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. Caroline Velez: Speaking Objections and Credibility Vouching to Explain her Inconsistent Testimony.

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.

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[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.

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