case could hinge on the jury determining if Petitioner had the background to know certain facts, which would be admitted through multiple witnesses.

The Judge objected a second and third time and informed the jury:

Court: "[T]hat's not the purpose of opening. I've already warned you" (T152)

As Petitioner was outlining the evidence he intended to prove, the Judge then objected and interrupted a fourth time, stating

Court: "You're going too far in an opening. Now move on"; (T155).

On the fifth occasion, the Judge stated,

Court: "Either bring it to a close or I will;" (T158).

The sixth time, the Judge yelled,

Court: "Mr. Bergrin!" (T164) and, on his seventh wrongful interruption and *sua sponte* and *ex parte* objection, the Court spoke directly to the jury,

Court: "This is another one of the problems when you get into such minute detail, which is totally improper." (T167).

Henceforth, after seven judicial objections and inappropriate comments, the jury was effectively convinced to ignore anything that Petitioner, acting as his own counsel, stated. It would also establish a pattern of shocking bias, making a fair trial impossible.

The Court's repugnant and offensive conduct and utter failure to protect Petitioner's constitutional rights and ensure the presentation of a fair trial, was evident in the court's incessant rushing to finish the trial. He consistently gave the impression to the jury that Petitioner was wasting the court and jurors' precious time refuting the government's evidence and presenting a defense.

The impropriety of the Court's conduct is evidenced by the fact that Petitioner's opening statement and cross-examination of many essential witnesses, was virtually identical to Petitioner's 2011 trial, which occurred with minimal objection.

C. The Government's Speaking Objections to Coach Witnesses' Answers, Vouch for their Credibility and Mislead the Jury.

1. *Lachoy Walker: Speaking Objections to Coach the Witness*

The trial began with the government calling Lachoy Walker; an important witness who alleged that Hakeem Curry told him that he was going to meet the drug connection to whom "Paul" introduced him. Walker never informed law enforcement of this claim for nearly 10 (ten) years. From about 2004, when he first began cooperating, until his trial testimony in 2013, Walker never made this claim—not even in the 2011 trial. Yet, the government sought to protect and vouch for this witness's credibility at all costs; especially through speaking objections.

Prosecutor Gay objected a multitude of times during cross-examination, instructing the jury that:

Gay: "[t]he witness never said that." T226;

Gay: "[t]his is not a document this witness has ever seen before, so I'm not sure what the question is . . . This witness has never seen this document and has no idea what's contained in the document." T236;" and

Gay: "Your Honor, that's not what the transcript says," T239.

Instead of making these (erroneous) points on redirect, Gay made each statement in the presence of the jury, clearly

intending to assist the witness in responding to cross-examination questions and attempting to justify the witness' inability to answer. The court never admonished the government and, as a matter of fact, this set the pattern of what was to come when the Court would not only encourage such objections but would participate and bolster them.

2. Marylu Bruno and Caroline Velez: Vouching for their Credibility and Inflaming the Passions of the Jury.

With witnesses, Marylu Bruno and her daughter, Caroline Velez, the prosecution and court did everything humanly possible to influence the jury and persuade the jury of their veraciousness. They expressed their personal belief in the truthfulness of the witnesses and the government's case; they vouched for their testimony. The Court and Petitioner's adversary had a shared agenda designed to convince the jury that Petitioner's questions of any witness were misstatements or mischaracterizations of fact and that anything Petitioner says should be disregarded.

a. Marylu Bruno: The Improper Speaking Objections, the Court's Vouching for Bruno's credibility and Scolding Petitioner for "wasting" the Court's Time with "Nothing But Irrelevant Testimony."

During Petitioner’s cross-examination of Bruno, [Minish] objected and stated to the jury: "No, Judge, absolutely incorrect. Mr. Bergrin is misstating the record and it’s completely unrelated to her testimony;" (when, in fact, it was perfectly permissible and appropriate examination). T 411.

When the government objected, the judge hurriedly came off the bench, red-faced and angry, came down to the witness stand and grabbed the document from her hand. He then informed the jury that Bruno was a truthful witness, inferring that Petitioner’s attempt to impeach her credibility was wrongful and improper; that Petitioner was wasting the court’s and jurors' precious time; and not being candid with anyone.

[Court]: "Now come on. THIS HAS NOTHING TO DO WITH ANYTHING. YOU'RE ATTACKING THIS WOMAN'S CREDIBILITY. SHE NEVER SAID ANYTHING ABOUT YOU. I DON'T UNDERSTAND ANY OF THIS. We are WASTING time." T 428. (Emphasis added).

Petitioner, acting as his own counsel, was attempting to cross-examine the witness to prove she was incredulous. (Emphasis added). This was entirely appropriate. This witness was directly linked to the serious charges of witness tampering; (with her daughter Caroline) and had to be impeached to establish they were both in cahoots with each other.

The Court even went further to destroy Petitioner's defense:

[Court]: "And I have a duty to move this case along at an appropriate pace and not have irrelevant testimony coming in;

and there's been NOTHING BUT IRRELEVANT TESTIMONY." (Emphasis added). T 444.

The Court effectively instructed the jury, with one of the very first witnesses in the case, that it was legally improper for the Petitioner to offer critical impeachment evidence against this witness (and impliedly against future witnesses) and that the jury should disregard it because Petitioner was incredulous and his defense meritless. In doing so, there Court removed this determination from the jury's province as the fact finder of credibility. (Emphasis added).

b. <u>Caroline Velez: Speaking Objections and Credibility Vouching to Explain her Inconsistent Testimony</u>.

Encouraged by the Court's comments, instructions and demeanor during Marylu Velez Bruno's testimony, the government (Minish) knew it had full reign. Throughout Caroline Velez's testimony, the government took full advantage of the situation with improper speaking objections and witness vouching, such as:

[Minish]: "Judge, a transcript Bergrin had was evidence of the crime Bergrin committed." T 940.
[Minish]: "Judge, that's incorrect and it's FACTUALLY INACCURATE" T 1019; (Emphasis Added).
[Minish]:"Judge, she has NOT testified that she was provided the statement prior to her testimony." "Judge, again he's mischaracterizing the overall flow of the tape." T 1098; (After a recording was played to the jury which obliterated the witnesses credibility);
[Minish]:"Judge, objection, ABSOLUTELY NO SUGGESTIONS (emphasis added) were made by this detective during the course of this video" T 1108 (Minish vouching for the detective's credibility who took the recorded video statement and during counsel's legitimate cross-examination of a vital witness);
[Minish]:"Judge, again, he's mischaracterizing." T 1114; "Judge, that's FACTUALLY INACCURATE. But she wouldn't know him by the

name."(Wrongfully testifying for the witness, suggesting answers and explaining her statements); (Emphasis added).
[MINISH]: (Adding additional improper and wrongful comments in front of the jury); "Actually it is not beyond the scope. Mr. Bergrin put him on the stand to say Carolyn didn't lie, Marylu is the one who did this, I was just defending you, I never told Carolyn to lie. .."

After these blatant due process violations by prosecutor Minish, the Judge instructed the jury why, Velez, the now-adult witness' had answers on cross-examination which were inconsistent with her direct examination testimony:

Court: "She said she did NOT think it was important. She was a 10 year old girl, Mr. Bergrin." T 1076. (explaining her memory loss on cross)
Court: "I know, but this is why this is TAKING TOO LONG. We've GOT TO GET TO THE QUESTIONS. Much of this is TOTALLY IRRELEVANT to the points before us." T 1104; (When the cross-examination was important to prove that the events could not have occurred as the witness testified. This examination was vital for impeachment purposes of the witness and her mother, Marylu Bruno Velez.)

The Judge and prosecution's clearly erroneous and improper comments and objections inflamed the passions of the jury causing them to despise Petitioner. The acts of explaining and justifying the witnesses' inconsistencies when confronted with impeachment evidence; implying and strongly inferring Petitioner's defense was meritless and his cross irrelevant, the jury as fact finder was strongly influenced to reject Petitioner's defense. The trial was tainted.

Subsequent to Bruno and Velez' testimony and through the blatant misconduct by the court and government, Petitioner lost any chance to receive a "fair trial". His constitutional rights to Due Process of Law was beyond rehabilitation.

3. Anthony Young: Coaching and Suggesting Answers to the Most Important Witness in the Case.

After the opening statement interruptions, the blatant accusations of dishonesty and implications of incompetency during Petitioner's examination of the first few witnesses, the jury's passions undoubtedly had been inflamed against Petitioner. With these impressions left fresh in the minds of the jurors, the government would now call the most important AND LEAST CREDIBILE witness in the case: Anthony Young.

Anthony Young was the most critical witness in the case for the most serious charges in the indictment, conspiring and aiding abetting to commit the murder of a witness to prevent their testimony. The murder victim was Deshawn "Kemo" McCray ("Kemo").

Young was the only witness on the Kemo related charges to implicate (falsely) Petitioner. Young was the government's sole, uncorroborated and incredulous witness who had consistently contradicted himself. Young provided three different versions

of the day of the murder during his proffer sessions. He first said saw the shooting while acting as a look-out. He then claimed not to be present. For more than a year, he maintained that he heard that Jemal McNeil was the triggerman.

And most significantly, at the three trials in which Young testified, he gave contradictory statements of what Petitioner allegedly said at this meeting,[24]

Being the government's only witness to implicate Petitioner and having testified to various accounts of the murder in prior trials and proofer sessions, Young was the government's weakest link.

Yet, before Young, the most crucial and vital witness in the case, uttered a single word, his testimony was already bolstered and the "Kemo" case given credibility. By the time Young took the witness stand, Petitioner had been stripped of all credibility and respect. Any defense or impeachment evidence Petitioner offered to refute witnesses would be viewed with

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[24]Young contacted the government to exchange information to avoid the lengthy sentence to new charges he was facing. During a one year period, Young gave three different versions of the Kemo shooting:

1) Young first claimed that he acted as a **"look-out"** during the murder and that **Jamal McNeil committed the shooting**.
2) After implicating himself in a murder conspiracy, Young then claimed **he was not at the shooting** and had only heard about it.
3) After still not being able to negotiate his charges, Young's third version was that **he did the shooting**, an unbelievable claim. The shooter was described by eye-witnesses as having shoulder-length dreadlocks. Young was completely bald.

After claiming to be the shooter, Young was given a plea deal and the benefits of witness protection.

extreme and unwarranted skepticism. The Court and the government had closed the jury's eyes, ears and mind to Petitioner's attempts to refute the claims against him.

The Kemo case was what the government built the entire indictment around; and through deliberate and knowing due process violations and continued wrongful acts, the government would ensure that the trial would result in a conviction.

It began with the Prosecutor's meritless speaking objections:

[Minish]: "Again, Judge, it is the same conspiring that co-conspirator statements are admissible - not hearing ... He's PROVIDING INFORMATION AS A MEMBER OF THE CURRY DRUG ORGANIZATION ABOUT SEARCHING FOR . . . TO MURDER A WITNESS. He's part of the same conspiracy." (Emphasis Added).T 2309.

[Court]: "I'll allow it.

The Prosecutor should never have been permitted to make statements like this, in the jury's presence. This was extremely prejudicial. In doing so, the government and the court vouched for Young's credibility about him being in a position to provide information on the murder of "Kemo," and the fact that Young was one of Curry's gang members[25] --all sensitive factual issues that were highly contested. It was the defense's ardent position that Young contrived both his relationship to

[25] Indeed, it has since been learned that Lachoy Walker, one of the top members in the "Curry Organization," has never met or even heard of Anthony Young.

Curry, being a member of the “Curry Organization” and his role in the Kemo murder.

The court refused to permit side-bars and encouraged impermissible speeches, speaking objections and credibility vouching. The court's erroneous rulings helped corroborate vigorously disputed facts; ultimate issues of fact that were the "*res gestae*" of the case.

During Young's direct examination prosecutor Minish asked him:

Minish: Why wouldn't Newark Police, for example, be interested in that?" [meaning $500,000 in drugs] T 2373.

Young: Well, I GUESS…

[At which time Petitioner objected because it was clear the forthcoming testimony was going to be speculative, conjecture and inadmissible.]

To which the [Court] responded by asking Young a question:

Court: "Well, wait. Why do you THINK they wouldn't?" (Emphasis Added).

[Young]: "Again, I think, you know, the Federal Government would want him," (Curry); (Making it appear to the jury that Young had special knowledge. No objective court would elicit this kind of speculative testimony).

The speeches before the jury, depriving Petitioner of due process, continued. The government and Court eviscerated the adversarial process and actually testified before the jury.

During vigorous cross examination of Young, Minish objected:

[Minish]: "Objection, Judge, He did not say that.
[Court]: What's the objection?
[Minish]: "He just didn't say that. He's mischaracterizing what he said. ONLY MR. BERGRIN MENTIONED conspiracy." (Emphasis Added). T 2442; (The comments by the prosecutor were totally improper and false, in that Young was explaining the law of conspiracy to the cooperating government witness, Hassan Miller, whom recorded him at the Hudson County Jail). T 2442.
[Young] "I found out conspiracy through Mr. Fussella, yes."

When Petitioner approached Young to question him about the jail house recording with Hassan Miller, the government abruptly interrupted; they suddenly had to make sure the "record was clear" before Young was shown the document, thereby impugning the reliability of the transcript, and signaling to Young he could questions its potential inaccuracy:[26]

Instead of waiting to make any points on redirect, the prosecutor stated:
[Court]: "Go ahead and your question?"
[Minish]: "Judge, just so the record's clear. IT'S NOT A TRANSCRIPT (emphasis added). It's RANDOM TRACKS and sections of the recordings."
[MR. BERGRIN]: "No, it's a transcript, Judge."
[MR. MINISH]: "So, it's picked and chosen, it's not beginning to end." (falsely testifying, when a verbatim transcript of the recording had been prepared by defense).

MINISH continued to interfere with the examination and wrongfully testify, through speaking objections. T 2468.

[26] During this recording, Young claims that he never tells the truth when he talks about his role in crimes. He also advises Hassan Miller to give the government "who" they want and the government doesn't care about who's the "triggerman," they care about the guys higher up.

[MINISH]: "Judge, I object to 'essentially'. If we're going to quote from Mr. Miller, we should at least be accurate with the transcript." T2468
[MINISH]: Objection, again, that's just not what it says," (when the transcript was read word for word). T 2475
[BERGRIN]: "I think it's blatant, Judge."
[MINISH]: "HE CAN THINK WHAT HE WANTS, Judge, BUT THIS IS THE PROBLEM WITH NOT PLAYING THE ACTUAL CLIPS."(Emphasis added).
[MINISH]: "Judge, my understanding, again . . . Mr. Bergrin was supposed to ask questions and then decide if there was a problem, he would go to the transcript. WHAT ARE WE GOING TO READ THE WHOLE TRANSCRIPT?" (Emphasis added) (Indicating to jury Petitioner was wasting time and doing something wrong). T 2478

During heated cross-examination of Young, Minish's interruptions were permitted to continue:

[MINISH]: "Objection Judge. This was the subject . . . Mr. Bergrin is doing this in a manner that he's not supposed to be doing."(Testifying before jury that Petitioner was incompetent, committing misconduct, when it was proper cross- examination). T 2488
[MINISH]: "Objection, Judge MR. BERGRIN KNOWS THE LAW AND THAT IS NOT THE CASE. (Emphasis added). There is no such thing as career offender for Trigger Lock cases, period." T 2494-95

After Minish testified before the jury and improperly coached Young by suggesting the wrong answer to Young on the law/trigger lock question, Young then testified:

[YOUNG]: "I know it's no such thing of a career offender in the state."

The government continued to imply and convince the jury that Petitioner was deceiving them and lacked any credibility; making sure that they vouched for Young's veracity as a witness.

[MINISH]: "Objection, Judge, AGAIN, he's mischaracterizing. HAVING NO KNOWLEDGE IS NOT THE SAME AS it didn't happen." (Emphasis added). T 2504

[Court]: (Even knowing the 'speaking objection' was wrong). "I think this witness can explain the situation."

Young was the most crucial witness to the most serious charges in the indictment and the government CONTINUED their evisceration of Petitioner's due process rights throughout Petitioner's cross-examination. Petitioner's cross-examination of Young was particularly critical because the government blocked the Petitioner from calling any of the witnesses Young claimed were at this alleged meeting. In open court during the 2011 trial, the government threatened that if Jamal Baskerville testified for the defense that that he could be criminally prosecuted for Kemo's murder as well as drug dealing offenses for which the statute of limitations had long since run.

But the government's interference would continue throughout Petitioner's cross-examination of Young:

[MINISH]: "Judge it is NOT a contradiction." T 2520.
[MINISH]: "Objecting, again, Judge, it's not what it says." T 2521
[MINISH]: "Judge, it is NOT a contradiction to anything he testified." T 2692
[MINISH]: "Again, Judge, this is NOT impeaching. That is what he's saying." T 2705.
[MINISH]: "Well, Judge, this is different in that we're not looking for contradictions; we're responding to Mr. Bergrin accusing him of contradictions." T 2914
[MINISH]: "It's not inconsistent. It's EXACTLY WHAT HE SAID." (Emphasis added). T 2643
[MINISH]: "Judge, AGAIN, for the record, this is not inconsistent It's simply not true." (Emphasis added). T 2771

The objective of the government was to make sure the integrity of their "star witness" remained intact with total

disregard to the consequences their conduct had on Petitioner's due process rights:

[MINISH] "Objection Judge, He's now saying what we did, our preparation is bad the first time and good the second time? These accusations are baseless. Mr. Bergrin just keeps going on and on and on." T 2545 (Attacking Petitioner's credibility and vouching for the government and their case).
[MINISH]: "Objection, Judge. It's misleading. There's also nothing in there that says 2003-2004, either." T 2603 (Misleading the jury and testifying to inaccurate facts).
[MINISH]: "Objection Judge. There's no possible way we're going to a question that this witness could know the answer to." T 2627
[COURT]: "Well, let me hear the question." (Telegraphing the answer to the witness and wrongfully testifying).
[MINISH]: "Objection; we can't go down . . . it's improper to go down implying that he did not answer the question that was asked. If he wasn't asked the question." (wrongfully vouching, arguing, and testifying that the witness did not testify to a fact, because he was asked a general question that should have encompassed the fact) T 2641.

Critical cross-examination, relevant to Young's alleged disposal of the murder weapon, on the date Kemo was shot, which was wholly inconsistent to prior testimony, was interfered with by the government's improper and wrongful vouching for Young's integrity. [T 2643]

[MINISH]: "Judge, can he read the page immediately prior to what Mr. Bergrin asked? IT'S NOT INCONSISTENT. (Emphasis added). It's exactly what he said."
[BERGRIN]:"No it's not Judge."

Subsequent to Minish' distorted and false statement to the jury, Young finally admitted he never informed the government of how he disposed of the alleged murder weapon and alleged blood stained clothing.

T 2648. [BERGRIN]: "That was my point."
[JUDGE]: "OKAY." (The Court never admonished Minish).

The government continued to vouch for Young's credibility. Given how crucial a witness Young was to the most serious charges against Petitioner, this was extremely prejudicial.

[MINISH]: "Judge, This is absolutely NOT contradictory." (Emphasis added). T 2521.
[MINISH]: "Objection, Again, Judge, it's not what it says." T 2692. [MINISH]: "Judge, it is NOT a contradiction to anything he testified." (Emphasis added)

The prosecution continued to improperly and negatively persuade the jury, that Petitioner was doing something wrong and could not be trusted --all through illegal speaking objections, vouching, etc.

T 2699. [MINISH]: "This is improper evidence. If he wants to bring in this thing (proper demonstrative evidence), he has to do it through a witness. THIS IS NOT A CHART he had seen. (vouching for Young and as to why he is being impeached)."
T 2702. [MINISH]: "Judge, I know exactly where he is going. I can probably short circuit it. This is -- again, Mr. Bergrin is going to try to impeach this witness with question -- not giving information to questions he has not asked."

The Judge assisted Minish in making it appear Petitioner was just wasting time. Minish capitalized on the Court's comments and argued to the jury, that the witness was NOT being impeached but that Bergrin was engaged in deceitful trickery. (Emphasis added).

T 2704. [COURT]: "But we can't spend this much time looking at every transcript . . . We've been spending too much time looking."
[MINISH]: ". . . [T]his is my point initially about we're getting back to TRYING TO IMPEACH WITH NOT PROVIDING INFORMATION

THAT HE WASN'T ASKED FOR, (wrongfully giving his opinion pertaining to cross-examination and vouching for witness's inability to respond), which was a problem."(Emphasis added). "Again, Judge THIS IS NOT IMPEACHING. That is what he's saying." T 2705. T 2708. [COURT]: "I'll leave it up to the jury to determine whether there's an inconsistency."(When government has already informed jury that there were no inconsistencies). "How much longer?" (Implying to jury Petitioner is wasting their time).
T 2716. [MINISH]: "Objection, Judge, it's absolutely not true." (During question about whether Young ever informed law enforcement about Rakeem Baskerville being in Curry's automobile. A major point).
[YOUNG]: (After hearing Minish speaking objection). "It's not true."

Again, the Judge, with unmistakable disgust in his voice, asks:

T 2721. [COURT]: "How long do we have with this witness?"
[BERGRIN]: "I'll try to finish up in a couple of hours, your Honor."
T 2722. [COURT]: "A couple of hours?"
[BERGRIN]: "He testified for a day and a half with the government, your Honor."
[COURT]: "OKAY. I BELIEVE THAT WE ARE SPINNING A LOT OF WHEELS AND WASTING A LOT OF TIME."(Clearly, unequivocally and improperly advising the jury that Petitioner was NOT IMPEACHING THE MOST IMPORTANT WITNESS IN THE CASE AND THAT HIS CROSS-EXAMINATION WAS A "WASTE OF TIME.")

This latter statement ALONE, was an EVISCERATION of Petitioner's due process rights and an abdication of the adversarial system of justice. (Emphasis added).

T 2729. [MINISH]: "Judge, objection. He said he used it on the phone call, not in court."(vouching). [Even on a crucial issue such as whom allegedly ordered Young to murder 'Kemo'"].
T 2771. [MINISH]: "Judge, again, for the record, this is not inconsistent. Mr. Bergrin used the word 'order' again and again. IT'S SIMPLY NOT TRUE." (Emphasis added).

[COURT]: "Yes, it's like apples and oranges." (Using the word order versus demand) and, instead of sustaining the objection, improperly vouching for the witness.
T 2794. [MINISH]: "And, Judge, just for the record, this is not a proffer meeting. There's no attorney."(MISINFORMING JURY THAT YOUNG'S MEETING WITH GOVERNMENT WAS NOT A PROFFER; and making it appear as if Petitioner was incredulous). (Emphasis added).

Subsequent to a plethora of inconsistent responses, the Judge and the government wrongfully interrupted Petitioner's cross-examination. They both vouched for Young's responses and believability with EXTRAORDINARILY PREJUDICIAL COMMENTS. (Emphasis added).

T 2834. [MINISH]: "Judge, objection, it's not inconsistent."
[COURT]: "We're back to where -- the SAME ONGOING PROBLEM OF TRYING TO SHOW AN INCONSISTENCY WHEN A FAIR READING IS THAT HE'S BEING CONSISTENT. WE'RE DOING THIS AGAIN." (Emphasis added).
T 2829. [COURT]: "You know, I think we've been over this spinning around enough times."(Cross-examination relevant to exactly how Young allegedly shot Kemo).
[MINISH] "And, Judge, just for the record, I was NEVER INVOLVED IN ANY STATEMENT about the spinning around."(Vouching for his own credibility). (Emphasis added).
T 2833. [COURT]: (Vouching for witness). "I've got the pages, but I don't know if that's what this refers to."
T 2836. [COURT]: "What is the relevance of any of this?"(*Sua sponte* inferring Petitioner was wasting time and his cross examination was irrelevant to any material issues).
T 2845. [MINISH]: (testifying) "Judge, he already answered the question. He said he has not spoken to her for 8 years." (When the question was never asked nor answered. Minish testified for the witness and also provided him the response.
[COURT]: "It's almost time for the jury to go home for the day. ... There comes a time when we've got to stop this."(Implying the cross-examination was a waste of time and irrelevant).
T 2914-2915. [MINISH] "Judge, we are responding to Mr. Bergrin ACCUSING HIM OF CONTRADICTIONS."(Again vouching for Young's credibility). (Emphasis added).

[COURT]: (improperly informing jury Petitioner's cross-examination questions were incomplete). "You mean completeness. All right, quite frankly I think that OBJECTION SHOULD HAVE BEEN MADE WHEN MR. BERGRIN WAS DOING THAT SO THAT IT WOULD BE, QUOTE, "complete". (Emphasis added).
[UNLAWFULLY, IMPROPERLY AND INAPPROPRIATELY INSTRUCTING THE JURY, THAT PETITIONER'S QUESTIONS AND CROSS-EXAMINATION WAS INCOMPLETE], concerning crucial examinations. (Emphasis added).
[MINISH]: "The fact one is MR. BERGRIN'S ATTEMPT at impeachment (vouching for Young's answers as credible), that Mr. Curry's the one who told them, not Mr. Bergrin about life in prison." (Interfering with crucial examination). (Emphasis added).

a. The Court Vouches for Young's Credibility and Disparages Petitioner in Front of the Jury by Stating that He is "Spinning" his Wheels and "Wasting Time."

WITH CRUCIAL WITNESS, ANTHONY YOUNG, PETITIONER VEHEMENTLY OPPOSED THE INORDINATE AMOUNT OF MERITLESS, OBJECTIONS, COMMENTS, AND ARGUMENT'S IN THE JURY'S presence, but the COURT INFORMED THE JURY THAT:

"The witness was being consistent, that he was not difficult and that Bergrin was to blame for asking the same question in different ways and wasting time. The Court repeatedly ADMONISHED PETITIONER IN FRONT OF THE JURY AND INFERRED THAT HE WAS LAWLESS. (Emphasis added).
"OKAY, BUT I GOT TO TELL YOU, I BELIEVE THAT WE ARE SPINNING A LOT OF WHEELS AND WASTING A LOT OF TIME HERE, I'VE GOT TO TELL YOU, MR. BERGRIN. WE ARE TAKING AN INORDINATE AMOUNT OF TIME BETWEEN QUESTIONS, LOOKING AT NOTES, TRYING TO FIND TRANSCRIPTS. WE'RE IN THE UNITED STATES DISTRICT COURT. WHEN YOU COME IN HERE AND SAY WE'RE READY TO GO TO TRIAL, WE SHOULD BE READY TO GO TO TRIAL... " T 2722-25.
"THERE HAS BEEN NO IMPEACHMENT, IT'S BEEN CONSISTENT TESTIMONY." T 2725.

Even during SUMMATION, Minish and the Court went out of their way to wrongfully vouch for the credibility of Young.

T 8477. Minish argued that the government found Young truthful and credible and filed a 5K, truthful, substantial cooperation letter. More importantly, that the Court believed Young was truthful and reduced his sentence.

THESE STATEMENTS ALONE SHOULD RESULT IN REVERSIBLE ERROR.

(emphasis added)

T 8479. "Anthony Young will die in prison based on his plea agreement unless BOTH the government and Court BELIEVE HE IS TELLING THE TRUTH and the COURT THINKS THAT less than life in jail is appropriate." (Clear reversible error since the prosecutor is vouching for Young by arguing that the government and court believed Young was truthful; since the government filed a 5K motion on Young's behalf; and the Court reduced his term of life imprisonment prior to his 2013 testimony, in US v BERGRIN).

T 8480. "If you believe Anthony Young, then Paul Bergrin is guilty."(After previously informing jury that government and Judge believed him).

T 8490. "Bergrin wants you to believe Government is making people say things."

T 8517. (Attacked Petitioner personally, vouched for Young, and asserted personal opinion). "Mr. Bergrin went after Anthony Young in a lot of ways (giving jury wrongful impression that Petitioner committed misconduct), with the accusatory tone, the moral indignation. You knew none of it I (emphasis added) submit to you, means nothing. Saw it again and again."

The prosecutor accused Petitioner of impropriety in the way the Petitioner conducted his defense and tried to corroborate-and substantiate Judge's 300 *sua sponte* and *ex-parte* objections.

T 8520 "Now, so like most of Mr. Bergrin's points on cross-examination, after you scratch the surface of them, they're either WRONG OR MISLEADING or ultimately don't amount to anything."

The Prosecution then went on to again vouch for Young's credibility, integrity and believability, with improper argument.

"And that is why Mr. Bergrin was so desperate to make him, albeit unsuccessfully, to look like a liar, because he knows Anthony Young's believable, I SUBMIT TO YOU - CREDIBLE and therefore Mr. Bergrin is guilty of each of the crimes related to Kemo." (Emphasis added). T 8545. AGAIN, THE PROSECUTOR WRONGFULLY EXPRESSES TO THE JURY THAT THEY BELIEVED ANTHONY YOUNG WAS TRUTHFUL BECAUSE THEY MADE A 5K MOTION TO REDUCE HIS SENTENCE; AND THAT THE JUDGE ALSO BELIEVED YOUNG WAS TRUTHFUL AND HONEST BECAUSE THE JUDGE REDUCED HIS SENTENCE. (Emphasis added).

"And the other guy who has already been sentenced is Anthony Young, right. He cooperated. He testified in William Baskerville's trial. The government made the motion that has been described to you many times. He didn't just walk out the door. He got time served. The Judge reduced his sentence to 30 years."

During Young's testimony the prosecution was permitted to wrongfully bring out that William Baskerville was convicted of Kemo's murder and received life in prison because of Young's testimony. This was one of the most egregious Due Process Constitutional violations that could have ever been committed against Petitioner; and it had an enormous impact on his case. Petitioner submits that this reversible error alone resulted in his convictions for aiding and abetting and the conspiracy to commit the substantive act of murder. The magnitude of the Kemo accusations were so inflammatory and prejudicial, that it prejudiced and tainted the remaining counts of the Indictment too.

4. *Thomas Moran: Improperly, Inaccurately and Prejudicially Implying to the Jury that Petitioner Admitted to Guilt.*

During direct examination of government witness, Thomas J. Moran, Jr., the following occurred:

T 6361-62. Q. "OKAY. So I don't want you to talk anything more about the article at this point. Please talk about what if any conversations you had with Mr. Bergrin.
A. "The day following the release of the article, I went to a jail visit with Paul early in the morning, the Essex County Jail. He was complaining about the article, and I was troubled by it, so I asked him what happened. He then related to me what happened in this case THAT HE HAD REPRESENTED THE INDIVIDUAL WHERE this Kemo had gotten killed."
Q. So can you decide what it was you learned about Kemo from Mr. Bergrin?
A. There was an article that came out in The New York Times.
Q. Okay, without getting into details . . . was Kemo mentioned?
A. Yes, he was.
Q. Okay, and what was it that he told you?
[BERGRIN]: "Objection your Honor. Hearsay."
[GAY]: "This is an admission by Mr. Bergrin, Judge."
[BERGRIN]: "There's no admissions whatsoever, your Honor."
[GAY]: "JUDGE, THIS IS CLASSIC ADMISSION."(Emphasis added).
[COURT]: 'I AGREE. GO AHEAD." (Emphasis added).

THIS IMPROPER SPEAKING OBJECTION BY THE GOVERNMENT, ABOUT AN "ADMISSION OF MURDER" AND THE JUDGE ARTICULATING THAT "HE AGREED," (INSTEAD OF DOING THIS OUT OF THE JURY'S PRESENCE OR SIMPLY STATING, "OVERRULED" OR "SUSTAINED"), HAD THE LEGAL EFFECT OF JUDICIALLY INSTRUCTING/THE JURY, THAT PETITIONER MURDERED KEMO; THEREBY MOVING ANY CHANCE TO HAVE THE TRIER'S OF FACT DECIDE THIS ULTIMATE ISSUE. (Emphasis added).

The Government's abuse of the legal system and Constitution continued in their win at all costs strategy with extremely prejudicial arguments in the jury's presence. It informed the

jury, "that there would be plenty of evidence to prove a contested point." T 4920; and even that a "particular transcript was EVIDENCE OF THE ACTUAL CRIME, Judge. It is better evidence than [the witness's memory]. This is not unlike the video tapes of the crime. So this is akin to the video tape of the crime. This is actually what's going on." T 939-40."

The Prosecution continued to take advantage of the Court's repeated REFUSALS to go to sidebar. (Emphasis added) Again, even on the most serious charges pertaining to "Kemo's" murder, the government made it a point to express these points in front of the jury.

T 6714.15. [BERGRIN]: "May we be heard briefly at sidebar?"
[COURT]: "First tell me if you object."
[BERGRIN]: "Yes."
[GAY]: "Judge, the basis is, the door is now open to this. He has now contested whether or not this article would have PROMPTED MR. MORAN TO BE SHOCKED...IT'S GOING TO SUPPORT MR. MORAN'S CONTENTION THAT HE WAS SHOCKED BY WHAT WAS CONTAINED IN THE ARTICLE." (Emphasis added).
[COURT]: "I'm going to sustain the objection."

EVEN THOUGH THE COURT SUSTAINED PETITIONER'S OBJECTION AND PRECLUDED ADMISSION OF *THE STAR LEDGER* ARTICLE ON THE KEMO MURDER, BECAUSE OF THE GOVERNMENT'S ILLEGAL AND IMPROPER VOUCHING AND SPEAKING OBJECTIONS, THE JURY NOW HAD TO BELIEVE THAT THE ARTICLE DEVASTATINGLY INCRIMINATED PETITIONER; AND THAT MORAN WAS SHOCKED BY ITS CONTENTS. THEY HAD TO FURTHER BELIEVE THAT BERGRIN WAS GUILTY OF THE KEMO CHARGES. (EMPHASIS ADDED).

Consequently, the government's statement convinced the jury that they had actually proved Petitioner committed a crime and the evidence was as strong as a video tape of the crime. The government's objections, comments and misconduct, made it impossible for Petitioner to receive a "fair trial." It affected every witness they called. They were desperate to make their witnesses appear credible.

D. The Speaking Objections, Witness Vouching and Disparagement of Petitioner Continues Every Day of Trial.

1. Detective Mendez

T 3848. Detective Mendez testifying
[GAY]: "Okay, I'll let the call stand for itself. I'll let the call stand for itself." (After Petitioner objected to the words in the transcript).
T 4877. After Petitioner objected to the transcript and recording being placed into evidence.
[GAY]: (Making it appear before the jury that Petitioner is attempting to hide something). "And just so it's clear, Mr. Bergrin has had every one of these for three years. He knows exactly what we're going to be playing."

2. Oscar Cordova

During Cordova's cross-examination concerning his material misrepresentation about his Latin King affiliation:

[GAY]: "Objection: That's not what he testified to." (Vouching for Cordova's credibility during vital cross-examination). "Judge, I'm not even sure where in the report it would even say what Mr. Bergrin is suggesting the report says because it's not in the report." (Falsely making it appear that Petitioner was being deceitful to the jury). T 5236.
[GAY]: "It's actually Mr. Bergrin who said 'Let's concentrate on one.'" T 5674 (Falsely testifying before the jury).

[GAY]: "Judge, it's clear now they're talking about a different guy here. It's obviously . . ." T 5702. (Falsely testifying to the jury).
T 5703. [GAY]: (Imploring the jury to believe Cordova is referring to something different, so he is not impeached; and ardently attempting to factually interpret a recorded conversation in front of the jury; through a speaking objection).(Gay is wrongfully testifying). "Judge, read -- please read this. What he's talking about here, Mr. Bergrin's question was, they needed a name for Junior the Panamanian . . . It's crystal clear from the transcript. SO THIS IS NOT IMPEACHING, THIS IS NOT ANYTHING." (Emphasis added).
T 5704. [BERGRIN]: "First of all, MR. GAY SHOULDN'T BE MAKING THESE OBJECTIONS, not before a jury. (Emphasis added). The prosecution was out of control.
[COURT]: "Gentlemen, we're not going to run to sidebar every two minutes."

E. The Judge's Refusal to Let Objections be Heard at Sidebar and His Practice of Telegraphing before the Jury his Agreement and Support for the Government's Position Resulted in the Judge becoming a Witness who was Attesting to the Credibility of the Government's Witnesses.

The objections were incessantly made by the government in the jury' presence. They continuously vouched for their witnesses' credibility, argued and even testified. The speaking objections became so flagrant that Petitioner pleaded with the Court that the objections be made at sidebar.

[COURT]: "The point is, where are you going with it?" T 5709
[BERGRIN]: "Judge, can could we go to sidebar? Because DOING THIS IN FRONT OF THE JURY IS JUST NOT PROPER, YOUR Honor."
[COURT]: "No, no ..."
[BERGRIN]: "We shouldn't be having these conversations in front of the jury, your Honor."

The government continued to frequently comment on whether Petitioner's questions or witnesses' answers were accurate; and made sure that the jurors knew the government believed Petitioner was trying to pull a fast one.

T 6900. [GAY]: "Judge, I'm going to object. That's a mischaracterization of his testimony. As FAR AS HE KNEW was what he said. He DIDN'T MAKE A STATEMENT THAT IT WASN'T." (Emphasis added).
T 1095. [GAY]: "Judge, I'm going to object. If we're going to start getting into this, there's a critical law enforcement . . .
T 6903. [BERGRIN]: "Judge, we have an expert, and the expert ... it's an important issue because of all the unintelligible."
[GAY]: "It's news to me. Judge, that there's this expert ..."

Other comments made during colloquy before the jury after Petitioner's request for a sidebar was refused, T 6902; clearly were intended to impeach Petitioner. T 6903.

T 3355. [MINISH]: "Judge, we have an objection, that Mr. Bergrin KNOWS THAT'S NOT THE CASE." (Emphasis added).
T 3675. " . . . "Mr. Bergrin KNOWS WELL THAT HE HAS REVIEWED REPORTS AND THAT INDICATES that Mr. Bergrin's question would be a MISREPRESENTATION OF THE FACTS."
T 7529-30. [GAY]: "Objection, not anywhere close to what Vincente Esteves testified to the jury."

F. Petitioner is Blocked from Cross-examining Eugene Braswell for Receiving the Government's Undisclosed Benefit of Not Being Charged with a Murder he Committed.

The following occurred during critical impeachment of cooperating government witness Eugene Braswell about a murder he committed for which he had not been charged: T 7165-66

[COURT]: What's the relevance? What is the relevance of this on this case?"
[BERGRIN]: "Judge, it's extremely relevant... Because there's no statute of limitations. He received the benefit of this cooperation."
[GAY]: (Testifies to the jury to discredit Petitioner): "HE NEVER RECEIVED ANY BENEFIT." "Judge, that's baloney. He was never charged . . . So MR. BERGRIN KNOWS FULL EXACTLY WELL WHAT HAPPENED." (Gay testifying as to all parties' knowledge of Petitioner's mindset and challenging Petitioner to respond, prejudicing his Fifth Amendment right not to testify) (emphasis added)
T 2520. [MINISH]: "Judge, this is absolutely not contradictory."
T 2705. [MINISH]: "Again, Judge, this is not impeaching. This is what he's saying."
T 2729. [MINISH]: "Judge, objection. He said housed it on the phone call, not in court."
T 4772. [MINISH]: (Testifying and Vouching) "Objection, Judge. . . He said Essex County Prosecutors Office does not accept calls. MR. BERGRIN IS TRYING TO INFER NOW THAT HE'S LYING BY JUST NOW BROACHING THE QUESTION."(Emphasis added).
T 4843. [MINISH]: "That's not what he said, Judge. He said he was going to take it from Peoples."
T 4844. [MINISH]: "Judge, he DIDN'T SAY HE LIED. He said he MADE A MISTAKE." (Emphasis added).
T 4687. [GAY]: "Judge, he elicited hearsay on this already." HE LEFT THE COURT AND JURY WITH A FALSE IMPRESSION about what Mr. Smith said at this trial." (Emphasis added).
T 6069. [GAY]: "Judge, I don't understand what the question is . . . Judge, I'm going to object. HE NEVER SAID THAT."

The interruptions and credibility vouching never ended. At times the prosecution even stepped into the trial court's role, as a means to appear authoritative and superior to Petitioner; with extremely prejudicial remarks:

T 5746-47. [GAY]: "HE'S GONE OVER THIS A HUNDRED TIMES ALREADY. WE'RE WASTING EVERYONE'S TIME. THAT'S WHY I want this to stop. Mr. Bergrin."

Such constant disruptions not only hampered Petitioner's ability to cross-examine witnesses effectively and to present his defense case. They suggested answers to the witnesses, provided additional testimony to the jury, explained away Petitioner's impeachment of witnesses, discredited Petitioner and his case, and made it appear as if Petitioner was immoral, lawless and constantly committing misconduct.

[MINISH]: "Judge, objection. Again she was never asked, all the knowledge you have when."
[BERGRIN]: "Judge, the witness can answer the question. The prosecutor doesn't have to stand up and make statements on her behalf."
[COURT]: (Wrongfully, instructing the jury to essentially disregard my cross-examination). "The prosecutor has every right to make objections. The jury has been listening to this testimony and I think they'll figure out what she was asked . ... They'll figure out how important it is."
T 1108. "Objection, Judge. Absolutely no suggestions were made by this detective during the course of this video." (Wrongfully advising jury that the video was made knowingly and voluntarily).
T 3634. "Judge, I object to the way Mr. Bergrin is combining questions. He said he didn't remember what the price was, AND THEN THE NEXT ONE is, you're telling the jury you didn't remember that you sold it to him, and the price." (Emphasis added to delineate interruptions).
T 3687. "Judge, again, Mr. Bergrin is parsing these things. . . Mr. Bergrin is speaking as if this was the entire price that was stated to the FBI." (And the Court INAPPROPRIATELY TELLS THE JURY).
[COURT]: " . . . It's so CONFUSING as to what occurred?"
T 3952. [GAY]: " . . . The line he's talking about is an aside, MEANING YOLANDA SPEAKING TO SOMEBODY ELSE . . ."
T 5392. "Judge, he testified THERE WAS NO RECORDING of this."
T 5683. "Judge, I'm going to object to this line of questioning. The tape is the tape. HE CAN'T SIT HERE AND ASK THIS WITNESS

ABOUT SOMETHING THAT HAPPENED YEARS AND YEARS AND YEARS AGO. THE WITNESS OBVIOUSLY HAS NO MEMORY OF WHAT WAS IN HERE."(Justifying to jury important impeachment testimony).
T 5684. "There's NO evidence that the recorder paused even a single time." (Emphasis added). (Justifying evidence of issues with recordings).
T 6616. "Judge, objection. He's already testified he didn't review any statements in this case."

G. The Court's Bias was Shockingly Apparent when he Acted as an Advocate for the Government by Giving his "View" in Front of the Jury, *Sua Sponte* Refuting Petitioner's Examinations and Presenting Adversarial Rebuttals to Petitioner's Points instead of Waiting for the Government to do so on Cross or Redirect.

The improper objections routinely met, not only the acquiescence, but the encouragement of the trial court. Instead of ruling on an objection "sustained" or "overruled," the court repeatedly voiced its agreement with the government. There was no way to defend the accusations with the court acting in concert with the government.

T 7220-21. [GAY]: "Objection, Judge. He never said anything like that."
[BERGRIN]: "It's the jury's recollection, not Mr. Gay's."
[COURT]: Well, it's the jury's recollection, but we have to have a proper basis . . .I don't remember that either."
T 411. [COURT]: "Yes, I'm just getting very confused here."
[STAND BY COUNSEL]: " . . . your Honor, objection to speeches in front of the jury."
[COURT]: "WAIT A SECOND. MR. BERGRIN WAS THE ONE WHO STARTED WITH THE SPEECHES." T 4789. (Essentially instructing jury Petitioner was wrong).
[MINISH]: "If we're going to go through the transcript, we go through it accurately. . ."

[COURT]: "One of the problems we're having here is that we're skipping a lot of testimony that's kind of -- NOT that it leaves it out of context. It's very difficult to understand." (Insinuating to jury Petitioner's cross-examination is both confusing and taken out of context).
[BERGRIN]: "You know what, Judge?" "Let's go through all the testimony."
[COURT]: "Well, no, I'm not saying we have to --" (Court was always forcing Petitioner to rush his examinations).
[BERGRIN]: "Let's go through all the testimony. You say I'm skipping things, Judge..."
[COURT]: "I'm not saying you're skipping."
T 7203. [GAY]: "He's misrepresenting the document, once again misrepresenting the document, Judge."
[COURT}: "I've got to tell you, Mr. Bergrin, unless I misread something -- if you pick out one little piece. That might be it, but if you read the whole page, I think you've got something different."
T 7379. [GAY]: "Judge, objection to 'they gave'." That is what he pled guilty to. There's an implication here -- Mr. Bergrin has no idea what the government could have proven. This is what the plea was. That's the end of the discussion."
[COURT]: "Mr. Bergrin, you know how these plea bargains work." (Implying I did something wrong).
T 4679-4670. [MINISH]: "Again, Judge, this is what I believe your Honor's ruling to be, that we're not to just read transcripts. And it's completely consistent with what he said, I wasn't in the witness protection" --
[COURT]: "You know, Mr. Bergrin, I've got to agree. Some of the words are a little bit different"
[MINISH]: "Judge, if these are arguments that he wants to make in summation, that's one thing, but this is not inconsistent . . ."
[COURT]: "Again, we're having this ongoing issue about pulling out a prior statement that in my view is not inconsistent."

Specifically, time and time again, as delineated multiple times herein, both the government and court explained to the jury their belief that various government witnesses were being truthful, despite the discrepancies in their testimony which

Petitioner was trying to establish. See T 410. Further examples were:

T 412. [COURT]: "THAT DOESN'T MEAN THAT HER STATEMENTS ARE UNFOUNDED. I KNOW OF PEOPLE THAT HAVE BEEN FOUND NOT GUILTY WHEN THEY WERE GUILTY OR GUILTY WHEN THEY WEREN'T."
"I'M NOT LETTING YOU GET INTO ALL OF THAT. I DON'T UNDERSTAND WHAT ALL OF THIS WAS ABOUT. I DON'T KNOW WHY WE COULDN'T JUST STIPULATE THAT THIS LADY WAS STABBED BY HER HUSBAND BECAUSE OF A DOMESTIC DISPUTE AND THEN GO ON FROM THERE." (When vital and material factual issues were hotly contested the Court improperly vouches that the witness was not only stabbed by her husband, but that it was domestic. Most importantly, the facts and circumstances surrounding this event were instrumental and intricately interwoven into the criminal allegations against Petitioner).
T 419-21. [COURT]: Admonishing Petitioner's credibility in front of the jury: "Wait a minute. You're taking this out of context. That is not what it says. You're taking this out of context. That is not what it says."
"That's an improper use of the transcript ... and it's out of context. And I'm going to stop you from it." "All right that's enough." "She doesn't remember, she said."
T 434. [COURT]: "Apparently in YOUR view because she didn't mention every ...single abuse that ever occurred to her that she's not being truthful in this one. And I just disagree ...and I think you're being unfair to this witness."
T 446-47. [COURT]: "You're taking it out of context. You're reading it LIKE SHE SAID SOMETHING THAT SHE DIDN'T SAY WHEN SHE EXPLAINS IT. This is something that HAPPENED 10 YEARS AGO. Now, are you finished yet, Mr. Bergrin?") (Emphasis added)
T 1193. [COURT]: "Okay. We've gone over this time and again."
[MR. BERGRIN]: "No, Judge, he hasn't answered the question, with all due respect."
[COURT]: "Oh, I think he has."
[BERGRIN]: "No, he hasn't Judge."
[COURT]"I THINK HE HAS, AND THE FIRST THING THAT YOU HANDED HIM SAID EXACTLY WHAT HE SAID, HE SAID IT RESEMBLES, AND HE KEEPS SAYING IT, and you keep on trying to get him to say it in a different way." (Emphasis added).

[BERGRIN]: "That's a different form and a different statement, your Honor."
T 1713. [COURT]: "I don't think that this witness has gone astray. I think she's clarifying the point."
T 3125. [COURT]: "The fact that law enforcement failed to act on Pozo's accusations does not render them false." (When law enforcement investigated his accusations and determined they were baseless).
T 3133. [COURT]: "He's being totally consistent with what he just testified:.. (The Court misread the statement. The witness was factually inconsistent).
T 3731. [COURT]: "Doesn't say anything about dealing behind my back in what you just read. IT SAID EXACTLY what he said before." (Judge was completely inaccurate, but continued making credibility comments to jury).
T 3732. [COURT]: "Well, I don't understand why we're going line by line. It's exactly consistent with what he said." (Significant inconsistencies existed).
T 6094. [COURT]: "He didn't say that."
T 6615. [COURT]: "It's also unfair. YOU'RE TALKING ABOUT SOMEBODY THAT'S REMEMBERING THINGS FROM 2007-2008. "Now, Mr. Bergrin come on." (Judge justifying fabrications and inconstancies to jury) (Emphasis added).
T 7238. [COURT]: [BERGRIN]: "Judge, I am going to object... speculation, conjecture."
[COURT]: "When somebody says I think, I believe, I don't consider that necessarily speculation or conjecture. I mean, NOT EVERYBODY IS ABSOLUTELY CERTAIN ABOUT EVERY SINGLE FACT. I think that's a reasonable way to respond to a question." (Emphasis added). (The Court justifying and instructing jury as to why a witness can't respond).

H. The Government Objections become Testimonial and Bolster their Witnesses.

The government's objections became so testimonial, that they even attempted to assert their technical expertise; and to bolster their expert's examinations.

T 5684. [GAY]: "THERE'S NO EVIDENCE THAT THE RECORDER PAUSED EVEN A SINGLE TIME." (Emphasis added).
[COURT]: "Yeah, I don't see that either, Mr. Bergrin."(When the transcripts of recorded conversations were laden with pauses).
T 7968. [BERGRIN]: "Objection, Judge. He has no right to talk to him in front of the jury like that." (After prosecution personally attacked defense witness and belittled him in front of the jury).
[MINISH]: "It's going after his credibility Judge . . ." HIS CREDIBILITY BEFORE THIS JURY. THIS JURY, YOU'RE RIGHT, CAN INDEPENDENTLY DETERMINE WHETHER OR NOT HE WAS INJURED, WHETHER OR NOT IT'S HIS BLOOD, ALL OF THOSE THINGS, ABSOLUTELY AND I THINK IT'S FAIR THAT I CAN ASK HIM A QUESTION OF... showing the injuries in that photograph." (Prosecution testifying that defense witness did not have defensive injuries to his hand and the blood on his hands, was not his own).
T 7478-79. [SAUNDERS]: "... We're going to have a summary witness, and this relates to PROOFS ABOUT MONIES FROM THE ENTERPRISE, and these records are necessary to CONNECT THAT UP..."(Prosecutor Saunders testifying before the jury, through argument, that there's an enterprise, that money will be proven connected to the enterprise and he will prove it).
T 7967. [GAY] AND [MINISH]: (They commented and argued to the jury their opinion on how the evidence proves conspiracy, the allegations in the indictment relating to the conspiracy, witness tampering and also vouching for the key witnesses' credibility. A combination of deplorable, horrific constitutional violations).
T 7967. [COURT]: "Why are we going into this avenue of questions?
[GAY]: "Charged in the indictment -- excuse me -- listed in the indictment, Judge, is the conspiracy between the witness and MR. BERGRIN DISCUSSING THIS CASE AND TRYING TO GET AROUND THE EVIDENCE IN THIS CASE and going into the -- I mean, IF YOU WANT ME TO SAY IT, ALL OF THE VARIOUS THINGS THAT WENT ON, WITH WITNESS TAMPERING, with evidence that went on in this case."

And on it went. The above examples depict just a sample of governmental and judicial misconduct. All of these acts occurred in the jury's presence.

I. The Government and the Court's Undermining and Abuse of Defense Witnesses.

In stark contrast to the wide latitude given to the government, the trial court consistently limited and excluded the testimony of defense witnesses, undermining their credibility and pushing to rush through their testimony. Indeed, the court prevented a defense witness' from testifying that he was instructed to lie and implicate Petitioner. Moreover, the court excluded critical defense witnesses from testifying by refusing to grant a short adjournment for witnesses who the Marshalls currently had in transport on the way to the trial.

The court, in conjunction with the prosecution, inappropriately and repeatedly interrupted defense witnesses and strongly implied the witnesses were dishonest. Most disturbing was the Court's condescension and actual abusiveness toward defense witnesses, at times mocking them outright in front of the jury.

T 7727. [COURT]: "Wait, wait. Let's just respond to the question. "Wait. All right. I'm going to ask you to just respond to the question ... He didn't ask you all that information."
T 7728. [COURT]: "All right. You're professionals. We don't have to explain background. We're just in background here."
T 7731. [COURT: [MINISH]: "Objection, Judge. How would he know?"

[COURT]: "Well, he was representing him." "Well, okay. I would just ask the witness to try to just confine your answers to the questions . . ."
T 7734. [COURT]: "All right. Just -- DON'T NEED TO EMBELLISH every answer here." (Emphasis added).
T 7737. [BERGRIN]: "He was answering the question."
[COURT]: "Okay. Wait. Wait. Let him answer the question. But I want to make sure that we respond to the question. We don't have to embellish it."
T 7738. [COURT]: "All right. All right. You sent him the case. Let's please just respond to the question. WE DON'T HAVE TO EMBELLISH EVERY ANSWER. (Emphasis added).

The Court repeatedly and sarcastically interrupted Petitioner's witness' *sua sponte* to order them to stop volunteering information; when they were simply attempting to respond to open ended questions. T 8045.

[COURT]: "Wait. Wait. Wait. You can't tell us conversations."
[WITNESS]: "Oh. He asked me a question. I'm trying to give the answer, Judge."
[COURT]: "Well, THAT'S DEBATABLE just respond to what he says to you." (Emphasis added).
T 8048. [MINISH]: "Objection, Judge."
[COURT]: "You know, AM I NOT being clear?" (Very degrading to the witness).
[WITNESS]: "I'll just give the direct answer."
[COURT]: "That would be nice. (Laughter)."
[WITNESS]: "And I'll shut up after ..."
[COURT}: "Yes, that WOULD BE GOOD." T 8049.

The court made sure vital defense witness, Lemont Love, came across INCREDULOUS to the jury: (Emphasis added). The comments by the Court and prosecutor deliberately embarrassed, belittled and discredited the witness; in essence the Court intentionally interrupted the witness and made sure the jury did not accept nor believe his testimony. THIS WAS ERROR AND

EXTREMELY UNFAIR. (Emphasis added). See Ottaviano, 738 F.3d at 595 ("[A] judge's apparent disbelief of a witness is potentially fatal to the witness's credibility.'" (quoting United States v. Goodwin, 272 F.3d 659,678 (4th Cir. 2001)).

The court's conduct created an "appearance of partiality by continued intervention on the side of one of the parties" and "undermine[d] the effective functioning of [pro se] counsel through repeated interruption of the examination of witnesses." United States v. Castner, 50 F.3d 1267, 1272 (4th Cir. 1995). The trial court's continuous remarks favoring the government, combined with its disparaging remarks aimed at the Petitioner's cross-examination strategy and his witnesses, unleveled the playing field even more than the defendant in Castner and requires reversal and a new trial.

T 8330. [COURT}: "Wait, wait, wait, wait. YOU'RE SAYING THAT'S WHAT WAS ON THIS TAPE? YOU HEARD THAT ON THIS TAPE JUST NOW?" (Witness responded with an explanation of his intent). (Emphasis added).
[COURT]: "But none of that's on the tape."
[WITNESS]: "That's what I was ... that's what I was saying that."
[GAY]: "Judge, I think we should play this tape for the jury…
[COURT]: "So do I." (On same recording).
T 8338. [COURT]: "Wait, wait. He's explained the conversation. THERE'S NO EXPLAINING. WE HEAR IT ... I'm not going to have him explaining it."

J. The Government's Misrepresentations during Summations and their Interruptions and Disparaging Remarks during Petitioner's Summation.

The government improperly interrupted Petitioner's summation and trampled upon his due process rights by knowingly asserting false facts. ADDITIONALLY, they argued facts not in evidence in their objections to ensure Petitioner never received fair consideration of the evidence by the jury. (Emphasis added).

T 8597 [GAY]: "Objection, Judge. That's just not true. There's no evidence of it and he knows that's false. The discovery -- THERE'S BEEN NO TESTIMONY on that. That's false. (emphasis added)

The government averred this vehemently and falsely because, if the jury believed and recalled the truth, then they would not find Petitioner guilty of conspiring to murder witnesses with Cordova and Esteves charges. The testimony by Esteves was that upon Petitioner's representation of Esteves and prior to ever meeting Cordova, Petitioner received copies of the discovery. The discovery specifically included Esteves' confession and cooperation with the Drug Enforcement Agency after his arrest. Thus, it is incredulous to believe Petitioner would conspire with Esteves, knowing he was a cooperating government witness. T 6127.

[ESTEVES] Q. "We had the copy of that [discovery] that statement . . . the confession that you gave. We knew about it from the beginning of your case, right."
A. T 6127. "Correct." (Consequently, Gay knew that he was lying to the Judge and Jury, but had to keep the truth from them).

Bergrin then continued on with his summation arguing that HE-BERGRIN-PETITIONER, would know that Vincente Esteves had no connections left. That Petitioner received Esteves' confession and knew he was a cooperating government witness. T 8670.

[GAY]: Wrongfully interrupted and objected a second time. "I'm going to object to this. THERE'S ABSOLUTELY NO EVIDENCE OF THIS AND MR. BERGRIN KNOWS FULL WELL THIS IS ABSOLUTELY FALSE." T 8670. (Emphasis added).

Gay thereby personally attacked Petitioner's veracity, inappropriately contriving the basis of the objection. His attacks inflamed the jury against Petitioner and destroyed any fair opportunity for Petitioner to contest the government's evidence.

The government would never have engaged in such misconduct if a criminal defense attorney made these same points during summations. The fact Petitioner was *pro se* should not have precluded him from making certain points in summations just as any defense attorney would have made. Nor should the Petitioner have been prevented from arguing to the jury what conclusions and inferences they could draw from the evidence presented or the lack of evidence presented. No court would stand for such misconduct toward a defense attorney in a criminal trial. The court should never have permitted such conduct toward Petitioner in representing himself.

Moreover, the Petitioner should not have been "corrected" on the facts presented at trial during his summation. The jury

is instructed that it is they who determine the facts and that summations are not evidence. Determining the facts comes within the sole purview of the jury; which is why the Court's response below is extremely troubling:

[COURT]: "Mr. Bergrin."
[BERGRIN]: "Your Honor, Vincente Esteves testified to this."
[GAY]: "That's ABSOLUTELY FALSE. Mr. Bergrin knows this is false. There's NO TESTIMONY of this. That is ABSOLUTELY FALSE. He knows darn well he didn't get discovery until January 26, 2009. That's the testimony." (Emphasis added).
[COURT]: "But, I will again CAUTION that we must stay within ..."
T 8671. The Judge, accepted Gay's representations and inferred to the jury that Bergrin was inaccurate or misleading them.

K. The Rebuttal Summation: Disparaging Petitioner, Nefarious Insinuations, Commenting on Facts not in Evidence, and Continued Vouching for Witnesses.

The Court and government's improper comments continued even during rebuttal summation. The prosecution, cognizant they had the last word, committed reversible error with their arguments. In the government's rebuttal summation, Gay again wrongfully attacked Bergrin's credibility on this issue and even shifted the burden of proof to defense.

T 8804. Well, ladies and gentlemen, he had 3 1/2 years to study the discovery and contrive what to say.

T 8795. REBUTTAL SUMMATION: [GAY]: "I picked out a couple of discrepancies between what Mr. Bergrin told you yesterday and what the evidence was.

I'M NOT GOING TO GO THROUGH EVERY SINGLE ONE OF THEM BECAUSE I WOULD BE HERE, PROBABLY FOR 5 - 6 HOURS IF I DID ..." (Emphasis added) (Injecting his personal belief, misleading the jury and exaggerating that there were other improprieties and misstatements by Petitioner).

The government also wrongfully shifted the burden of proof to Petitioner, implying Petitioner had authority and means to grant immunity!

T 8797. "And so these witnesses that Mr. Bergrin criticized the government for not calling he could have called them." (Defense Witnesses arrived to testify and, at the behest of the government, given court appointed CJA lawyers to advise them against testifying, expressing that they would only testify if granted immunity).
[BERGRIN]: "Judge again. I have to object because defense has no right to grant immunity. The government does."
[COURT]: "No, I don't think it's deceptive...You had a chance to call these witnesses.
T 8804. "Well, ladies and gentlemen. HE HAD 3 1/2 YEARS TO REVIEW ALL OF THIS STUFF, 3 1/2 YEARS TO COME UP WITH WHATEVER HIS DEFENSE WAS GOING TO BE IN THIS CASE, 3 1/2 YEARS TO EXPLAIN AWAY THINGS, 3 1/2 YEARS TO RECREATE HISTORY ... (emphasis added) (All improper arguments, that transferred the burden of proof to Petitioner)
T 8805. (Improper vouching for credibility of Oscar Cordova).
... And, ladies and gentlemen, as the argument makes clear, that's the ONLY WAY WE COULD GET MR. CORDOVA TO COME HERE AND TELL YOU THE TRUTH ABOUT THAT ... "(Emphasis added).

In front of the jury, the Court reprimanded Petitioner for objecting during the government's argument, when it was Petitioner's responsibility to object to improper comments.

T 8822 [GAY]: "Oh, wait, wait, wait, wait, wait, wait, wait.
[COURT]: "No, Mr. Bergrin, this is inappropriate objections to summations. Do you have an objection to something he just said?"
T 8823. (Petitioner was objecting to Gay lying to the jury and denying the same ammunition used in the Kemo murder, was found

in the apartment known as the dungeon; and Malik Lattimore was arrested at the dungeon).
[BERGRIN]: "Objection, your Honor."
[COURT]: "What's the objection?"
[BERGRIN]: "The objection is ..." (Court cuts off Bergrin).
[COURT]: "Are you saying he's saying something not in evidence."
[BERGRIN]: "Yes, it's right in transcript, Judge."
[COURT]: "I disagree."

Gay admitted he was wrong only AFTER Petitioner objected and tried to explain away the ammunition found at the location known as "the dungeon." Thus, the Court and the government were mistaken. It was too late though; the damage had been done. T 8823.

L. The Government and Court Treated Petitioner's Statements Made while Presenting his Defense as Testimonial, Using them to "Impeach" Petitioner, in Violation of his Fifth and Sixth Amendment Rights.

Petitioner did not testify in his trial. Nonetheless, throughout the entire trial, the government treated Petitioner's actions and words as testimonial. The trial excerpts detailed above prove the government improperly used Petitioner's *pro* se status to their advantage. The government seized upon the opportunity to use statements and actions Petitioner made while acting in his own defense -- questioning witnesses, stating objections and giving his opening/summation-- as an opportunity to "impeach" Petitioner as if he were testifying.

The government's statements show that this was a deliberate strategy used to convince the jury that Petitioner's trial presentation was filled with trickery, deception and misconduct. The government's goal was to convince the jury that Petitioner, while acting as his own attorney before them, committed misconduct in the proceedings before their very eyes in an attempt to mislead them. Given the nature of the allegations--that Petitioner was using his services as an attorney unlawfully--these tactics were enormously prejudicial. The government's constant accusations of impropriety inflamed the jury's passions, improperly lent credence to the government's theory of the case and thwarted Petitioner's defense.

The government and the court's conduct throughout the trial egregiously and irreparably trampled on Petitioner's Sixth Amendment Right to represent himself and to confront the evidence against him.

Moreover, many, many of the government's remarks, i.e., inviting the "ladies and gentlemen" of the jury to consider the "three and a half years" Petitioner had to "contrive WHAT TO SAY" (T 8804), violated Petitioner's right not to testify in his own defense, a promise guaranteed by the Fifth Amendment.

M. The Government's Continuous Interference with Petitioner's Defense Intruded on the Jury's Fact Finding Function and Precluded the Jury from being able to Meaningfully Consider Petitioner's Defense.

The Compulsory Due Process Clause protects the presentation of a defendant's case from unwarranted interference by the government and court; be it from blocking witnesses from testifying; disparaging comments; improper and misleading arguments; continuous erroneous rulings and objections; prosecutorial misconduct; and immeasurable prejudicial errors, such as those was detailed at length herein. Government of the Virgin Islands v Mills, 956 F.2d 443,445 (3d Cir. 1992).

The right to present a complete defense encompasses the right to rebut the government's evidence through cross-examination. See Alexander v. Shannon, 163 F.App'x 167,174 (3d Cir. 2006) (citing Webb v. Texas, 409 U.S. 95 (1972)). The trial court's and government's frequent interference with Petitioner's cross-examination of government witnesses interfered with that right.

In United States v Smith, one of the most recent vouching cases decided by a Sister Circuit, the Court forbade and condemned prosecutorial vouching for the credibility of a witness. 2016 BL37128, 5th Cir. No. 14-60926 (Feb. 10, 2016). In Smith, the prosecutor told the jury that "the witnesses were 'TELLING THE TRUTH' and that his office would not prosecute an innocent man." (emphasis added)

The impermissible conduct in the Smith case pales in comparison to the extent of highly improper prosecutorial credibility vouching and extreme bias and egregious misconduct by the Court.

From Petitioner's opening statements through summations, the aspersions the court and government casted upon Petitioner's integrity detrimentally influenced the jurors' perception of him. They set the tone and theme of the trial which unquestionably denied Petitioner Due Process of law.

Moreover, the *ad hominem*, gratuitous, and personal attacks of Petitioner, a *Pro Se* defendant; the extraordinary and inordinate amount of erroneous judicial rulings; speaking objections, which were so obviously designed to provide government witnesses with the answers to cross-examination questions; prejudicial comments by both court and government counsel; and flagrant bullying[27], by both the prosecution and court, made it impossible for Petitioner to receive a fair trial.

Despite baseless and meritless assertions that counsel "invited error" or was the cause and effect of flagrant due process violations; the court and government should have ensured the guarantee of Due Process and prevented the trial from being

[27] Clearly, the government would never have engaged in such misconduct with private counsel, providing the very same defense, in a criminal trial.

infected by errors of a constitutional magnitude. The examples espoused herein were undeniably overwhelming and this Honorable Court must be compelled to vacate and dismiss Petitioner's convictions in the interest of justice.

The trial court's tolerance for the government's improper objections, as well as its encouragement and participation, enabled the government to pursue a course of "overzealous advocacy that disturbed the fact finding function of a criminal court." United States v. Quinn, 728 F.3d 243,260. This was reversible error. See, e.g., United States v. Filani, 74 F.3d 378,385-87 (2d Cir. 1996)(reversing conviction when Judge's repeated interference and questioning "inappropriately intruded as an advocate during trial and thereby prejudiced defendant" leaving "a powerful impression that the district court agreed with the government that the defendant was guilty"); United States v. Hickman, 592 F.2d 936 (6th Cir. 1979) (reversing convictions because judge interjected himself into the proceedings over 250 times, limited cross-examination, and exhibited anti-defendant attitude); United States v. Harris, 501 F.2d 1, 9 (9th Cir. 1974) ("the trial judge overstepped the bounds of judicial propriety by excessively interjecting himself into the proceedings below"); Blumberg v. United states, 222 F.2d 496,501 (5th Cir. 1955) (judge interrupted too often).

Here, the government and trial court interrupted Petitioner to curtail his cross-examinations; rushed him through questioning, and casted aspersions on his approach; it thereby "significantly inhibited [the] effective exercise of h[is] right to inquire into [the] witness's motivation in testifying,'" and to impeach government witnesses." United States v. Silveus, 542 f.3d 993, 1006 (3d Cir. 2003) (quoting United States v. Chandler, 326 F.3d 210,219 (3d Cir. 2003).

The extent of these interferences exceeded the "reasonable limits" that a trial court and adversary may establish, Id., because they left the jury "with insufficient information to determine a witness' motives or bias" or other lack of credibility. It also destroyed any credibility *Pro Se* Petitioner would have had before the triers of fact. Williams v. Virgin Islands, 271 F.Supp.2d 696,707 (D.V.I. 2003) (quoting United States v. Casoni, 95 F.2d 893,902 (3d Cir. 1991)). See also Pennsylvania v. Ritchie, 480 U.S. 39,51-52 (1987)("The right to cross-examination includes the opportunity to show that a witness is biased, or that the testimony is exaggerated or unbelievable."); Douglas v. Owens, 50 F.3d 1226,1230 and n. 6 (3d Cir. 1995)("To properly evaluate a witness a jury must have sufficient information to make a discriminating appraisal of a witness's motives and bias ... It is an abuse of discretion for a district judge to cut off cross-examination if the opportunity

to present this information is not afforded.") (citing United States v. Abel, 469 U.S. 45, 52 (1984).

The Petitioner has clearly proven that the government exceeded its bounds by repeatedly commenting on testimony in a manner that vouched for the credibility of government witnesses. See United States v. Young, 470 U.S. 1,18-19(1985)("The prosecutor's vouching for the credibility of witnesses . . . carries with it the imprimatur of the Government and induces a jury to trust the Government's judgment rather than its own view of evidence.")

When a judge does the same thing, it exacerbates the issue to a level where any hope for a fair trial is eviscerated. Ottaviano, 738 F.3d 595 ("a judge must not 'abandon his proper role and assume that of an advocate'") (quoting United States v. Adedoyin, 369 F.3d 337,342 (3d Cir. 2004); see, e.g., Quercia v. United States, 289 U.S. 466,468-70(1933)(reversing conviction where trial court commented on testimony in biased manner); United states v. Vandyke, 14 F.3d 415, 423 (8th Cir. 1994) (reversing conviction where "excessive interplay between the district court and witnesses" gave "rise to a perception that the judge favored the prosecution's case"); United States v. Singer, 710 F.2d 431 (8th Cir. 1983) (*en banc*) (reversing conviction where district court's comments and questions to witnesses gave jury impression that it favored the prosecution).

Can this reviewing Court even imagine a jurist objecting, *sua sponte*, MORE THAN 300 times in the course of a trial; and all the while making coarse comments about Petitioner to the jury? There can never be any justification for the government in objecting even more times than that while vouching for a witness' veracity.

N. The Indefensible Conduct was a Clear and Obvious Error which so Infected the Trial that it Lacked Fairness and Integrity, Undermined Confidence in the Verdict and Violated Petitioner's Substantive, Procedural and Constitutional Rights.

The many improprieties in this case--including the government's permitted use of speaking objections to "testify" to crucial facts; feeding cross examination answers to witnesses to help them explain and justify the inconsistencies in witnesses' testimony; and treating Petitioner as if he were testifying while presenting a defense, were clear and obvious errors.

These errors affected Petitioner's substantial rights which "seriously affect[s] [sic affected] the fairness, integrity or public reputation of judicial proceedings." United States v. Atkinson, 297 U.S. 157, 160, 56 S. Ct. 391, 392, 80 L.Ed. 555 (1936). .

The government and the court's conduct is outrageous and indefensible. The improprieties tainted and infected the trial

proceedings. No jury instruction could have repaired the damage this misconduct and continuous abuse of Petitioner and his witnesses caused. And it would be an insult to anyone's intelligence to even attempt to argue that these acts did not deleteriously affect the jury's impression of Petitioner and negatively influence the verdict against him.

The Court and Government decimated Petitioner's Due Process rights, violated his Fifth and Sixth Amendment rights and prevented him from receiving a "fair trial." Petitioner prays that this Honorable Court reverses his convictions and orders a new trial. The interests of justice require nothing less.

XII. BERGRIN'S INDICTMENT WAS INEXCUSABLY AND WRONGFULLY DELAYED IN ORDER TO ACHIEVE TACTICAL ADVANTAGE.

Bergin re-alleges all facts contained supra and incorporates them by reference, herein.

On or about November 25, 2003 at approximately 2:00pm Bergrin appeared as counsel, at the Rule 5, Fed. R. Crim. P. Initial Appearance of William Baskerville, in United States District Court and entered a formal plea of not guilty, to the Complaint. Upon leaving the District Court, it is alleged that Bergrin telephoned Baskerville's cousin, Hakeem Curry and read him the contents of the Complaint. Bergrin was requested by Will Baskerville's wife and mother to both inform them and Hakeem Curry, Will's first cousin, of what had occurred. Curry was raised in the same home with the Baskerville's.

It was first alleged by both Young and the government, from the date of Young's first proofer, January 18, 2005, to Bergrin's 2011 trial, that approximately four to five days subsequent to Will's arrest, that Bergrin met with Curry, Rakeem, and Jamal Baskerville, Anthony Young and Jamal McNeil at 9pm and on 17th Street and Avon Avenue, Newark, New Jersey; and reiterated the contents of the Complaint and that if the accusation that if the informant Kemo testifies, Will would receive life in prison and never get bail. Moreover, it is alleged that Bergrin stated "No Kemo, no case."

On March 2, 2004, Shawn "Kemo" McCray (Kemo), the informant in the Baskerville case was shot and killed in Newark, New Jersey. In May 2005, William Baskerville (Will), was formally charged and indicted for the murder; on, in or about April, May 2007, he was tried before the Honorable Judge Joel Pisano, Judge, United States District Court, Trenton, New Jersey. The government represented by Assistant United States Attorney's Joe Minish and Robert Frazier, sought capital punishment. During the course of the trial both Frazier and Minish argued that Bergrin was as guilty as Baskerville for Kemo's murder. Moreover, the government's witness FBI case agent Shawn Manson and Supervisory Assistant United States Attorney, John Gay, testified that Bergrin was a co-conspirator of Baskerville and guilty of murder. Most importantly, Gay further testified he was a Supervisory Assistant District Attorney, in the New York District Attorney's Office for 13 years, prior to his employ as an Assistant U.S. Attorney in New Jersey.

In or about January, 2007, Bergin was indicted in New York County, by Gay's former office and charged with conspiracy to commit money laundering, conspiracy to promote prostitution and misconduct by an attorney for his alleged role in the New York Confidential Escort Agency. Bergrin was wrongfully indicted for first degree crimes, when lawfully they were only second

degrees. The offenses were alleged to have occurred from in or about July 24, 2005 to in or about March 2, 2005.

At Bergrin's New York Bail hearing, Assistant District Attorney, Nancy Smith vociferously argued that Bergrin was a "prime suspect" in the murder of a federal witness in New Jersey. The press coverage of Bergin's tribulation was extraordinary and international; as Bergrin was a prominent and well known attorney, whom challenged the United States Government in his defense of soldiers at Abu Ghraib, Iraq, Objective Iron Triangle, Mosul, Iraq and Forward Operating Base Tikrit, Iraq, in United States v. Parker. Bergrin's bail was set at one million dollars. Bergrin retained the legal services of New York Attorney, Gerald Shargel, who was informed of the Baskerville trial testimony, and accusations against Bergrin; he also was made aware of the argument of Assistant District Attorney, Nancy Smith and Cursio memorandums were filed with every federal and state court judge before whom Bergrin appeared compelling Bergrin and his clients to acknowledge that they were cognizant he was indicted in New York and presumptively under investigation by the federal government; and that the clients were aware of their rights to conflict free council.

Additionally, Shargel was provided with the Cursio memorandums, researched the "Kemo" case and issues and made specific inquiry with New Jersey counsel, pertaining to these

allegations. Upon Bergrin's Indictment in the District of New Jersey, in or about May 20, 2009, for the murder of Kemo, amongst other charges, Shargel formally appeared at Bergrin's Rule 5, Initial Appearance and Bergrin's subsequent Detention Hearing, held a few days later. Bergrin had paid Shargel for trial of the New York case, but this never occurred, as Bergrin was offered a plea deal, that one would have to be completely incompetent to reject.

In or about May 4, 2009, Bergrin entered pleas of guilty to two misdemeanor conspiracy to promote prostitution charges, in New York Supreme Court and, while he was detained, pursuant to The Bail Reform Act, on the federal indictment, at the Metropolitan Detention Center, Brooklyn, New York, he was transported to New York Supreme Court for sentencing. Bergrin was transported to New York Court by New York City Detective Myles Mullady and his partner, who purposely parked six blocks from the Manhattan Courthouse and paraded Bergrin through the city streets while cuffed and shackled. It was a media frenzy and circus to humiliate Bergrin.

During the transportation process, Mullady advised Bergrin that for at least two years he has been in daily contact with FBI Agent Shawn Manson and that law enforcement in New Jersey strategized with the New York District Attorney's Office, to make sure Bergrin obtained a State court prostitution

conviction; as he was going to be indicted federally shortly after this sentencing. Moreover, Mullady instructed Bergrin that he was offered a misdemeanor so that New Jersey had at least one provable racketeering act, and that they would use it against him in Federal Court. Bergrin had plead not guilty in New York and maintained his innocence until he was offered a misdemeanor, without any custody or probation and a minor fine. At the time Bergrin plead guilty in New York, he had no knowledge whatsoever of the pending federal case and submits he would never had plead guilty if he had known. The offer of a misdemeanor was just too good to turn down and Bergrin was not required to assert any facts during his guilty plea. It must also be noted that Mullady had left the New York City Police Department, and was now employed by the Manhattan D.A.'s

In or about June, 2008. Bergrin was retained by Monmouth County, New Jersey drug kingpin Vincent Esteves in Monmouth County, New Jersey, Superior Court case.

At the time, Esteves was arrested in May 2008, he fully confessed to being a drug lord and controlling a multi-million dollar drug organization. Furthermore, on the day of his arrest, he cooperated and detailed each and every aspect of his drug operation, including but not limited to participant drug routes, international and national connections of his organization, means and methods of his drug distribution network

and even inculpated his own brother-in-law. Bergrin was provided with information of Esteves confession and video recorded cooperation, immediately upon his retention by Esteves. Bergrin reviewed the video copiously and was cognizant of his client's confession and cooperation.

In or about July, 2008, the government induced and procured federal paid informant, Oscar Cordova, to contact both Bergrin and Esteves to allegedly plan to murder witnesses against Esteves. Cordova made this suggestion immediately upon meeting Bergrin and even suggested and sought the purchase of narcotics from Esteves, as payment for his assistance. Bergrin has obtained evidence to prove he knew Cordova was a government informant.

The indictment also charged Bergrin with wire fraud from May 2005-April 2006 and a drug conspiracy from January 2005 to May 2009.

On December 8, 2008, Yolanda Jauregui, Bergrin's live-in girlfriend, sold 500 grams of cocaine to cooperating government informant Maria Correia, who befriended her. The evidence proved that Correia solicited, induced and implored the sale of the substance and that Bergrin had absolutely no knowledge nor involvement, in the Jauregui-Correia transactions. As a matter of fact, it was conceded that Jauregui was engaging in an illicit affair with a Mexican drug cartel drug dealer, Alejandro

Castro, totally devoid of Bergrin's knowledge, and that Jauregui and Castro conducted narcotic transactions together.

Correia stated Bergrin was not involved in Jauregui and Castro's drug dealing and was ignorant of what was occurring.

On May 20, 2009, Jauregui was arrested by federal authorities and charged with wire fraud conspiracy, which occurred from in or about May 19, 2005 to April 6, 2006. The initial indictment failed to charge any narcotic allegations pertaining to either Bergrin or Jauregui.

Jauregui was released on bail and, while free of custody, she made a one kilogram sale of cocaine to Correia. Again, the evidence will categorically prove that Correia pleaded, prodded, motivated, solicited and eventually convinced Jauregui to make the drug sale.

Jauregui was appointed counsel pursuant to The Criminal Justice Act and had no knowledge, Chris Adams, of the Waldor, Hayden firm was conflicted, and had represented drug kingpin Hakeem Curry in United States District Court.

Jauregui was subsequently named in a superseding indictment with a multitude of counts including; racketeering, narcotics and bribery. In a separate indictment, she was charged with the one kilogram sale to Correia. If Jauregui had been charged with the December 8, 2008 transaction, the subsequent sale would

never have occurred. It must be accentuated that Correia aggressively implored her to make the sales.

Jauregui's counsel coerced her to cooperate with the government and she was interviewed, interrogated, coerced and intimidated a minimum of 35-50 times. The government convinced Jauregui to inculpate Bergrin and suggestively coached her incriminating statements. They used the leverage of her motherhood, threatened years of imprisonment and the assistance of her attorney to get Jauregui to cooperate. They also threatened to charge Jauregui's elderly mother and niece, who suffered from Cerebral Palsy, and were with Jauregui, when she made the drug deal; if she did not cooperate.

Furthermore the prosecution held back charging her with narcotic trafficking in her original indictment and procured another narcotic deal to force her cooperation and inculpation against Bergrin. The recordings between Correia and Jauregui clearly reflect these accusations.

LEGAL ARGUMENT

The government's delay in indicting Bergrin from the dates of the alleged commission of the offenses until after he had plead guilty in New York County Court, violates the fundamental concepts of justice, which lie at the base of our civil and

political institutions. It is abhorrent to the community's sense of fair play and decency. What makes the acts of the government deplorable is the strategic planning, communications and purposeful tactic to delay Bergrin's indictment to lock in at least one racketeering act and coerce drug traffickers to cooperate. The joint operation and actions between the federal government and New York County cannot be accentuated enough. Mooney v. Holohan, 294 U.S. 103,112 (1935), Rochin v. California, 342 U.S. 165, 173 (1952) See also Ham v. South Carolina, 409 U.S. 524, 526 (1973); Lisenba v. California, 314 U.S. 219, 236 (1946); Herbert v. Louisiana, 272 U.S. 312, 316 (1926), Hartado v. California, 110 U.S. 516, 535 (1884).

The evidence will prove that Assistant District Attorney Hurley, Manhattan District Attorney's Office, New York County and Supervisory Assistant United States Attorney, District of New Jersey, John Gay were professional and personal friends. They worked together closely, as Assistant District Attorney's in New York.

Moreover, Case Agent Shawn Manson, FBI, Newark, New Jersey and New York City Detective Myles Mullady communicated with other daily for a full year vie e-mail and telephonically. They discussed and meticulously planned and strategized to use the New York law enforcement authorities to ensure that Bergrin was convicted of some offense, thereby gaining a grave tactical and

strategic advantage against Bergrin in his federal case. Henceforth, on the eve of Bergrin's scheduled trial date, the New York County District Attorney's Office made Bergrin an offer that no sane defendant would refuse; a low grade misdemeanor, no jail time and a minor fine. All felonies were to be dismissed, especially misconduct by an attorney. Consequently, Bergrin no longer risked losing his license to practice law, a prolonged trial, which would have crippled his private practice, a felony conviction and even potential incarceration.

The offer was made only after consultation and agreement between New York authorities and the New Jersey Federal Government and subsequent to assurance that this would give a great tactical advantage to the federal government to meet their burden of proof on a racketeering charges. They now had at least one of two required predicate acts necessary to prove the racketeering charge. This is proven by Bergrin being indicted federally within one week of his New York County guilty plea.

In United States v. Marion, 404 U.S. 307 (1971), the Supreme Court considered the significance for the constitutional purposes of pre-indictment delay. The Court held that the Due Process Clause of the Fifth Amendment protects individuals against oppressive pre-indictment delay. 404 U.S. at 324. Actual prejudice which is exactly what occurred sub judice makes a due process claim ripe for adjudication and that prejudice is

generally a necessary but not sufficient element of a due process claim. A due process inquiry must consider the reasons for the delay, as well as the prejudice to the accused. 404 U.S. 324-325. It would insult this Court's intelligence for any argument to be presented, except the fact that the federal government delayed indicting both Bergrin and Jauregui in order for them to obtain a state conviction for one racketeering act, thereby making it simple to convict Bergrin of a RICO offense.

They also violated the technical mandates of United States v. Massiah, 377 U.S. 201 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964). The New York authorities and Federal government strategically and unlawfully plotted to further record Bergrin and Jauregui and to further incriminate Jauregui; so the federal government had additional sentencing leverage to coerce and intimidate her to cooperate against Bergrin.

A tactical delay violates due process and the government must concede this fact. A due process violation can also be proven upon a showing that prosecution incurred in reckless disregard of circumstances known to the prosecution; suggesting that there existed an appreciable risk that delay would impair the ability to mount an effective defense. {emphasis added} United States v. Marion, 404 U.S. 321, n. 25.

In the case at hand, the pattern of the government's delay, the timing of the plea offer to a misdemeanor, the additional

recordings of both Bergrin and Jauregui and the Jauregui coerced drug transaction, can only be interpreted one way. That the Federal Indictment delay was intentionally caused to gain a tactical advantage, on behalf of the government; and through the manipulation of constitutionally prescribed prohibitions which actually and substantially prejudiced the defendants. Consequently, the superseding indictment must be dismissed as it clearly violates the Due Process Clause. United States v. Ismaili, 828 F. 2d 153, 167-168 (3d Cir. 1998); United States v. Lovasco, 431 U.S. 783 at 789-90 (1977); United States v. Massiah, supra.

The Third Circuit has held that pre-indictment delay, which is unreasonable and inexcusable, violates the Due Process Clause when it prejudices the defendant (the time between the crime and bringing the indictment) and the delay was motivated in order to obtain an improper tactical advantage or to harass. United States v. Beckett, 208 F. 3d 140, 150-151 (3d Cir. 2000); United States v. Lovasco, 431 U.S. 783-790, 795-96, 52 L. Ed. 2d 752, 97 S. Ct. 2044 (1977); United States v. Ismaili, 828 F. 2d 153, 168 (3d Cir. 1987), cert. denied, 485 U.S. 935, 99, L. Ed. 2d 271, 108 S. Ct. 1110 (1988); United States v. Marion, 404 U.S. 307, 325-26, 30 L. Ed. 2d 468, 92 S. Ct. 455 (1971).

These cases clearly and unequivocally establish the doctrine of the government using delay to obtain a tactical

advantage, factually analogous to the case sub judice. The facts herein delineated, the reasons for the delay and proofs presented in this memorandum are paramount to whether a due process violation has occurred. The government's relationship with New York County, their extraordinary and inordinate communications tactically and strategically planning the Bergrin plea agreement and delayed Indictment and their conduct are exactly what these cases seek to prevent.

Our sister Circuit, found that the government's desire for tactical reasons to await the results of defendant's appeal was inexcusable delay. More importantly, the Appellate Court opined that the government's improper and unreasonable delay was a maneuver to bolster its case against the defendant. "The desire to gain such a tactical advantage, however, is not a sufficient reason for trial delay" Cf. United States v. Marion, 404 U.S. 307 (1971).

Bergrin has clearly enunciated Due Process Clause violations resulting from an inexcusable delay in indicting him to gain tactical delay.

Additional reasons the government wrongfully delayed indicting Bergrin for the exclusive reason to obtain a tactical advantage are:

A. Massiah and Henry violations

The government was prohibited from inducing, procuring and using informants Cordova and Correia from securing and inculpatory statements from both Bergrin and Jauregui, subsequent to Bergrin's arrest and indictment on the New York charges in January 2007 and to Jauregui after appointment of counsel in May 2009. Massiah, supra. United States v. Henry, 447 U.S. 264, 275 (1980).

The government clearly espoused their position in 2007, United States v. Baskerville, that Bergrin was an unindicted co-conspirator and just as guilty as Baskerville, for the murder of Kemo. Both these seminal Supreme Court cases precluded their tactics and methodology, in violation of the United States Constitution's Sixth and Fourteenth Amendments, from their aggressive proactive investigation of Bergrin and Jauregui.

The government intentionally failed to indict Bergrin for the March 2, 2004, Kemo murder from 2004 to May 2009 and Jauregui for December 8, 2008, narcotic distribution of a kilogram of cocaine to obtain extremely important strategic and tactical advantage; and to manipulate or attempt to usurp Massiah and Henry. This is abhorrent conduct in blatant violation of our Constitution and vehemently prohibited. This pattern of "win at all and any costs," manipulated and usurped Bergrin's Due Process rights. The Government exhibited a

specific intent to avoid assertion of rights violations, by meritlessly arguing that, since the defendants were not formally charged with the criminal offenses, then the Sixth Amendment right to counsel is not invoked and it is strictly permissible. The prejudice caused by the government's conduct is the additional evidence procured, enhanced charges and bolstering of their cooperating witnesses by stacking charges, enhancing punishments and intimidating the witnesses to cooperate.

B. Bolstering Credibility of Informants and Criminal Charges

From 2004 to 2009, the government lacked confidence to prosecute Bergrin for the Kemo murder. They realized that the evidence was inconsistent, frail and incredulous. Moreover, they were in possession of recorded conversations that proved Bergrin's innocence, if he ever became cognizant of them. They needed additional evidence to prejudice the public and jury pool against Bergrin and thereby add credence to their Kemo prosecution against him.

By failing to charge Bergrin with Kemo's murder from 2005 to 2009, despite their firm and vehement accusations of his culpability, in 2005, they gained a material and significant tactical advantage, bolstering Anthony Young as an informant; through their argument that Bergrin had to be guilty of Kemo's

murder, if he committed all the other charged offenses. They also wrongfully argued that William Baskerville was convicted through Young's testimony, so he must be credible. They clearly and improperly used the propensity argument by stacking charges; and this is why they failed to indict Bergrin in 2005 and waited until 2009. This corroborated through their use of witness Cordova who consistently implored and suggested Bergrin murder witnesses. It was never Bergrin who made this suggestion.

C. Maintenance of a Narcotics facility

Agents from the Drug Enforcement Administration seized cocaine from 710 Summer Avenue, Newark, New Jersey on May 21, 2004 and subsequent to Bergrin's arrest. What is most important, is that the cocaine was picked up and delivered to Alejandro Castro AFTER Bergrin was arrested--an arrest that carried extensive national and international publicity.

Jauregui sold a kilogram of cocaine to Correia that she received from Castro, in June 2009 and again subsequent to Bergrin's arrest. As a matter of fact, Correia and Jauregui both confessed that Bergrin had no involvement in their drug activities or trafficking.

The government used the cocaine seized at 710 Summer Avenue, Newark, New Jersey on May 21, 2004, and Jauregui's June drug trafficking against Bergrin. These accusations severely

prejudiced him and tainted the jury's perception of the evidence, against Bergrin. It was catastrophic in Bergrin's attempt to receive a fair trial and all the evidence was developed prior to his indictment. The government had arrested Castro for drug trafficking in 2004 and were aware of Jauregui's involvement. Additionally, they had Jauregui and Castro under investigation and more than ample evidence to arrest and charge them since 2006; when they were both incriminated in the Rondre Kelly Title III drug case and wire taps. Both Jauregui and Castro's organization were inculpated in arranging and conducting cocaine transactions.

The sale of the kilogram of cocaine, by Jauregui to Correia in or about 2009, severely prejudiced Bergrin's count in the indictment, accusing Bergrin and Jauregui of maintaining a narcotics facility the 710 Summer Street, Newark, New Jersey, wherein multiple kilograms of cocaine belonging to Castro were seized. It also destroys any scintilla of a fair trial for narcotics offenses Bergrin had. It was the impetus for the narcotic trafficking accusations contained in the indictment. Consequently, the tactical advantage gained by the government's delay in charging these offenses enhances and bolsters the veraciousness of the other counts of the indictment. The government's failure to charge the Kemo murder in a timely manner caused informant Cordova, to implore narcotic

transactions from Esteves and Bergrin. This would have been impermissible if not for the intentional tactical delay.

D. The Prostitution Allegations/Charges

The allegations against Bergrin in the New York Confidential prostitution charges terminated in 2005. There was no further evidence nor investigation subsequent to the New York City Police Department and New York County District Attorney's Office closing the agency and making arrests in 2006 and 2007.

The government wrongfully and improperly communicated on a daily basis with New York City authorities, and in essence guided their prosecution of Bergrin. He would never have been offered two low level misdemeanors with complete dismissal of all felonies and the attorney misconduct charge, but for the influence of the federal government.

Working hand-in-hand with the federal government and with a coordinated strategy to unlawfully obtain a tactical advantage against Bergrin, the federal government used New York as their *de facto* agents. It was the District Attorney's Office whom contacted Bergrin's defense attorney, Gerald Shargel and aggressively implored a plea; they suggested an amicable resolution of the case. Their mission and objective was to obtain on behalf of the federal government a guaranteed

conviction, so Bergrin would have a difficult, if not impossible, burden in defending the racketeering counts of the indictment.

Furthermore, the government and State prosecutors were innately aware of the immeasurable prejudice accusations of prostitution would have before a jury. They deliberately and tactically colored the jury's perception against Bergrin. The spirit of the Due Process Clause of the United States Constitution and the tenure of the illegal excessive delay to obtain a tactical advantage was improper and reprehensible misconduct.

The government made the decision to also charge Bergrin with the New York offenses subsequent to him entering his New York plea of guilty; with facts and evidence in their possession since 2005. The government purposely held back indicting and charging Bergrin in New Jersey until the New York case had been resolved. They trapped him with a conviction and an inability to fairly defend multiple federal charges. The chronology of the indictment was not a coincidence.

The prejudices mired by Bergrin are extraordinary and were specifically delineated within the depictions of the tactical advantage gained through excessive delay in indicting. The enhanced punishments encumbered by these additional charges, brought on as the direct result of the excessive delay from

offense to formal charging is substantial; the totality of the circumstances from additional charges to bolstering of incredulous witnesses and defensible offenses, resulted in actual prejudice. Multiple RICO predicates were created, strengthened and enhanced as the result of the government's violation of Due Process.

For the aforementioned reason, the Due Process Clause violations are prohibitive and dismissal is the only alternative.

XIII. BERGRIN'S PROSECUTION WAS MALICIOUS RETALIATION AND THE RESULT OF VINDICTIVENESS FOR HIS HISTORY OF ADVOCACY AGAINST THE GOVERNMENT.

As a career soldier, state and federal prosecutor, criminal defense attorney, humanitarian and human being, I witnessed a plethora of criminality, violations of international law, the law of war, treaties, inhumanity and both blatant and intentional lies, by the highest levels of the United States Government; by individuals who would condone human rights atrocities and then hypocritically and wrongfully publicly condemn such actions.

Bergrin now realizes why he was prosecuted and imprisoned. He understands that in order to impugn his integrity, morality, and veracity and render him seemingly incredulous, the government had to levy a win at all costs prosecution; otherwise his knowledge of state, federal and international law violations would deleteriously destroy the lives and careers of a multitude of esteemed political individuals. Bergrin has the ability to connect the most heinous and atrocious abominations committed against innocent civilians, Prisoners of War, Insurgents, Inmates, criminal defendants and enemy combatants to every level of law enforcement and, most importantly, to the highest levels of our national government; which would cause our enemy, foes, countries we condemn for human rights violations and our own

allies, to disdain our country. Bergrin has knowledge and experience which could prove that North Korea, Iran, China etc. violations of human rights pales in comparison to the actions of The United States of America. His knowledge would cause other nations to refuse extradition to the United States of those accused of crimes, especially with his knowledge of the flaws in our criminal justice system and conditions of confinement.

There exists not another human being alive who has such unique and vital experiences, first-hand and indisputable knowledge, as well as information ascertained through copious investigative mechanisms. As an attorney and retired Army Major, Bergrin can eviscerate the alleged morality of a government, system and their political idealism and prove the nexus of this realism. The government became fully cognizant that Bergrin was capable of proving the hypocrisy of our criminal justice system and grave miscarriages of justice by government leaders, which resulted in immeasurable and unjustified suffering, crippling pain and anguish.

Bergrin was recruited for employment at the Office of the United States Attorney, United States Department of Justice, District of New Jersey, by United States Attorney Thomas Graulich and First Assistant United States Attorney Thomas Roth. He was personally familiar with the United States General Edwin Meese himself.

Bergrin had a very successful career as a State Homicide Prosecutor; earning convictions in more than twenty homicide cases and more than fifty various prosecutions. He had knowledge of corruption, falsified evidence and fabricated police work and reports. He was aware of law enforcement's flagrant use of coached and suggestive witness preparation and law enforcement officers' had absolutely no fear of confiding in him or him turning against them, as he grew up with a father whom was a "tough as nails" New York City street cop; whom stressed the code of silence and despised "snitches." Henceforth, he turned his back on many improprieties and at all different levels of police work. He witnessed tainted convictions and it devastated him. He was nauseated and condemned some of the police work and prosecutions he witnessed and it shaped his life to defend the oppressed.

Shortly after Bergrin was hired as a federal prosecutor, the administration changed. The new United States Attorney was Samuel Alito and the First Assistant United States Attorney was Michael Chertoff; and Paul Fishman was appointed Chief of the Criminal Division. During his years as a federal prosecutor Bergrin excelled; as a matter of fact he gained two major convictions in his first 6 months there, a truck hijacking of microwave ovens case and the leader of a Columbian drug cartel. He also convicted the first Post Master General in history and

was assigned to co-direct the child exploitation, child pornography unit in New Jersey, immediately subsequent to the statutes passing. Additionally, Fishman assigned him the "hottest case of the office:" "The Candyman Commercial Terrorism case," United States v. Gerald Winters et al. A major, complex, multi-party, multi-national racketeering enterprise committing every crime of violence known.

While performing his duties as a FED, Bergrin learned about the indictment of Detectives Thomas Gilsenan and Ralph Cicalese; two former Newark Police Detectives, whom became detective's at the Essex County Prosecutor's Office, where Bergrin worked. They were formally charged with corruption, racketeering, bribery and misconduct in office. As the result of Bergrin's federal employment and work with these hero law enforcement officers, whom were now defendant's and fighting for their lives and liberty, Bergrin was subpoenaed as a defense witness and called upon to testify on their behalf.

The unabated attacks upon Bergrin were about to commence. Bergrin's albatross and nemesis, would be this high profile prosecution as Alito, Chertoff, Fishman and others took his recruitment to testify personally and attempted to coerce, intimidate and even threatened him against testifying truthfully. They all attempted to suborn his perjury and collectively warned him that he should get amnesia, upon the

witness stand and that he would regret eternally uttering one favorable word. He was repeatedly warned that there would be dire consequences and ramifications to his career, future and integrity if, essentially, he testified truthfully.

The pressure and distress exerted against Bergrin was beyond comprehension and immeasurable. He could not sleep nor concentrate and it affected every aspect of his personal and professional life. Despite the coercion and intimidation placed against Bergrin, he refused to back down and made the decision to testify.

What is of integral importance is the fact that Chief Assistant United States Attorney, John Fahy, who was the Division Chief, of the Unit prosecuting the case, was personally sent by Alito to attempt to intimidate, persuade and coerce Bergrin against testifying; and if compelled to testify through subpoena take a dive on the witness stand; and make sure he contrived and fabricated negative evidence. The conversation was extremely "hot," loud, abusive and Fahy attempted to influence Bergrin in ways beyond words. Subsequent to Bergrin refusing to back down to FAHY, he was visited at his office, (the door was closed and he was now confronted), by both FAHY and Chertoff; Chertoff attempted the good guy approach and attempted to persuade Bergrin with words such as loyalty, future consequences and love for one's family and the Justice

Department. Chertoff further informed Bergrin that his career as a prosecutor was over, if he testified.

Bergrin testified in the United States District Court, District of New Jersey and before the Honorable Maryann Trump-Barry, The Donald's sister. She was a former federal prosecutor in Bergrin's office and still acted as one as a judge. During his testimony, Alito sat in the center of the courtroom, stared him down and Bergrin was convinced he was attempting to coerce and intimidate him.

The trial ended with guilty verdicts against both Detectives. Within hours of the verdict, Bergrin was ordered into Fishman's office. He was reprimanded for his disloyalty, told he testified falsely and now had to live with the consequences that will alter and affect his life. Bergrin's office was moved to the 6th floor of the federal building, which housed the social security administration. He had no desk, chair, secretary and the office removed him from every criminal file and case upon which he was working, including the Candyman-Winters, et al prosecution. He was the sole prosecuting attorney on the entire floor. Bergrin was surrounded by secretaries and clerks, who worked on social security cases.

Bergrin remained with the Department of Justice for several months and made the voluntary decision to resign his position,

in good standing, as an Assistant United States Attorney. He then entered private practice in Newark, New Jersey.

Within two years of Bergrin entering private practice and becoming a very successful criminal defense attorney, he was wrongfully and falsely indicted for the offenses of conspiracy to tamper with evidence and tampering with evidence. The same United States Attorney Office, with Alito, Chertoff, and Fishman leading the charge, that ostracized and crucified Bergrin for his testimony and veraciousness, was now attempting to imprison him when they knew or should have known he was actually innocent.

Bergrin remained under indictment for approximately two years and it devastated his law practice and clientele; as Bergrin was now representing police unions and federal agents. He became a public figure through the acquittals he was winning his high profile clients and the looming indictment.

The proof of Bergrin's innocence was over-whelming. An FBI Questioned Document Examiner and Retired New York City Police Captain and former Commanding Officer of the document examination lab, confirmed through his expertise, Bergrin's innocence. The government's two cooperating witnessing were caught scheming and contriving evidence against him and Bergrin provided witnesses such as a Superior Court Judge, Chief of Detectives, Assistant United States Attorney and United States

Federal Agent, who proved to an absolute certainty he was innocent.

Three days prior to jury selection and commencement of trial and approximately two years after indictment, the Justice Department conceded his innocence and summarily dismissed the indictment; in the interests of justice.

What is pathetic and deplorable was that a Special Assistant United States Attorney, Harold Shapiro, was appointed to prosecute Bergrin and coincidentally he was a very close friend of Chertoff's as they worked together in the Southern District of New York an co-prosecuted one of the largest mob trials in history together; The Commission Case. They were inseparable buddies and Shapiro made Bergrin suffer the anguish and indignation of an indictment and prosecution remaining open for two years when the evidence of innocence was mountainous. Bergrin was wrongfully indicted devoid of investigation to punish and retaliate against him for his testimony and Alito, Chertoff and Fishman were leading the wrongful charge against him.

Alito would depart from his tenure as the New Jersey United States Attorney and be rewarded by the Bush Administration for attempting to destroy Bergrin; by being elevated by the Republican's and Bush Administration and allies to the Third

Circuit Court of Appeals and then to the United States Supreme Court.

Alito's long term alliance and friendship with David Addington, a Federalist like Alito and arch conservative Republican would be Bergrin's nemesis. Addington became Chief of Staff and legal counsel to Vice President, Richard Cheney.

Chertoff and Alito also would be instrumental in justifying Cheney and Rumsfeld's personal war on terror. Addington, along with Texan and White House Counsel, Alberto Gonzales would change history by redefining the term "torture" in clear contravention to moral decency, humanity, the law; and, most importantly, create a memo wrongfully and unlawfully espousing Rumsfeld and Cheney's horrific position of permissible torture during interrogations of prisoners. Furthermore, Addington and Gonzalez would intentionally deceive intelligence agency heads on permissible torturous interrogation techniques, with the consent, approval and blessing (condonation) of The White House; and most importantly the techniques and methods were ardently blessed by MICHAEL CHERTOFF, who served as Chief of the Criminal Division, Washington, D.C., United States Department of Justice. He was in the direct chain of this approved illegalities.

Directors of the Central Intelligence Agency (CIA), National Security Agency (NSA), Defense Investigative Agency (DIA), and all seminal intelligence agencies, detrimentally

relied upon this memo and Addington, Gonzalez, and Chertoff, in advising and ordering missions by their operatives, agents and soldiers in the field. The torture directive intentionally breached the American Code of Law, international law and executed Treaties and Convictions, and essentially espoused that the United States and its allies were to commit crimes against humanity and America will protect them.

As the lead defense counsel in the Abu Ghraib case and former Army Major, Bergrin obtained a copy of this nefarious memo and exposed its substance to both the media and military tribunal. Bergrin vociferously and aggressively sought the order by Military Judge James Pohl, Colonel, United States Army, to compel President Bush, Vice President Cheney, Secretary of Defense Donald Rumsfeld, Deputy of Intelligence Stephen Cambone, Deputy Defense Secretary Paul Wolfowitz, Samuel Alito, Michael Chertoff, Alberto Gonzalez, Addington and others to testify and admit to the government's position on torture. The government implored the Court to deny Bergrin's motion, arguing "National Security" interests, and vehemently denied the existence of the torture memo. ***Most importantly, the government denied that any United States Government official had any knowledge of the torture memo, or approved it—blatant lies that Bergrin could easily prove.***

Bergrin refused to back down against the government and the Star Ledger of New Jersey, all national and international papers, including Al-Jazeera and other media interests carried Bergrin's position on torture and its creation and condonation by our government. When Bush attempted to raze the Abu Ghraib prison, Bergrin opposed it and won. It was declared a crime scene; all this incensed the White House, United States government and especially Bush's allies against Bergrin. The White House press secretary and Bush himself, went on national television and denied Bergrin's accusations of their knowledge, but Bergrin refused to back down and used the media to enunciate his position. Bergrin became despised by the Bush administration and their corrupt friends.

Alito, a staunch ally of Addington and the Bush Administration was requested to give the Keynote speech at the Federalist Society. Through this speech he attempted to give new and unprecedented powers to Bush and his administration, thereby countering Bergrin's accusations, which were now public and worried the White House.

Paul Fishman, Bergrin's former Criminal Division Chief, moved on to the Justice Department, in Washington D.C. and then to the Chief Prosecuting Attorney position in New Jersey (the United States Attorney) when Bergrin was tried, convicted and sentenced to life in prison.

Chertoff would fill the first Director of Homeland Security position, in the Bush White House, after heading the Justice Department's Criminal Division, from 2001-2003 and Alito would be rewarded by Bush with the prestigious Supreme Court Justice vacancy. They should all thank Bergrin for his sacrifices and their elevated careers.

Bergrin's ardent, vociferous and aggressive betrayal of the Bush Administration, in his quest to zealously represent scapegoated soldiers on the Abu Ghraib case would haunt him. His repeated and incessant attacks against all members of the Bush White House and accusations of lies, deception and criminality infuriated Bush and all those associated with him; they knew if Bergrin was believed it would discredit the legendary Presidency and would affect their place in history. They also understood that the torture memo's genuinely existed, that Bergrin was accurate and that they unlawfully and wrongfully sanctioned torture and even murder; making them war criminals. What is important to note is Bergrin had vast knowledge of the murder of an imprisoned Iraqi General by intelligence agents.

Subsequent to Abu Ghraib, Bergrin was thrust into the spotlight and immeasurable controversy with the Bush White House again and again.

The hierarchy of the men Bergrin challenged rose in power and prestige as delineated. They all knew of his tenacity as a fearless defender of soldiers and the defenseless and underprivileged accused. They observed his public display of discrediting the highest levels of government and that he had to be curtailed at all costs. In an interview on public radio, national news and Al-Jazeera, Bergrin vowed to prove Bush and all associated with him were scapegoating the low level soldiers and that they had intentionally deceived the United States Congress, the international community, American public and the World. Thus, Bergrin became a realistic threat to the reputation, integrity and influence of the United States in the eyes of the entire World.

To further exacerbate Bergrin's problems and add fuel to his fire, he viewed, witnessed and became innately cognizant of not only violative acts of torture, but the murder of prisoners of war, water boarding, starvation, beatings, closed quarter isolation booths, Muslim's being forced into nudity at American prisons and paraded for public display, the illegal use of vicious dogs against Muslim prisoners, sleep deprivation, hangings with chains and handcuffs to cell doors, and all by order of the Bush Administration. His knowledge was all prior to Obama's release of the infamous torture memos, which confirmed the truthfulness of Bergrin's accusations.

In December 2006, and the month preceding Bergrin's New York County Indictment, he announced in a public interview, with the New Jersey Star Ledger that he was preparing legal motions to reverse the course of history and all the Abu Ghraib convictions. Bergrin also vowed to seek indictments in international court and to hold responsible the true guilty parties who ordered the torture.

The next month, January 2007, Bergrin was indicted and embarrassingly arrested. The media coverage was extraordinary and all done at the direction of the federal government; although New York County did their dirty work.

At this time, Bergrin was rising in status as an attorney and when he was arrested and this indictment announced, he was in the middle of an international, high publicity and profile case involving the alleged murder of Iraqi prisoners, on the Island of Samurra, New Smyrna Chemical Plant, Samurra, Iraq. Bergrin had been thrust into duty when three American Soldiers from the heroic and legendary 101st Airborne Division were scapegoated. Bergrin again became lead counsel and was astonished that the United States government sought murder convictions and life imprisonment for the soldiers, without any opportunity for parole. At the time Bergrin took the case, no one was fighting for the soldiers or on their behalf.

Through arduous work, Bergrin was able to discover that Rumsfeld had issued a rule of engagement, unprecedented in history. The Commander of Charlie Company, Colonel William Steele, of these "band of brothers" ordered his soldiers to kill every military aged male on this island. The rule of engagement was being withheld from the media and until Bergrin sprang into action, no defense attorney either discovered this fact or was willing to reveal it.

Bergrin became a threat to national security again and was threatened about revealing facts which would detrimentally affect the United States' government, its reputation in the international community and its continued emaciation of both the law of war and international treaties/conventions.

Bergrin discovered that the commanding officer who gave the order to the soldiers in Charlie Company, Colonel William Steele, was (publicly) larger than life and the officer who commanded elements of the 75th Ranger Company, that lost eighteen lives in Somalia. It was portrayed on screen in the movie, "Black Hawk Down". Bergrin was the exclusive authority that learned Steele was to take the fall for Rumsfeld and protect the White House at all costs. Bergrin demanded Steele's testimony at the Article 32 investigation in Tekrit, Iraq, but he asserted his right to remain silent and refused to incriminate himself or others. Bergrin then moved for immunity to be granted to

Steele, by high level commanding General's and on the White House (our Commander-in-Chief), but this was denied.

The government prosecutor's attempted to kick Bergrin off the case, due to the New York Indictment, but this was defeated; as the accused soldiers pleaded for him to remain on the case. Bergrin made five separate trips to Iraq and fought with intensity prosecutor's had never seen. He fully disclosed the scapegoating of young American soldiers by Bush, Cheney, Rumsfeld and the White House. John Ashcroft was the United States Attorney General protecting the White House and Bergrin attacked him, too. The negative publicity against the White House enabled Bergrin to fight the case successfully; but he was now a marked man and knew there would be retaliation.

It must be accentuated for the purpose of this motion that upon Bergrin's retention in the Abu Ghraib case, in or about April of 2004, he lived the war on terror. There was not an investigation that was endorsed and conducted that he failed to read. With his secret security clearance he was able to obtain classified documents and reports. There was not a federal law enforcement office or intelligence agency Bergrin did not scrutinize for their involvement in torture. Through media coverage, Bergrin incessantly held conferences and publicly disclosed or commented upon the multitude of atrocities. Bergrin believed that by remaining in the public eye, it would

be more difficult for him to be retaliated against. He became an arch enemy of Bush and all those either associated or affiliated with him. Bergrin revealed the fact that he had read thousands and thousands of pages of reports and evidence, in legal motions he filed and argued in these cases. He became obsessed with defending soldiers and ensuring they never felt abandoned nor lose their lives in the courtroom; as they were already losing enough lives on the field of battle.

Bergrin obtained copies of the torture investigations by Schlesinger, Taguba, the Central Intelligence Agency, the Federal Bureau of Investigation, the Army Criminal Investigation Division, Inspector Generals' Office, International Red Cross, Iraq Survey Group, Special Operations Command, United States Senate, Fay-Jones, Task Force 121 and travelled to Langly Air Force Base, Virginia and Washington D.C. to review emails sent by soldiers in Iraq from the Army's secret email system. Every report of investigation, trip to Iraq, and move he made was scrutinized and discussed with the media. The government was also cognizant of all the soldiers he interviewed in the Abu Ghraib case and Objective Iron Triangle, Samurra, killing. He was an absolute thorn in the side of White House Counsel, Albert Gonzalez, who eventually became Attorney General, John Ashcroft, United States Attorney General and the Bush legacy. It was Bergrin whom continually kept the pressure on the United States

government to reveal their involvement in sadistic and inhumane torture of human beings and whom repeatedly accused them of deception, misinformation, lies and atrocities.

Bergrin also disclosed and revealed the fact that the United States had actual knowledge of the conditions of imprisonment for Iraqi's and the continued use of torture through "ghost detainees"; prisoners who were placed in prison under false names and numbers, so they cannot be located or interviewed by the International Red Cross; Clear violations of the law. Most importantly, through legal motions, Bergrin forced the video tape depositions of high level military commanders which was looked upon with disdain. He aggressively questioned high level Generals, Commanding Officers and Intelligence Officials; all whom vehemently denied their knowledge of any torture by American soldiers and civilians in both Iraq and Afghanistan. Through their lack of preparation and disbelief that Bergrin had amassed so much intelligence information and knowledge, especially through the secret emails, Bergrin proved every one of these high echelon officials liars.

Bergrin then made legal motions to compel all these individuals to testify, including the Bush Administration, which was denied. But he had made the point and the media capitalized on it. Most importantly, Bergrin submitted a witness list in the Abu Ghraib case to the Military Judge, whom had to approve

each person, consisting of 150 witnesses; only about 6 were approved and none from the White House or of any high ranking General. Bergrin had revealed and ascertained that Israeli Mossad Agents were at Abu Ghraib assisting in unlawful interrogations and how interrogation techniques included rape, murder, and inflicting serious bodily injury. He was able to call several witnesses in the Abu Ghraib case whom described the torture and abuse of prisoners. Bergrin makes these points because while working on Abu Ghraib and in the Green Zone of Iraq, Bergrin was greeted and confronted by several government agents. He was threatened and warned about his work on behalf of the soldiers and told to back down and cease attacking the United States Government. That is why he knew he would be retaliated against.

Subsequent to Bergrin completing the Abu Ghraib and Objective Iron Triangle cases, he was called upon a third time; this time to represent a tank commander, Staff Sergeant Leon Parker, whom was being scapegoated again by the White House and accused of manslaughter. Bergrin visited Parker in Germany, imprisoned in Manheim and was incensed at his treatment. This time Bergrin held a major press conference and appeared on the front page of "Stars and Stripes;" a paper read by every Soldier, Sailor and Marine. Bergrin attacked Bush again for this hero soldier being scapegoated. It disheartened Bergrin,

but he again defended this soldier, by attacking the government and espousing the facts as to why the solder was being scapegoated. To make Bush look good and keep his fake image to both the American public as well as the Muslim communities and countries.

Bergrin was maliciously prosecuted and retaliated against because of his knowledge and what he could attest to. He witnessed the dried blood in the torture chambers at Abu Ghraib, uncovered gory details of how United States Agents beat General Manadel Al-Jamadi to death and the indignant matter of how he was treated even after death. He learned that the Central Intelligence Agent's that beat Jamadi to death was being protected by Special C.J.A. United States Attorney, Federal Prosecutor John Durham and how strategic military and civilian commanders were escaping responsibility, for criminal actions. Bergrin's investigation and his motivation to prosecute all those whom crucified and wrongfully destroyed the lives, liberty and hope of young devoted soldiers lead him to certain public officials, whose culpability was prevalent. Bergrin knew that Addington, Chertoff and Gonzalez had re-written the torture memo's for White House officials and redefined torture to only include permanent disfigurement and injury. But he also learned from intelligence agents, that during Michael Chertoff's confirmation hearing testimony, for Secretary of Homeland

Security, Bergrin could now prove he lied under oath to the United States Senate about his knowledge and involvement in war crimes in Iraq. Bergin also learned of the intimate connection between Department of Justice heads and United States Attorney General John Ashcroft, Bush and White House officials, Gonzalez, Addington, Alito and Chertoff. He realized that the Federal Bureau of Investigation, whom had agents at Abu Ghraib and in the Green Zone of Iraq tortured prisoners and committed war crimes against humanity, and he feared them.

Bergrin was awaiting trial on his New York Indictment when he coincidentally met former Supervising Assistant United States Attorney, John "Jay" Fahy, in a Newark, New Jersey restaurant. Fahy was apologetic for Bergrin's woes and advised Bergrin to subpoena him to testify at trial. That he could attest to his ardent belief that Bergrin was being retaliated against for his representation of soldiers in Iraq and what happened at the United States Attorney's Office. He said Bergrin embarrassed the Republicans and Bush and would never get away with it. Most importantly, Fahy informed me to be very careful of New Jersey, United States Attorney Christopher Christie. I was informed that Christie bought his position as United States Attorney through Bush and John Ashcroft and rewarded Ashcroft with a 40 million dollar, no bid contract, for legal work in New Jersey. Fahy told me that Christie is the most vindictive human being he

has ever met and was coming after Bergrin, to avenge Ashcroft and the Bush allies. I later learned Fahy was found shot to death in his automobile. It was ruled a suicide, devoid of any evidence to support this theory.

Within months of my New York federal indictment, I demoralized the New Jersey Office of the United States Attorney by gaining an acquittal in United States v. Carmine Dente, Jr, a case wherein Chief Assistant United States Attorney Marc Larkin, was attempting to prove a point for the Federal Bureau of Investigation. They sought to convict Dente for assault on a federal cooperating witness and send a message to the public, of its consequences. When the jury announced they had a verdict, seated in the front row of the Courthouse pew, was Acting United States Attorney Ralph Marra, appointed by Christie to head the office, and the heads of the Federal Bureau of Investigation.

The acquittal on all counts was the final nail in Bergrin's coffin. All the law enforcement officials stormed out of the Courthouse and the atmosphere was heated. Bergrin celebrated the verdict. Marra was Christie's appointment who would leave the federal government and receive a high level appointment in Governor Christie's New Jersey Administration and was the Chief Federal Prosecutor who indicted Bergrin before leaving office.

The facts are historical, uncontroverted and indisputable. Bergrin attempted to reveal every fact contained herein, but due

to the vociferous objection by the government, he was precluded from presenting this to his jury by the district court. Bergrin's zealous and heartened conduct from testifying in the Gilsenan, Cicalese federal prosecution, to his defense of soldiers in Abu Ghraib, Objective Iron Triangle and the Sergeant Leon Parker fiasco, to his media coverage, attention and threatened revelation of national and international crimes by the highest level of the United States Government and its agents, were the motivation for his malicious and retaliatory prosecution.

LEGAL ARGUMENT

Although broad, prosecutorial discretion is not unlimited, Prosecutor's may not engage in vindictive prosecution, which violates due process rights. In Borden Kircher v. Hayes, 434 U.S. 357, 363 (1978) the Supreme Court firmly held that "to punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." All Bergrin ever did was represent his clients zealously, aggressively and wholeheartedly. He has put the interests of his clients above politics, political correctness and defied intimidation, coercion and extraordinary pressure; to protect the rights of the accused, downtrodden, distressed, underdog and lowly soldiers; individuals with no one else to defend them; and

this caused State and Federal prosecutors and the highest level of the government to vindictively prosecute him and blatantly violate his due process rights. The facts specifically delineated, supra, prove this.

United States v. Taylor, 686 F. 3d 182, 197 (3d Cir. 2012) held that a clear error of review is the standard for factual conclusions, but de novo for legal conclusions. Bergrin's denial of an opportunity to present this legal defense was reversible error. The Court's failure to permit him to explain the evidence in opening argument and pursue it in the course of trial, violated Bergrin's constitutional rights.

The Due Process Clause prohibits a prosecutor from using charges in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights. See Borden Kircher v. Hayes, 434 U.S. 357, 363 (1978). Bergrin was prosecuted as punishment for exercising his legally protected right; to effectively and constitutionally represent the rights of defendant's and for him being wrongfully portrayed as a "whistleblower;" when all that was being done was disclosing the truth that soldiers were following orders from the highest levels of the government and being scapegoated.

Additionally, he was prosecuted vindictively for him challenging the government's illegal and wrongful misconduct of

scapegoating gallant and heroic soldiers who were merely following orders.

He was also punished vindictively for his wrongfully perceived disloyalty in testifying truthfully pursuant to subpoena, in United States v. Cicalese and Gilsenan. This is proven by being meritlessly and baselessly indicted by Alito, Chertoff, Fishman and Shapiro for Conspiracy to tamper with evidence and Tampering with evidence. These improper actions are the genesis, impetus and motivation to prosecute Bergrin, in the case sub judice. Misconduct of a constitutional dimension was held prohibitive by the Third Circuit. See U.S. v. Esposito, 968 F. 2d 300, 303 (3d Cir. 1992). The animus against Bergrin and hostility toward him is clear and evident in all points of this motion and especially the facts espoused supra. The historical chronology is a clear affirmation of the government's against him and must be considered by the Court. U.S. v. Battles, 745, F. 3d 436, 459 (10th Cir. 2014). U.S. v. Kendrick, 682 F. 3d 974, 981 (11th Cir 2012).

Both selective and vindictive prosecution claims can arise from alleged retaliation for the exercise of protected rights. The chief difference is that selective prosecution claims related to protected rights typically assert that a defendant is being prosecuted in the first instance for exercising rights, whereas vindictive prosecution claims usually deal with

allegations that the government has increased the severity of the case and charges, once the decision to prosecute has already been made. See U.S. v. Wilson, 639 F. 2d 500, 502 (9th Cir. 1981).

Motives are complex and difficult to prove. As a result, in certain cases in which action detrimental to the defendant has been taken after the exercise of a legal right, the Court has found it necessary to "presume" an improper vindictive motive. U.S. v. Goodwin, 457 U.S. 368, 373 (1982); see U.S. v. Stewart, 590 F. 2d 1212, 1220 (3d Cir. 1993). Due process can be implicated by the mere appearance of vindictiveness. Blackledge .v Perry, 417 U.S. 21, 28-29 (1974).

If this Court reviews the totality of facts, there will be only one conclusion that can be reached; and that is Bergrin's due process rights were violated.

Bergrin's legal issues arose immediately subsequent to his federal court testimony, while serving as an Assistant United States Attorney. Alito, Chertoff, Fishman, and members of the FBI in New Jersey ostracized him and punished him for lawfully exercising his right and testifying truthfully, pursuant to subpoena. They tormented him through removal of his prosecutorial responsibilities, moving him out of the office and these actions were tantamount to termination. They could not fire him because he did nothing wrong and they chose to

retaliate against him through vindictive and selective prosecution.

Within 24 months of Bergrin leaving the Office of the United States Attorney, District of New Jersey he was wrongfully indicted by Chertoff, Alito, Fishman and their crony, Howard Shapiro. Although "actual innocence" was proven to an absolute certainty by Bergrin and his legal counsel, Michael Critchly; to be vindictive and retaliatory for his legal testimony, they refused to dismiss the indictment until the eve of the trial. The indictment was dismissed with a specific Order detailing that "the interests of justice" required dismissal. The Honorable District Court Judge Joseph Rodriguez, District of New Jersey was appalled at the Government's acts against Bergrin.

Deshawn "Kemo" McCray was murdered on March 2, 2004 and almost all the allegations in Bergrin's federal and New York indictment were complete years preceding 2009. Not until Bergrin exercised his legally mandated right to defend accused's at Abu Ghraib, Objective Iron Triangle, The Leon Parker Tank Commander manslaughter case, United States v. Dente and a multitude of other State and Federal acquittals; as well as Bergrin's inordinate media coverage averring overwhelming governmental misconduct, violations of international law, violations of international treaties, conventions, governmental cover-ups and criminal culpability that affected the Presidency

of the United States did an indictment occur. The chronological time line Bergrin presented and the magnitude of the individuals involved in the criminal conduct and misconduct against Bergrin, was vindictive, retaliatory and malicious prosecution as well as selective prosecution.

Bergrin has conclusively proven that the office of the United States Attorney for the District of New Jersey from Alito, Chertoff, Fishman, Christie and Marra acted in concert and violated his Constitutional Rights to Due Process of Law. The case must be reversed. Bergrin has delineated objective evidence of actual vindictiveness. See Ala. V. Smith, 490 U.S. 794, 799 (1989).

Bergrin most respectfully seeks dismissal of his indictment.

XIV. XIV. THE DISTRICT COURT RELIED UPON FACTS THAT WERE NOT PROVEN BEYOND A REASONABLE DOUBT AND LACKED SUFFICIENT INDICIA OF RELIABILITY IN CALCULATING AND IMPOSING THE SENTENCE.

A. Amendment 782, to the United States Sentencing Commission Guidelines mandates a reduction of two offense levels when determining drug quantities.

B. Alleyne v. United States, 133 S. Ct. 2151, 186 L. Ed. 2d 314, 2013 U.S. LEXIS 4542 (2013), held that "any fact that, by law, increases the penalty for a crime is an "element" that must be submitted to the jury and found beyond a reasonable doubt."

The District Court enhanced Petitioner's sentence by wrongfully finding enhancements that were not proven beyond a reasonable doubt. As a matter of fact, they were not proven at all by using any standard of proof.

The District Court violated Petitioner's right to due process by relying on disputed and highly contested facts without an appropriate hearing, special verdict finding and arbitrarily, capriciously and discriminatorily applying the maximum penalty statutorily applicable on each and every charged offense; in clear contravention of the 6th and 14th Amendment of the United States Constitution, 18 U.S.C. §3553 and the law.

Although Petitioner pleaded for a factual hearing and raised objections to disputed issues, the Court ignored it. See United States v. Cifuentes, 863 F.2d 1149, 1150 (3d Cir. 1988), the interpretation of the Guidelines, see United States v. Wood,

526 F.d 82, 85 (3d Cir. 2008) and Alleyne v. United States, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2014).

Over Petitioner's ardent and vociferous objections, the District Court adopted these facts wholesale and relied upon them in imposing six concurrent life terms as well as concurrent prison terms of 120 months, 240 months and 60 months.

As was implored in Petitioner's sentencing memorandum, a life sentence, which was statutorily mandatory for Counts three, twelve and thirteen, see 18 U.S.C. §1959(a)(1), §1512(k), and §1512(a)(1)(A), clearly was disproportionate, grossly inequitable and violated the Eighth Amendment's ban on cruel and unusual punishment. It was based upon Petitioner's alleged *de minimis* involvement in the McCray allegations.

At best and in accordance with the prosecution's own theory of the case: Petitioner is alleged to have attended a meeting between members of the Baskerville family and in Anthony Young's presence and informed the group that William Baskerville will receive life in prison if "Kemo" testifies; that they are to make sure he does not testify, so William Baskerville will go free and he could win the case; and without Kemo, the government has no case.

All decisions to do violence, according to the testimony at trial, were decided after Petitioner left this alleged meeting;

and he has never been alleged to have had any further role whatsoever in the offense.

Truly there is a "gross imbalance between the crime" that Petitioner was found to have committed and multiple life sentences. United States v. MacEwan, 445 F.3d 237, 248 (3d Cir. 2006), given that Petitioner's alleged involvement in the conspiracy to murder McCray was limited to a few ambiguous comments about his client's case, to members of his family.

The Eighth Amendment also forbids extreme sentences that are "grossly disproportionate" to the crime, United States v. Yousef, 327 F.3d 56, 163 (2d Cir. 2003) (citing Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in the judgment).

The trial court's imposition of a life sentence as to Counts One, two and five, for which Petitioner was statutorily eligible, see 18 U.S.C. §1962(c) and (d); 21 U.S.C. §841 (a)(1) and (b)(1)(A), is unconstitutional for the same reasons.

Petitioner was a first time offender with an impeccable record which included honorable military service of 35 years, wherein he retired with the rank of Major; service in the Essex County Prosecutor's Office, Newark, New Jersey as a homicide prosecutor; and as an Assistant United States Attorney, Office of the United States Attorney, Newark, New Jersey. He also served as lead counsel in the Abu Ghraib military Court

Martial's, Objective Iron Triangle, Iraq murder cases and the Sergeant Leon Parker, tank homicide at The Forward Operating Base Mosul, Iraq.

His military record included a multitude of oversea tours which he served with distinction. He also served as a criminal defense attorney throughout the United States and was the representative of multiple State and Federal Policeman Benevolent Associations and contracts.

It also must be accentuated that the evidence now delineated in this motion prove the inaccuracy of the facts relied upon, for sentencing; and makes these issues of paramount importance. Petitioner incorporates by reference all facts averred supra.

C. The trial court erred in denying Petitioner his constitutional right to due process and violated the Sentencing Guidelines by refusing to hold a hearing to resolve disputed facts

The trial court also erred, denying Petitioner his constitutional right to due process, and violating the Sentencing Guidelines, see USSG 6A(1)(3), by refusing to hold a hearing to resolve disputed facts upon which it relied in determining the Guideline Offense Level was 48, as calculated by the government.

Specifically, the trial court was required to hold a hearing to enable Petitioner to substantiate his claims as to his innocence, and at best very limited nature and extent of his involvement in the offenses and to clearly prove that the upward enhancements were not applicable. Petitioner vehemently denied and objected to the following:

1. That Petitioner was an organizer or leader, USSG 3B1.1 (a)b). Petitioner had evidence which would have proven to an absolute certainty that he never had a leadership and managerial role in the offenses and that this was inapplicable to all drug counts. Witnesses Yolanda Jauregui, Alejandro and Lorenzo Castro, Jose Jiminez, Ramon Jiminez, Ashley Jauregui, a/k/a Theresa Vannoy, Maria Corriera and several others would have testified that Petitioner never directed drug trafficking activities, and was deliberately excluded from their knowledge and operations;

2. That Petitioner was involved in drug quantities which exceeded 5 kilograms; and that the Court erroneously held him responsible for at least 150 kilograms of cocaine. (The jury found Petitioner guilty of drug trafficking in 5 kilograms of cocaine, but there is not a scintilla of evidence that they held him responsible for more than that quantity.)

The Court was required to hold a hearing to establish whether the base offense level for the drug trafficking should be calculated using five (5) kilograms which would have resulted in a base offense level of 32, USSG 2D1.1(c)4), as Petitioner implored, or the wrongfully held and judicially determined 150 kilograms, resulting in a level of 38, 2D1.1 (c)(1), as the government contended. See also, United States v. Quiroga-Cordova, No. 91-00201-01. 1992 U.S. Dist. LEXIS 12333, at *9 n.4 (E.D. Pa. August 14, 1992)(granting Fatico hearing to permit defendant to dispute drug amount).

(WHAT IS VERY CRITICAL IS THE FACT THAT UNITED STATES SENTENCING COMMISSION GUIDELINE AMENDMENT 782, is applicable to Petitioner and results in a two point reduction in his base offense level, amending it to level 30);

3. That Petitioner abused his position of trust or uses special skills, USSG3B1.3, which was highly contested and objected to;

4. That Petitioner was complicit in the McCray murder for the offer or receipt of anything of pecuniary value, USSG 2A1.5(b)(1). The government argued that Petitioner was involved in the murder of McCray to keep William Baskerville from cooperating against him and incriminating him in the drug organization; which was absurd and devoid of any evidence whatsoever.

Sentencing Courts which resolve factual disputes without making independent and specific findings often violate Rule 32. See United States v. Gricco, 277 F.3d 339, 355 (3d Cir. 2002). United States v. Martinez, 83 F.3d 488, 494-95 (1st Cir. 1996); United States v. Roberts, 14 F.3d 502, 521 (10th Cir. 1993); Fatico, 603 F.2d. at 1057 n.9. Cf. United States v. White, 492 F.3d 380, 415 (6th Cir. 2007) (Once a "defendant calls the (disputed) matter to the Court's attention, the court may not merely summarily adopt the factual findings in the (PSR) or simply declare that the facts are supported by a preponderance of the evidence.")

The Court determined that, despite the enormity of contradictions between various witnesses in their accounts of Petitioner's participation, there was no reason to question the reliability of material facts and objections.

Alleyne, which delineates the law in Apprendi v. New Jersey, 530 U.S. 466 (2000), requires contested facts used for sentencing enhancement, that were neither admitted nor found by a jury to be proven beyond a reasonable doubt; especially when they increase the minimum mandatory sentence.

Every single enhancement against Petitioner, which clearly eviscerated his minimum mandatory drug trafficking sentences of 10 years, was objected to determined judicially; in

contravention to existing case law, the constitution, and statute.

The court never considered any mitigating factors pursuant to 18 U.S.C. §3553, ignored its obligation to have a hearing on the issues, and sentenced Petitioner to the statutory maximum on each and every count.

The sentence must be vacated.