Stephen Aguiar
Reg. No. 03722-082
FMC Devens
P.O. Box 879
Ayer, MA 01432

Date: October 11, 2023

BadJurist.com
8834 E 34 Road #131
SMB #44345
Cadillac, MI 49601

In re Prosecutorial Misconduct/Judical Misconduct

Dear BadJurist.com:

Please find enclosed a complaint of my criminal case in which Assistant United States Attorneys in Burlington, Vermont fabricated and falsified evidence to convict me. I have filed numerous complaints to various agencies including the Attorney General, Office of the Inspector General, and Office of Professional Responsibility. I have also filed complaints to the Second Circuit Court of Appeals about Judge William K. Sessions III who has also engaged in violating the Cannons of Judicial Conduct and Ethics by also engaging in acts of corruption in his sanctioning the fabricated evidence of prosecutors to protect his own interests despite an obvious conflict of interest.

Could you please post the enclosed documents that clearly show by documentary evidence that I was convicted in my criminal case by prosecutorial and judicial misconduct in United States v. Aguiar, 737 F.3d 251 (2d Cir. 2013), to protect and preserve the good faith exception to the exclusionary rule regarding warrantless GPS tracking prior to 2011.

Thank you for your urgent attention in this matter.

Sincerely yours,

Stephen Aguiar

COMPLAINT TO U.S.A.G.O.

Stephen Aguiar
Reg. No. 03722-082
FMC Devens
P.O. Box 879
Ayer, MA 01432

Date: August 14, 2023

Merrick Garland
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

IN RE OFFICIAL COMPLAINT OF ASSISTANT UNITED STATES ATTORNEY ILLEGAL CONDUCT
UNITED STATES V. AGUIAR, No. 2:09-cr-90 (DISTRICT OF VERMONT: 2009-2014)

Dear Attorney General Garland:

I write this letter in the interest of justice hoping that you will take action regarding the enclosed evidence. Three Assistant United States Attorneys of the Burlington, Vermont United States Attorney's Office knowingly, willingly, and intentionally falsified GPS and wiretap documents in my criminal case. The need for you to take action regarding this complaint about corrupt Burlington, Vermont Assistant United States Attorneys who work under the United States Department of Justice ("USDOJ Officials") is dire.

A. USDOJ ASSISTANT UNITED STATES ATTORNEY OFFICIALS FALSIFIED A COURT STAMP; APPENDED THE FALSIFIED COURT STAMP TO A JULY 2, 2009 TITLE III WARRANT; AND FILED THE FALSE DOCUMENT IN THE VERMONT UNITED STATES DISTRICT COURT

First, to save the government's Title III wiretap evidence in my criminal case related to a July 2, 2009 Title III wiretap warrant filed with the Burlington, Vermont district court under seal, Burlington, Vermont USDOJ Officials knowingly, willingly, and intentionally falsified a United States Vermont District Court stamp after I was arrested because Vermont District Court Judge William K. Sessions had signed the July 2, 2009 Title III wiretap warrant that was missing a vital USDOJ Criminal Division authorization page. See Attachment 1 (2016 complaint containing clear and convincing evidence of fraud and misconduct sent to the Inspector General and Office of Professional Responsibility).

After I complained to both the Inspector General and Office of Professional Responsibility, neither agency took action and my complaint of intentional USDOJ official misconduct and my complaint remains discounted and discluded from action taken. See Attachment 2-3 (responses from both the Inspector General's and Office of Professional Responsibility's Office concluding that no action will be taken on my credible complaint unless I can invalidate my convictions).

Attorney General Garland, I am in a catch-22 because Vermont District Court Judge Sessions -- who signed the Title III wiretap warrant on July 2, 2009 with a missing USDOJ authorization page, see In re Tahair, 2:09-mc-34. ECF 17-1 (D. Vt. July 6, 2009 filed with the district court under seal July 2, 2009 wiretap application containing an incomplete USDOJ Criminal Division authorization page that was signed by Judge Sessions) -- is the presiding Judge over all of my post-conviction proceedings and all other related civil claims making it impossible for me to receive a fair and objective review regarding USDOJ's misconduct in my case. See, e.g., Aguiar v. Carter, No. 2:17-cv-121, 2018 U.S. Dist. LEXIS 139751 (D. Vt. Aug. 17, 2018)(Judge Sessions dismissing the complaint against USDOJ officials by inappropriately finding that "there is no plausible allegation that [] AUSA Defendants acted fraudulently or unfairly"); but see Attachment 1.

B. USDOJ ASSISTANT UNITED STATES ATTORNEY OFFICIALS DESTROYED GPS EVIDENCE; FALSIFIED GPS EVIDENCE; AND COMMITED FRAUD ON THE COURTS ABOUT GPS EVIDENCE

Second, I am also filing this letter to you as a direct and official complaint against the same Burlington, Vermont USDOJ Officials of your agency [Wendy Fuller; Timothy Doherty; and Paul Van De Graaf] regarding the destruction, falsification, and misrepresentation of GPS evidence before, during, and after my criminal case. See Attachment 4 (motion for a COA to the Second Circuit demonstrating by clear and convincing evidence that AUSAs Wendy Fuller; Timothy Doherty; and Paul Van De

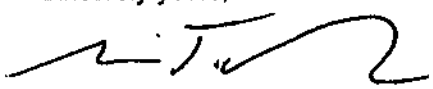
Graaf knowingly and intentionally committed fraud on the courts; violated the Federal Rules of Criminal Procedure and Evidence, Brady v. Maryland, and the Fifth and Sixth Amendments of the United States Constitution by suppressing, destroying, and falsifying GPS surveillance evidence and my criminal case and engaging in other misconduct in my post-conviction case). I have highlighted for your convenience the relevant illegal USDOJ illegal conduct-related portions of my motion that are supported by district court filed record evidence.

If you recall, you should be familiar with the government's collateral misconduct in connection with a related Freedom of Information Act ("FOIA") appeal over which you presided during the time I continued to be misled about the GPS evidence for years that made it impossible for me to exercise due process in my criminal case and adequately prepare a complete defense. See, e.g., Aguiar v. DEA, 865 F.3d 730, 736 (D.C. Cir. 2018)(criticizing the DEA's misleading descriptions of the GPS software used to track Appellant's 2009 movements in the district court related to his FOIA request and when "[a]sked at oral argument to reconcile the[] six divergent descriptions, DEA counsel instead tacked on a seventh..." and holding that the Court did not "know how to square the heptagon").

In closing, I pray that you will take much-needed action in my case as I am serving an excessive 360 month prison term as a result of Assistant United States Attorneys' illegal conduct throughout my criminal case and even to-date. The truth in my situation is ugly, but I pray that you see that the ends of justice are best served whatever action you decide to take. I look forward to your response in this case.

Thank you for your urgent attention in this matter.

Sincerely yours,



Stephen Aguiar

ATTACHMENT 1

Stephen Aguiar
Reg. No. 03722-082
FCC Petersburg Medium
P.O. Box 1000
Petersburg, VA 23804

June 3, 2016

RE: FORMAL COMPLAINT AGAINST U.S. ATTORNEY'S OFFICE (Burlington, VT)

STEPHEN AGUIAR, Complainant, v. AUSA Paul Van De Graaf, AUSA Wendy Fuller, AUSA Timothy Doherty, U.S. Attorney's Office, Burlington, Vermont	COMPLAINT NO. Related Case No. 2:00-cr-90 (D.Vt.)

I. Introduction

Stephen Aguiar brings this formal complaint against certain and above named Assistant U.S. Attorneys working out of the U.S. Attorney's Office in Burlington, Vermont. This complaint stems from misconduct alleged herein on information and belief that occurred in early to mid-2010 in criminal case 2:09-cr-90 out of the District of Vermont. Aguiar argues that prosecutors in his case either directly or indirectly participated in, or were a part of, outrageous government misconduct. Among other things, prosecutors in Aguiar's case falsified a U.S. District Court stamp

by copying the Court stamp on a Title III wiretap application to cover up prosecutors' failure to include a complete copy of a Department of Justice authorization page in the wiretap application when AUSA Wendy Fuller presented the Title III application to Judge Sessions who had signed the wiretap. Aguiar asserts:

II. Factual History

On July 2, 2009, AUSA Wendy Fuller allegedly received an authorization memorandum from the Department of Justice to wiretap Aguiar's cell phone bearing the number 802-238-9396. AUSA Fuller prepared the Title III application. Based on information and belief, there was some printing error in the preparing of the July 2, 2009 Title III application and a vital page of the Department of Justice authorization was missing, lost, or misplaced.

In the hours after closing on July 2, 2009, Judge Sessions reportedly signed the wiretap application and the Title III warrant issued. Incriminating conversations were intercepted and Aguiar and several codefendants were arrested on July 30, 2009.

After Aguiar's arrest at his detention, he told his attorney a vital page was missing during his hearing when his attorney gave him an ECF copy of the July 2, 2009 wiretap. His attorney did not act. The clerk's office of the Court only keeps copies of original pleadings for thirty days and the original July 2, 2009 wiretap was destroyed leaving the ECF copy of the July 2, 2009 wiretap the only copy of that wiretap.

On March 9, 2010, Aguiar's attorney eventually filed his suppression motion. In this motion, Aguiar's attorney alleged that a vital page was missing from the Department of Justice and

Title III required that the issuing judge was required to be presented with evidence that the Department of Justice ("DOJ") had authorized the Title III application at the time he signed the Title III application citing United States v. Staffeldt, 451 F.3d 578 (9th Cir. 2006). See United States v. Aguiar, Case No. 2-09-cr-90, Dec. 16, 2011 (D.Vt.), ECF 171 at 6; see also ECF 323 at 2-3.

On June 7, 2010, prosecutors filed an Opposition Memorandum. It argued that, on Thursday, July 2, 2009, preceding a three day holiday weekend, AUSA Wendy Fuller presented the July 2, 2009 wiretap application to Judge Sessions at the close of business. Id. ECF 216 at 15-16. Therefore, the signed application could not be filed with the Court until Monday, July 6, 2009. Id. According to the July 6, 2009 events described in great detail in its Memorandum, prosecutors explained:

> Upon receipt of the application packet, the clerk's office date-stamped the packet indicating it was "RECEIVED." The clerk's office then made a complete copy of the filing for the government's records. The government saved a copy of this application packet for its file and the copy received by the clerk's office on July 6, 2009 is attached at Govt. Ex. E. After the defendants had been charged, the government asked the clerk's office for ECF copies of all wiretaps contained in this case including the application, affidavit, and order pertaining to the TARGET CELL PHONE #3. The ECF copies were turned over to the defense as part of discovery.

Id. (emphasis supplied). Inconsistent with this explanation of events, the ECF copy of the July 2, 2009 Title III application that prosecutors provided to Aguiar was stamped "FILED" and also date and time stamped July 6, 2009 at 12:01 p.m. and further initialed by the Court's clerk. See ECF 17, United States v. Aguiar, Case No. 2:09-mc-34 (D.Vt.)(filed under seal). In stark contrast,

the proffered "Exhibit E" copy of of the July 2, 2009 wiretap application filed by prosecutors was stamped "RECEIVED" and was incorrectly date-stamped July 6, 2000, and lacking a time stamp and court initials. See ECF 216, United States v. Aguiar, Case No. 2:09-cr-90 (D.Vt.).

This comparison negates the prosecutors' explanation because prosecutors' filed "Exhibit E" copy of the July 2, 2009 wiretap application was clearly not a copy of the original -- filed, dated, time-stamped, and court-initialed document filed with the clerk on July 6, 2009 at 12:01 p.m.

III. Complaint Discussion

Based on information and belief, Aguiar argues that the more likely explanation as to the missing authorization page from the DOJ was a printing error in the U.S. Attorney's Office when the Title III application was being prepared [or the page was lost or misplaced] before it was presented to Judge Sessions to be signed and that outrageous government misconduct ensued to cure the governments' fatal error in Aguiar's case.

Aguiar alleges that prosecutors told a different story at Aguiar's August 4, 2010 suppression hearing. Despite prosecutors' detailed and succinct account of July 6, 2009 filing events, at the suppression hearing, AUSA Fuller told the Court:

> Whatever happened in the clerk's office when it was finally filed on the 6th, I have no idea. This is why we have no evidence as to what happened on the 6th.

See ECF 624, United States v. Aguiar, Case No. 2:09-cr-90 (D.Vt.) (August 4, 2010 suppression hearing transcript).

I ask that in the interest of justice, that a full investigation

be launched immediately into Aguiar's allegations of outrageous government misconduct by prosecutors in his case. In further support of Aguiar's allegations, Aguiar can provide irrefutable evidence that these prosecutors named here allowed DEA SA Richard Carter to falsely testify about GPS locations Aguiar's vehicle travelled during Aguiar's trial. Aguiar can further provide evidence that AUSA Doherty intentionally lied about locations in writing as to where DEA Agents installed GPS tracking devices on Aguiar's vehicles.

Aguiar also argues that criminal charges should be brought against those responsible for filing the copy of the July 2,2009 Title III wiretap warrant with the fraudulent U.S. District Court stamp on it. See ECF 216, Ex. E, supra.

IV. Conclusion

For all the above reason, Aguiar asks that your office provide Aguiar with confirmation of this formal complaint and any action that is or will be taken.

Respectfully submitted,

Dated: June 3, 2016

Stephen Aguiar

VERIFICATION

I, Stephen Aguiar, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Stephen Aguiar

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS ON CELL PHONE BEARING CALL NUMBER 802-238-9396	)	Misc. No. 2:09-MC-34

APPLICATION

Wendy L. Fuller, Assistant United States Attorney for the District of Vermont, being duly sworn, states:

A. This is an application for authorization, under Title III of the Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. § 2510, *et seq.*, for an order authorizing the interception of wire communications over one cell phone, bearing call number 802-238-9396 ("TARGET CELL PHONE #3") for 30 days. I am an "attorney authorized by law to prosecute or participate in the prosecution" of pertinent offenses, for purposes of § 2510(7).

B. Pursuant to Section 2516 of Title 18, United States Code, the Attorney General of the United States has specially designated the Assistant Attorney General, any Acting Assistant Attorney General, any Deputy Assistant Attorney General or any acting Deputy Assistant Attorney General of the Criminal Division to exercise the power conferred on the Attorney General by Section 2516 of Title 18, United States Code, to authorize this Application. Under the power designated to him by special designation of the Attorney General pursuant to Order Number 3055-2009, dated February 26, 2009, an appropriate official of the Criminal Division has authorized this Application. Attached to this Application as Exhibit A are copies of the

DEFENDANT'S EXHIBIT 5

ACTUAL TITLE III SEALED COURT FILING

Attorney General's order of special designation and the Memorandum of Authorization approving this Application.

C. This application seeks authorization to intercept wire communications of Stephen AGUIAR, Brian TAHAIR, Herbert "Buddy" LAWRENCE, Jeremy MACKENZIE, William MURRAY, Nathan FLEMING, Lisa FOY, Jessica ADCOCK, Shawn FOSTER, Edwin REYES, Tina MUNSON, Clint WALKER, Franklin GRANT, Jason OPALENIK and others as yet unknown (collectively the "TARGET SUBJECTS"), concerning federal felony offenses enumerated in § 2516, that is: (1) offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841, 843(b), and 846; and (2) laundering the proceeds of narcotics trafficking, conspiracy to do the same, and attempts to do the same, in violation of 18 U.S.C. §§ 371, 1956 and 1957 (collectively the "TARGET OFFENSES"). The TARGET SUBJECTS are using the TARGET CELL PHONE #3 to facilitate the TARGET OFFENSES. This application seeks authorization to intercept wire communications occurring to and from the cellular/wireless phone bearing call number 802-238-9396 ("TARGET CELL PHONE #3"), which is a prepaid Tracfone issued by Verizon Wireless with no subscriber and an Electronic Serial Number ("ESN") of A00000073EBACE, used by Stephen AGUIAR and the TARGET SUBJECTS. The authorization given is intended to apply not only to the TARGET CELL PHONE #3, but to any other telephone number subsequently assigned to the instrument(s) bearing the same electronic serial number(s) used by the TARGET CELL PHONE #3 within the thirty-day period. The authorization is also intended to apply to the TARGET CELL PHONE #3 number referenced above regardless of service provider, and to

background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.

D. Applicant has discussed the circumstances of the TARGET OFFENSES with U.S. Drug Enforcement Administration Task Force Agent Justin Couture and has examined the "Affidavit" of Agent Couture, attached as Exhibit B. Your applicant states upon information and belief that:

1. There is probable cause to believe that the TARGET SUBJECTS have committed, are committing, and will continue to commit, the TARGET OFFENSES, and that wire communications of the TARGET SUBJECTS concerning the TARGET OFFENSES will be obtained through interception of the communications for which authorization is requested. In particular, the communications are expected to concern discussion of the specifics of the offenses, including revealing:

a. the nature, extent and methods of operation of the narcotics and money laundering business of the TARGET SUBJECTS;

b. the identities and roles of accomplices, aiders and abettors, co-conspirators and participants in the TARGET OFFENSES;

c. the distribution of contraband and currency involved in those activities, in particular the receipt of currency, as well as the source and nature of such currency, including its relation to the sale and purchase of controlled substances;

d. the locations and items used in furtherance of the TARGET OFFENSES;

e. the existence and locations of records pertaining to the TARGET OFFENSES;

f. the location and source of resources used to finance the TARGET OFFENSES; and

g. the times, dates and places the persons involved in this narcotics and money laundering operation pick-up and exchange currency and contraband, and meet to discuss the progress of the ongoing money laundering and narcotics trafficking operation.

2. The attached Affidavit contains a complete statement explaining why normal investigative procedures have been tried and failed, or at this point reasonably appear unlikely to succeed if continued, or reasonably appear unlikely to succeed if tried, or reasonably appear to be too dangerous to attempt.

3. There is probable cause to believe that the TARGET SUBJECTS have used, are using, and will continue to use during the period of interception requested, the TARGET CELL PHONE #3 to communicate with each other in connection with the TARGET OFFENSES.

E. The attached Affidavit contains a complete statement of facts concerning all previous applications that have been made to any judge of competent jurisdiction for authorization to intercept, or for approval of interception of, wire, oral or electronic communications involving any of the same individuals, facilities, or places specified in this application.

F. On the basis of the allegations contained in this application and the attached Affidavit, the applicant requests:

1. That this Court issue an Order pursuant to the power conferred on it by 18 U.S.C. § 2518, authorizing agents of the DEA, specially deputized officers, and interpreters under contract with the Government and acting under the supervision of a DEA agent authorized to conduct the interception, to intercept wire communications to and from the TARGET CELL PHONE #3. Additionally, pursuant to § 2518(3), it is requested that in the event the TARGET

CELL PHONE #3 is transferred outside the territorial jurisdiction of this Court, interception may take place in any other jurisdiction within the United States.

2. The applicant further requests that the Court's order provide that interceptions be executed as soon as practical, and not automatically terminate after the first interception that reveals the manner in which the TARGET SUBJECTS conduct the TARGET OFFENSES, but continue until communications are intercepted that fully reveal the manner in which they participate in the specified offenses and that reveal the identities of co-conspirators, their places of operation, and the full nature of the conspiracy, or for another period of 30 days, whichever is earlier. It is further requested that this time be measured from the day on which the investigative or law enforcement officer first begins to conduct the interception pursuant to the Court's order, or 10 days from the date of the Court's order, whichever is earlier.

3. It is further requested that this Court issue an order pursuant to § 2518(4), directing that Verizon Wireless and Tracfone, the service providers for the TARGET CELL PHONE #3, furnish the DEA all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider accord the persons whose communications are to be intercepted, and that the service provider be compensated by the DEA for reasonable expenses incurred in providing such facilities or assistance. In the event that the service provider for the TARGET CELL PHONE #3 changes during the pendency of the Court's order, it is requested that the order apply to the new service provider without the necessity of a further application or order.

4. It is further requested that, to avoid prejudice to the investigation, the Court order that Verizon Wireless and Tracefone and its agents and employees, shall not disclose, or

cause a disclosure, of this Court's Order or the request for information, assistance, and facilities by the DEA or the existence of this investigation to any person other than those of their agents and employees who require said information to accomplish the services requested. In particular, said service provider and its agents and employees should be ordered to not make such disclosure to a lessee, telephone subscriber, or any interceptee or participant in the intercepted communications.

5. It is further requested that the Order provide that the undersigned applicant, or any Assistant United States Attorney familiar with the facts of this case designated by Acting United States Attorney Paul J. Van de Graaf, shall provide the Court with a report on or about every tenth day following the date that interception begins, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. If any of the above reports should become due on a weekend or holiday, it is further requested that such report become due on the next business day.

6. It is further requested that the Order provide that authorization to intercept wire communications shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception, such as privileged attorney-client communications, in accordance with the minimization requirement of § 2518(5). The authorization shall terminate upon attainment of the authorized objective, or in any event, at the end of thirty (30) days from the earlier of the day on which investigative or law enforcement officers first begin to conduct an interception under this Order or ten (10) days after this Order is entered. In the event the intercepted communication is in a foreign language, and an expert in that foreign language is not reasonably available during the interception period, minimization

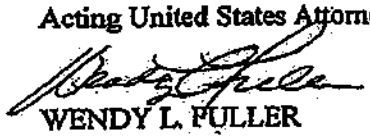
may be accomplished as soon as practical after such interception. Further, it is requested that if a wire communication is minimized, monitoring personnel may spot check to insure that the conversation has not turned to criminal matters.

7. It is further requested that the Order provide that, upon an *ex parte* showing of good cause to a judge of competent jurisdiction, the service of the inventory or return may be postponed for a further reasonable period of time.

8. It is further requested that this Application, the attached Affidavit, any resulting Order, and all interim reports filed with the Court be sealed until further order of this Court.

Respectfully submitted,

UNITED STATES OF AMERICA
PAUL J. VAN DE GRAAF
Acting United States Attorney

By: 
WENDY L. FULLER
Assistant U.S. Attorney

Subscribed and sworn to before me this 2 day of July, 2009.

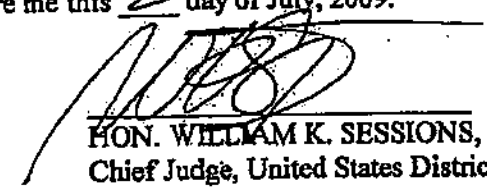

HON. WILLIAM K. SESSIONS, III.
Chief Judge, United States District Court

EXHIBIT A

delegated power, the appropriately designated official authorizes the above-described application to be made by any investigative or law enforcement officer of the United States as defined in Section 2510(7) of Title 18, United States Code.

The authorization given is intended to apply not only to the target telephone number listed above, but to any other telephone number subsequently assigned to or used by the instrument bearing the same electronic serial number used by the target cellular telephone within the thirty-day period. The authorization is also intended to apply to the target telephone number referenced above regardless of service provider, and to background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.

Lanny A. Breuer
Assistant Attorney General
Criminal Division

JUL -2 2009
Date

John C. Keeney
Deputy Assistant Attorney General
Criminal Division

U.S. Department of Justice

Criminal Division
Office of Enforcement Operations

Maureen H. Killion, Director *Washington, D.C. 20005*

Title III Implementation Information

In connection with the concomitantly transmitted documents approving your request to apply for a court order authorizing an interception pursuant to Title III, we would like to advise you of the following so that you might avoid issues in these areas:

Pending Charges / Privileged Communications - Monitoring personnel must exercise care to avoid intercepting communications of persons under indictment that may pertain to any such person's culpability in relation to the indictment, or the strategy that they contemplate employing as a defense, or communications involving a recognized privilege, e.g. doctor-patient. If such a communication is overheard inadvertently, monitoring personnel are to make notation of the incident in the intercept log and make an immediate report to the attorney who is supervising the interception.

Sealing - It is the obligation of the supervising attorney to ensure that the tapes of the intercepted conversations are protected adequately, and that these tapes are sealed by the court on a regular basis, preferably at the end of each 30-day period, if the interception is authorized to continue beyond the initial 30-day period. If there is a break in the interception period, this attorney should ensure that the tapes are sealed by the court as soon as practicable thereafter.

Computation of the 30-Day Period - Because of conflicting court decisions regarding the counting of the 30-day period for purposes of Title III interceptions, the supervising attorney should ensure that the method of computing time is set forth in the court's order and made known to monitoring personnel. *See, e.g., United States* v. *Gangi*, 33 F.Supp.2d 303 (S.D.N.Y. 1999) (counting calendar days rather than 24-hour periods, unless order provides otherwise), and *United States* v. *Smith*, 223 F.3rd 554, at 575 (7th Cir. 2000) (Fed.R.Crim.P. 45, minus weekend and holiday exception, applies). Notwithstanding the method used, communications should not be intercepted for longer than a strict counting of 30 days.

Extensions - All extensions MUST be approved by the Criminal Division before they are filed with the court.

Reporting - Section 2519 of Title 18, United States Code, requires that the Attorney General make an annual report to the Administrative Office of the United States Courts (AOUSC) each year regarding electronic surveillance by a federal agency under Title III. The statute requires you, through your investigative agency, to report specific post surveillance information, i.e., the number of resulting trials, the number of motions to suppress, whether the motions were granted or denied, and the number of convictions. These reports are compiled by AOUSC and provided to Congress and the public.

OEO's Electronic Surveillance Unit (ESU) can be reached at (202) 514-6809. Requests for surveillance authorized under T-III must be submitted to ESU by email through ESU.Requests@usdoj.gov or through our FAX-to-email server on (803) 726-2180.

Office of the Attorney General
Washington, D.C.

ORDER NO. 3055-2009

SPECIAL DESIGNATION OF CERTAIN OFFICIALS OF THE CRIMINAL DIVISION AND NATIONAL SECURITY DIVISION TO AUTHORIZE APPLICATIONS FOR COURT ORDERS FOR INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS

By virtue of the authority vested in me as the Attorney General, including 28 U.S.C. § 510, 5 U.S.C. § 301, and 18 U.S.C. § 2516(1), and in order to preclude any contention that the designations by the prior Attorney General have lapsed, the following officials are hereby specially designated to exercise the power conferred by section 2516(1) of title 18, United States Code, to authorize applications to a Federal judge of competent jurisdiction for orders authorizing or approving the interception of wire and oral communications by the Federal Bureau of Investigation or a Federal agency having responsibility for the investigation of the offense(s) as to which such application is made, when such interception may provide evidence of any of the offenses specified in section 2516 of title 18, United States Code:

1. The Assistant Attorney General in charge of the Criminal Division, any Acting Assistant Attorney General in charge of the Criminal Division, any Deputy Assistant Attorney General of the Criminal Division, and any Acting Deputy Assistant Attorney General of the Criminal Division;

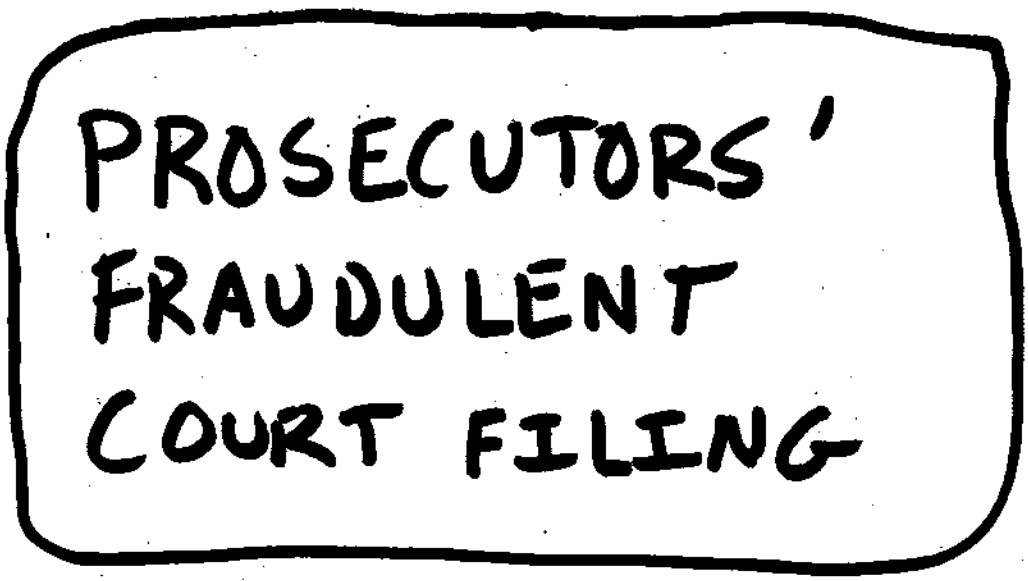
2. The Assistant Attorney General for National Security, any Acting Assistant Attorney General for National Security, any Deputy Assistant Attorney General for National Security, and any Acting Deputy Assistant Attorney General for National Security, with respect to those matters delegated to the supervision and responsibility of the Assistant Attorney General for National Security. These officials of the National Security Division shall exercise this authority through, and in full coordination with, the Office of Enforcement Operations within the Criminal Division.

Attorney General Order No. 2943-2008 of January 22, 2008, is revoked effective at 11:59 p.m. of the day following the date of this order.

2-26-09
Date

Eric H. Holder, Jr.
Attorney General

THE GOVERNMENT'S: # Exhibit E



UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS ON CELL PHONE BEARING CALL NUMBER 802-238-9396	)	Misc. No. 2:09-MC-34

APPLICATION

Wendy L. Fuller, Assistant United States Attorney for the District of Vermont, being duly sworn, states:

A. This is an application for authorization, under Title III of the Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. § 2510, *et seq.*, for an order authorizing the interception of wire communications over one cell phone, bearing call number 802-238-9396 ("TARGET CELL PHONE #3") for 30 days. I am an "attorney authorized by law to prosecute or participate in the prosecution" of pertinent offenses, for purposes of § 2510(7).

B. Pursuant to Section 2516 of Title 18, United States Code, the Attorney General of the United States has specially designated the Assistant Attorney General, any Acting Assistant Attorney General, any Deputy Assistant Attorney General or any acting Deputy Assistant Attorney General of the Criminal Division to exercise the power conferred on the Attorney General by Section 2516 of Title 18, United States Code, to authorize this Application. Under the power designated to him by special designation of the Attorney General pursuant to Order Number 3055-2009, dated February 26, 2009, an appropriate official of the Criminal Division has authorized this Application. Attached to this Application as Exhibit A are copies of the

Attorney General's order of special designation and the Memorandum of Authorization approving this Application.

C. This application seeks authorization to intercept wire communications of Stephen AGUIAR, Brian TAHAIR, Herbert "Buddy" LAWRENCE, Jeremy MACKENZIE, William MURRAY, Nathan FLEMING, Lisa FOY, Jessica ADCOCK, Shawn FOSTER, Edwin REYES, Tina MUNSON, Clint WALKER, Franklin GRANT, Jason OPALENIK and others as yet unknown (collectively the "TARGET SUBJECTS"), concerning federal felony offenses enumerated in § 2516, that is: (1) offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841, 843(b), and 846; and (2) laundering the proceeds of narcotics trafficking, conspiracy to do the same, and attempts to do the same, in violation of 18 U.S.C. §§ 371, 1956 and 1957 (collectively the "TARGET OFFENSES"). The TARGET SUBJECTS are using the TARGET CELL PHONE #3 to facilitate the TARGET OFFENSES. This application seeks authorization to intercept wire communications occurring to and from the cellular/wireless phone bearing call number 802-238-9396 ("TARGET CELL PHONE #3"), which is a prepaid Tracfone issued by Verizon Wireless with no subscriber and an Electronic Serial Number ("ESN") of A00000073EBACE, used by Stephen AGUIAR and the TARGET SUBJECTS. The authorization given is intended to apply not only to the TARGET CELL PHONE #3, but to any other telephone number subsequently assigned to the instrument(s) bearing the same electronic serial number(s) used by the TARGET CELL PHONE #3 within the thirty-day period. The authorization is also intended to apply to the TARGET CELL PHONE #3 number referenced above regardless of service provider, and to

background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.

D. Applicant has discussed the circumstances of the TARGET OFFENSES with U.S. Drug Enforcement Administration Task Force Agent Justin Couture and has examined the "Affidavit" of Agent Couture, attached as Exhibit B. Your applicant states upon information and belief that:

1. There is probable cause to believe that the TARGET SUBJECTS have committed, are committing, and will continue to commit, the TARGET OFFENSES, and that wire communications of the TARGET SUBJECTS concerning the TARGET OFFENSES will be obtained through interception of the communications for which authorization is requested. In particular, the communications are expected to concern discussion of the specifics of the offenses, including revealing:

a. the nature, extent and methods of operation of the narcotics and money laundering business of the TARGET SUBJECTS;

b. the identities and roles of accomplices, aiders and abettors, co-conspirators and participants in the TARGET OFFENSES;

c. the distribution of contraband and currency involved in those activities, in particular the receipt of currency, as well as the source and nature of such currency, including its relation to the sale and purchase of controlled substances;

d. the locations and items used in furtherance of the TARGET OFFENSES;

e. the existence and locations of records pertaining to the TARGET OFFENSES;

f. the location and source of resources used to finance the TARGET OFFENSES; and

g. the times, dates and places the persons involved in this narcotics and money laundering operation pick-up and exchange currency and contraband, and meet to discuss the progress of the ongoing money laundering and narcotics trafficking operation.

2. The attached Affidavit contains a complete statement explaining why normal investigative procedures have been tried and failed, or at this point reasonably appear unlikely to succeed if continued, or reasonably appear unlikely to succeed if tried, or reasonably appear to be too dangerous to attempt.

3. There is probable cause to believe that the TARGET SUBJECTS have used, are using, and will continue to use during the period of interception requested, the TARGET CELL PHONE #3 to communicate with each other in connection with the TARGET OFFENSES.

E. The attached Affidavit contains a complete statement of facts concerning all previous applications that have been made to any judge of competent jurisdiction for authorization to intercept, or for approval of interception of, wire, oral or electronic communications involving any of the same individuals, facilities, or places specified in this application.

F. On the basis of the allegations contained in this application and the attached Affidavit, the applicant requests:

1. That this Court issue an Order pursuant to the power conferred on it by 18 U.S.C. § 2518, authorizing agents of the DEA, specially deputized officers, and interpreters under contract with the Government and acting under the supervision of a DEA agent authorized to conduct the interception, to intercept wire communications to and from the TARGET CELL PHONE #3. Additionally, pursuant to § 2518(3), it is requested that in the event the TARGET

CELL PHONE #3 is transferred outside the territorial jurisdiction of this Court, interception may take place in any other jurisdiction within the United States.

2. The applicant further requests that the Court's order provide that interceptions be executed as soon as practical, and not automatically terminate after the first interception that reveals the manner in which the TARGET SUBJECTS conduct the TARGET OFFENSES, but continue until communications are intercepted that fully reveal the manner in which they participate in the specified offenses and that reveal the identities of co-conspirators, their places of operation, and the full nature of the conspiracy, or for another period of 30 days, whichever is earlier. It is further requested that this time be measured from the day on which the investigative or law enforcement officer first begins to conduct the interception pursuant to the Court's order, or 10 days from the date of the Court's order, whichever is earlier.

3. It is further requested that this Court issue an order pursuant to § 2518(4), directing that Verizon Wireless and Tracfone, the service providers for the TARGET CELL PHONE #3, furnish the DEA all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider accord the persons whose communications are to be intercepted, and that the service provider be compensated by the DEA for reasonable expenses incurred in providing such facilities or assistance. In the event that the service provider for the TARGET CELL PHONE #3 changes during the pendency of the Court's order, it is requested that the order apply to the new service provider without the necessity of a further application or order.

4. It is further requested that, to avoid prejudice to the investigation, the Court order that Verizon Wireless and Tracefone and its agents and employees, shall not disclose, or

cause a disclosure, of this Court's Order or the request for information, assistance, and facilities by the DEA or the existence of this investigation to any person other than those of their agents and employees who require said information to accomplish the services requested. In particular, said service provider and its agents and employees should be ordered to not make such disclosure to a lessee, telephone subscriber, or any interceptee or participant in the intercepted communications.

5. It is further requested that the Order provide that the undersigned applicant, or any Assistant United States Attorney familiar with the facts of this case designated by Acting United States Attorney Paul J. Van de Graaf, shall provide the Court with a report on or about every tenth day following the date that interception begins, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. If any of the above reports should become due on a weekend or holiday, it is further requested that such report become due on the next business day.

6. It is further requested that the Order provide that authorization to intercept wire communications shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception, such as privileged attorney-client communications, in accordance with the minimization requirement of § 2518(5). The authorization shall terminate upon attainment of the authorized objective, or in any event, at the end of thirty (30) days from the earlier of the day on which investigative or law enforcement officers first begin to conduct an interception under this Order or ten (10) days after this Order is entered. In the event the intercepted communication is in a foreign language, and an expert in that foreign language is not reasonably available during the interception period, minimization

may be accomplished as soon as practical after such interception. Further, it is requested that if a wire communication is minimized, monitoring personnel may spot check to insure that the conversation has not turned to criminal matters.

7. It is further requested that the Order provide that, upon an *ex parte* showing of good cause to a judge of competent jurisdiction, the service of the inventory or return may be postponed for a further reasonable period of time.

8. It is further requested that this Application, the attached Affidavit, any resulting Order, and all interim reports filed with the Court be sealed until further order of this Court.

Respectfully submitted,

UNITED STATES OF AMERICA
PAUL J. VAN DE GRAAF
Acting United States Attorney

By: 
WENDY L. FULLER
Assistant U.S. Attorney

Subscribed and sworn to before me this 2 day of July, 2009.

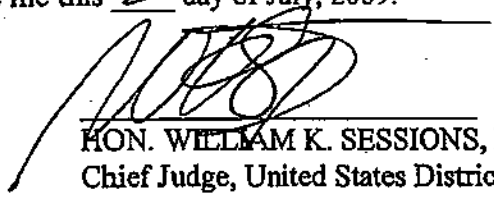

HON. WILLIAM K. SESSIONS, III.
Chief Judge, United States District Court

EXHIBIT A

U.S. Department of Justice

Washington, D.C. 20530

JUL 2. 2009

MEMORANDUM

TO: Janet D. Webb, Acting Director
Office of Enforcement Operations
Criminal Division

ATTN: Wendy L. Fuller

FROM: Lanny A. Breuer
Assistant Attorney General
Criminal Division

SUBJECT: Authorization for Interception Order Application

This is with regard to your recommendation that an appropriately designated official of the Criminal Division authorize an application to a federal judge of competent jurisdiction for an order under Title 18, United States Code, Section 2518, authorizing for a thirty (30) day period the interception of wire communications occurring to and from the pre-paid cellular telephone bearing the number (802) 238-9396, with no subscriber information, in connection with an investigation into possible violations of Title 21, United States Code, Sections 841, 843 and 846; and Title 18, United States Code, Sections 371, 1956 and 1957, by Stephen Aguiar, Brian Tahair, Herbert Lawrence, Jeremy Mackenzie, William Murray, Nathan Fleming, Lisa Foy, Jessica Adcock, Shawn Foster, Edwin Reyes, Tina Munson, Clint Walker, Franklin Grant, Jason Opalenik, and others as yet unknown.

By virtue of the authority vested in the Attorney General of the United States by Section 2516 of Title 18, United States Code, the Attorney General has by Order Number 3055-2009, dated February 26, 2009, designated specific officials in the Criminal Division to authorize applications for court orders authorizing the interception of wire or oral communications. As a duly designated official in the Criminal Division, this power is exercisable by the undersigned. WHEREFORE, acting under this

delegated power, the appropriately designated official authorizes the above-described application to be made by any investigative or law enforcement officer of the United States as defined in Section 2510(7) of Title 18, United States Code.

The authorization given is intended to apply not only to the target telephone number listed above, but to any other telephone number subsequently assigned to or used by the instrument bearing the same electronic serial number used by the target cellular telephone within the thirty-day period. The authorization is also intended to apply to the target telephone number referenced above regardless of service provider, and to background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.

Lanny A. Breuer
Assistant Attorney General
Criminal Division

JUL 2 2009
Date

John C. Keeney
Deputy Assistant Attorney General
Criminal Division

U.S. Department of Justice

Criminal Division
Office of Enforcement Operations

Maureen H. Killion, Director *Washington, D.C. 20005*

Title III Implementation Information

In connection with the concomitantly transmitted documents approving your request to apply for a court order authorizing an interception pursuant to Title III, we would like to advise you of the following so that you might avoid issues in these areas:

Pending Charges / Privileged Communications - Monitoring personnel must exercise care to avoid intercepting communications of persons under indictment that may pertain to any such person's culpability in relation to the indictment, or the strategy that they contemplate employing as a defense, or communications involving a recognized privilege, e.g. doctor-patient. If such a communication is overheard inadvertently, monitoring personnel are to make notation of the incident in the intercept log and make an immediate report to the attorney who is supervising the interception.

Sealing - It is the obligation of the supervising attorney to ensure that the tapes of the intercepted conversations are protected adequately, and that these tapes are sealed by the court on a regular basis, preferably at the end of each 30-day period, if the interception is authorized to continue beyond the initial 30-day period. If there is a break in the interception period, this attorney should ensure that the tapes are sealed by the court as soon as practicable thereafter.

Computation of the 30-Day Period - Because of conflicting court decisions regarding the counting of the 30-day period for purposes of Title III interceptions, the supervising attorney should ensure that the method of computing time is set forth in the court's order and made known to monitoring personnel. *See, e.g., United States* v. *Gangi*, 33 F.Supp.2d 303 (S.D.N.Y. 1999) (counting calendar days rather than 24-hour periods, unless order provides otherwise), and *United States* v. *Smith*, 223 F.3rd 554, at 575 (7th Cir. 2000) (Fed.R.Crim.P. 45, minus weekend and holiday exception, applies). Notwithstanding the method used, communications should not be intercepted for longer than a strict counting of 30 days.

Extensions - All extensions MUST be approved by the Criminal Division before they are filed with the court.

Reporting - Section 2519 of Title 18, United States Code, requires that the Attorney General make an annual report to the Administrative Office of the United States Courts (AOUSC) each year regarding electronic surveillance by a federal agency under Title III. The statute requires you, through your investigative agency, to report specific post surveillance information, i.e., the number of resulting trials, the number of motions to suppress, whether the motions were granted or denied, and the number of convictions. These reports are compiled by AOUSC and provided to Congress and the public.

OEO's Electronic Surveillance Unit (ESU) can be reached at (202) 514-6809. Requests for surveillance authorized under T-III must be submitted to ESU by email through ESU.Requests@usdoj.gov or through our FAX-to-email server on (803) 726-2180.

Office of the Attorney General
Washington, D.C.

ORDER NO. 3055-2009

SPECIAL DESIGNATION OF CERTAIN OFFICIALS OF THE CRIMINAL DIVISION AND NATIONAL SECURITY DIVISION TO AUTHORIZE APPLICATIONS FOR COURT ORDERS FOR INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS

By virtue of the authority vested in me as the Attorney General, including 28 U.S.C. § 510, 5 U.S.C. § 301, and 18 U.S.C. § 2516(1), and in order to preclude any contention that the designations by the prior Attorney General have lapsed, the following officials are hereby specially designated to exercise the power conferred by section 2516(1) of title 18, United States Code, to authorize applications to a Federal judge of competent jurisdiction for orders authorizing or approving the interception of wire and oral communications by the Federal Bureau of Investigation or a Federal agency having responsibility for the investigation of the offense(s) as to which such application is made, when such interception may provide evidence of any of the offenses specified in section 2516 of title 18, United States Code:

1. The Assistant Attorney General in charge of the Criminal Division, any Acting Assistant Attorney General in charge of the Criminal Division, any Deputy Assistant Attorney General of the Criminal Division, and any Acting Deputy Assistant Attorney General of the Criminal Division;

2. The Assistant Attorney General for National Security, any Acting Assistant Attorney General for National Security, any Deputy Assistant Attorney General for National Security, and any Acting Deputy Assistant Attorney General for National Security, with respect to those matters delegated to the supervision and responsibility of the Assistant Attorney General for National Security. These officials of the National Security Division shall exercise this authority through, and in full coordination with, the Office of Enforcement Operations within the Criminal Division.

Attorney General Order No. 2943-2008 of January 22, 2008, is revoked effective at 11:59 p.m. of the day following the date of this order.

2-26-09
Date

Eric H. Holder, Jr.
Attorney General

U.S. Department of Justice

Office of the Inspector General

Investigations Division

1425 New York Avenue NW, Suite 7100
Washington, D.C. 20530

June 22, 2016

Stephen Aguiar
Reg. No. 03722-082
FCC Petersburg Medium
P.O. Box 1000
Petersburg, VA 23804

Dear Mr. Aguiar:

The purpose of this letter is to acknowledge receipt of your correspondence dated June 3, 2016. The matters that you raised are more appropriate for review by another office or Agency. Therefore, your complaint has been forwarded to:

Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Rm 3266
Washington, D.C. 20530

Executive Office for U.S. Attorneys
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Rm 2245
Washington, D.C. 20530

Any further correspondence regarding this matter should be directed to that office.

I hope this answers any questions you have relative to this matter.

Sincerely,

Office of the Inspector General
Investigations Division

ATTACHMENT 2

U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530

AUG 16 2016

Stephen Aguiar
Reg. No. 03722-082
Federal Correctional Complex
P.O. Box 1000
Petersburg, VA 23804

Dear Mr. Aguiar:

This is in response to your correspondence to the Office of Professional Responsibility (OPR) in which you complained about the United States Attorney's Office for the District of Vermont in your criminal case *United States v. Aguiar*, case no. 2:09-cr-90-01 (D. Vt.).

OPR has jurisdiction to investigate allegations of misconduct involving Department of Justice (DOJ) attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when they are related to allegations of attorney misconduct within the jurisdiction of OPR. It is, however, the policy of this Office to refrain from investigating issues or allegations that could have been or still may be addressed in the course of litigation, unless a court has made a specific finding of misconduct by a DOJ attorney or law enforcement agent. Based on our review of your correspondence, we have determined that your allegations fall into this category. Accordingly, we concluded that no action by this Office is warranted. You may wish to consult private counsel or contact the nearest Legal Aid Society to determine what additional legal avenues, if any, may be available to you.

We regret that we are unable to be of further assistance to you in this matter.

Sincerely,

Jennifer La Point
Executive Officer

ATTACHMENT 3

ATTACHMENT 4

*TRULINCS 03722082 - AGUIAR, STEPHEN

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STEPHEN AGUIAR,
Petitioner-Appellant

v. Case No. 23-6446

UNITED STATES OF AMERICA,
Respondent-Appellee

CORRECTED MOTION FOR A CERTIFICATE OF APPEALABILITY

I. INTRODUCTION AND SUMMARY

Pro se Petitioner Stephen Aguiar ("Mr. Aguiar") respectfully moves the Court to grant him a certificate of appealability ("COA") on the issues cited below after the district court denied his Federal Rules of Civil Procedure 60(b) motion to reopen habeas proceeding in this case despite being provided qualifying new facts and evidence that include: (1) that the district court did not rule on all of Mr. Aguiar's claims that he raised in his 28 U.S.C. Section 2255 motion; (2) that the government violated agency policy, the rules of discovery, the rules of evidence, and the confrontation clause of the United States Constitution by fabricating GPS evidence material to its investigation, its Title III wiretap authorizations and its government witness testimony; (3) that the government committed fraud on the courts; and (3) numerous Vermont State Superior Court nunc pro tunc orders of expungement expunging Mr. Aguiar's prior Vermont State criminal convictions each of which fully support that the unopposed Rule 60(b) motion was appropriately filed in and before the district court under the Rule. Mr. Aguiar insists that jurists of reason would disagree with the flawed reasoning of the district court and whether Mr. Aguiar's claims under Rule 60(b) deserve encouragement to proceed further.

II. APPELLATE JURISDICTION

This application for a COA arises from Mr. Aguiar's appeal to all aspects of the district court's final judgment denying his unopposed Federal Rule of Civil Procedure 60(b) motion to reopen habeas proceeding entered April 21, 2020, see Appendix A, and subsequent final judgement denying his motion to alter or amend judgement under Federal Rules of Civil Procedure 59(e) entered March 8, 2023. See Appendix B. Mr. Aguiar filed a timely notice of appeal in the district court below on May 2, 2023. See ECF 826.* See Fed. R. App. P. 4(a)(1)(B)(i); (a)(4)(A)(iv). The jurisdiction of this Court rests on 28 U.S.C. Section 1291. This appeal is from a final order that disposes of all parties' claims.

III. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On November 6, 2000, Burlington, Vermont Police Department ("BPD") Lead Detective James Brigham arrested Mr. Aguiar in possession of 23 grams of heroin and 84.6 grams of cocaine after contacting the Drug Enforcement Administration ("DEA") as a result of his Vermont State drug trafficking investigation. See ECF 807-1 at 4-5 (court-filed amended Fed. R. Civ. P. 60(b) motion to reopen habeas proceeding that was denied in this case). Mr. Aguiar was charged in the Vermont district court and the court appointed Attorney David Williams as defense counsel. Id. at 3-4. Relying on Attorney Williams's, the government's, and the district court's inaccurate statements of both the law and the facts of his case, Mr. Aguiar involuntarily pled guilty to count one of the indictment charging his having possessed over 100 grams of heroin at the time of his arrest despite his having possessed only 23 grams of heroin at the time of his arrest under an defective plea agreement and an inapplicable 21 U.S.C. Section 851 enhancement and following off-record plea negotiations between counsel, the government, and the sentencing Judge, received an unlawfully increased six year mandatory minimum term of supervised release. See United States v. Aguiar, No. 2:00-cr-119, ECF 100-1 (D. Vt. 2001)(court-filed proposed amended 28 U.S.C. Section 2255 motion).

In January 2007, Mr. Aguiar was released from federal custody and began serving his unlawfully-imposed 6 year mandatory minimum term of supervision that was transferred from Vermont to Massachusetts. See United States v. Aguiar, No. 1:07-cr-10257, ECF 1 (D. Mass., case docketed Jan. 24, 2007).

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* Independent references to "ECF" (electronic case filing) refer to documents docked in the criminal case in the court below: United States v. Aguiar, No. 2:09-cr-90 (D. Vt. 2011)(the "drug conspiracy case").

In November 2008, police informant ("PI") Justin Gaboriault was detained by police and agreed to cooperate. PI Gaboriault told Vermont BPD Detective Michael Morris that Mr. Aguiar was supplying cocaine in the Burlington area to William Murray, Brian Tahair, and Herbert "Buddy" Lawrence. See ECF 633 at 52-55; 103-107.

On December 29, 2008, police physically surveilled PI Gaboriault's movements and conversations as Gaboriault purchased approximately two grams of cocaine from Lawrence with the help of Brian Tahair. Id. at 80-81.

On January 1, 2009, PI Gaboriault met with Det. Morris and made an unsuccessful attempt to set up a drug deal by placing a recorded call to a person he told Det. Morris was Mr. Aguiar, see id. at 59-63, but Det. Morris had no foundation to identify that Mr. Aguiar was the person that Gaboriault had called. Id. at 64. The next day, PI Gaboriault called Tahair that led to three controlled drug buys from Tahair. The first two occurred on January 9, 2009 and January 21, 2009. Police again physically surveilled PI Gaboriault's movements and conversations during both sales that took place at Tahair's residence. Mr. Aguiar was not observed during either of the first two transactions. Id. at 72; 80; 116-122.

On January 23, 2009, the DEA became actively involved in the investigation by reportedly installing the first of many GPS tracking units on the first of Mr. Aguiar's three of cars and employing the DEA's use of a private company to search, read, and record Mr. Aguiar's movements using a Global Positioning System ("GPS"). See ECF 807-1, Attachment 2.

Private company and government contractor Corp Ten International's ("Corp Ten") computer server and software tracked and recorded Mr. Aguiar's 2009 movement's on DEA's behalf per a licensing agreement. See ECF 807-1, Attachment 2, Paragraphs 16-17; see also Aguiar v. DEA, No. 14-cv-240, ECF 87-3; 93-1 (D.D.C. 2015), remanded, 865 F.3d 730 (D.C. Cir. 2017). Corp Ten's server and software received Mr. Aguiar's location data directly from the GPS units attached to his cars. See ECF 807-1, Attachment 2, Paragraphs 16-17. To search Mr. Aguiar's movements, the DEA first installed Corp Ten's software on a DEA end-user laptop. Id. The software allowed the DEA to then connect to Corp Ten's server via "a secure internet connection." Id. Once connected to Corp Ten's system, the software also allowed the DEA to prompt, set, and control the frequency of the location data emitted from each of the GPS units that the DEA had attached to Mr. Aguiar's cars. Id. The DEA searched Mr. Aguiar's long-term movements from January 23, 2009 through his July 30, 2009 arrest. See ECF 614.

On January 23, 2009, the DEA installed a GPS unit on Mr. Aguiar's 2008 Subaru Impreza and Corp Ten's server and software began recording Mr. Aguiar's movements at 7:09 a.m. Id. at 108-121. Later, the DEA connected to Corp Ten's server and tracked Mr. Aguiar's Impreza from Farrell Street in South Burlington to Casella Waste Management on Lakeside Avenue in Burlington where Tahair worked at which time the DEA transmitted Mr. Aguiar's whereabouts to Det. Morris who was out on surveillance, see id. at 109, who could not recall having "complete eyes on [Mr. Aguiar's Impreza] the whole way." ECF 633 at 94-95. PI Gaboriault later met with Det. Morris and purchased cocaine for the police from Tahair at Casella Waste Management during which time the DEA continued to track Mr. Aguiar's movements using Corp Ten's tracking system.

Beginning January 23, 2009, the DEA conducted "[a]round the clock [GPS] monitoring," see ECF 614 at 144, and "analyze[d the GPS] data all the time" and "look[ed] for" and "pa[id] attention to when [Mr. Aguiar's] vehicle [went] to a [new] location" and "if [and when it] le[ft] and c[a]me[] to Vermont...." Id. at 125.

On January 30, 2009, the GPS tracking unit on Mr. Aguiar's 2008 Impreza malfunctioned. On January 31, 2009, the DEA removed the broken GPS unit from Mr. Aguiar's 2008 Impreza and attached a new tracker. See ECF 766-3 (copy of government Jencks/Giglio material that Attorney Williams refused to share with Mr. Aguiar detailing the Jan. 30, 2009 GPS unit malfunction and subsequent Jan. 31, 2009 reinstallation). The DEA continued GPS tracking of Mr. Aguiar's 2008 Impreza and "started seeing...patterns...in Massachusetts...and...reported to [lead case Agent] Justin [Couture] and...compar[ed] notes...about this location near Columbia [Road] and Holden Street...." Id. at 126. "At the beginning [of its investigation], obviously [the DEA] had no clue about...who lived...at that location." Id. at 136. In February 2009, the DEA came to "belie[ve] that that location was [the] source location [at which Mr. Aguiar was obtaining drugs]." Id. at 170.

In February 2009, the "GPS [also] picked up Mr. Aguiar's vehicle on Hayward Street [where Jeremy Mackenzie lived]" and "at other places that month" that included "Casella Waste [Management where Tahair worked]" and "Chestnut Terrace [where Tahair lived.]" Id. at 166-167. "[Q]uite often [the DEA] would be monitoring [using GPS and] would [] transmit[] what [the DEA] was seeing on the screen to the agents that were out on surveillances, and to [lead case Agent Justin] Couture...." Id. at 169.

The GPS units attached to his cars** allowed the DEA to track Mr. Aguiar's movements "almost around the clock" between January 23, 2009 and June 4, 2009. Id. at 113-118. Using Corp Ten's tracking system to search Mr. Aguiar's whereabouts, DEA investigators were able to identify several additional suspects in Vermont and Massachusetts that included Edwin Reyes,***

** In May 2009, the DEA attached new GPS units on Mr. Aguiar's 2007 Mazda RX8 (in South Burlington, VT) and 2008 Impreza (in Quincy, MA). See ECF 614 at 145. The DEA attached a GPS unit to Mr. Aguiar's newly-purchased 2009 Subaru Impreza on June 19, 2009, see id. at 145-147, that also malfunctioned on July 16, 2009 and forced the DEA to again replace that broken GPS tracking unit on the 2009 Impreza, see id. at 149-150, that then enabled the DEA to search his July 30, 2009 movements using Corp Ten's system to effect his arrest in Vermont. Id. at 150.

*** The DEA originally believed that Edwin Reyes was supplying cocaine to Mr. Aguiar from the Columbia Road and Holden Street suspected source location based on the GPS tracking. Through wiretap evidence, the DEA was able to only later discover in July 2009 that Edwin Reyes was incarcerated and decided that Daniel Reyes was the suspected source of supply for Mr. Aguiar. See ECF 521 at 67-69.

Jeremy Mackenzie, Lisa Foy, Nate Fleming, Jason Opalenik, and Jessica Adcock.****

Between January and July 2009, the DEA tracked Mr. Aguiar's movements between his Quincy, MA home and Burlington, VT where he resided with his family when in Vermont.

Based on Corp Ten's GPS tracking system data, the DEA reportedly learned that Mr. Aguiar would stop near 644 Columbia Road in Dorchester before leaving Massachusetts and again on his return trip from Vermont. See pp.2-3 of this motion. Using the GPS data, the DEA was also able to track Mr. Aguiar's vehicles to the residences of several codefendants including Brian Tahair (Chestnut Terrace, Burlington); Jeremy Mackenzie (Hayward Street, Burlington); Jessica Adcock/Jason Opalenik (Riverside Avenue/Buell Street, Burlington); and Lisa Foy (West Center Street/Main Street, Winooski). See ECF 614.

On February 25, 2009, for example, the DEA tracked Mr. Aguiar as he drove around the Burlington area with Lisa Foy. Enabled by Corp Ten's GPS tracking data, the DEA observed Mr. Aguiar and Foy arrive at Mr. Aguiar's father's 7 Farrell Street apartment in South Burlington and were able to surveil Mr. Aguiar removing a duffle bag from the trunk of his car. Tipped off to Mr. Aguiar's probable destination by the GPS tracker, investigators were standing by when Mr. Aguiar and Foy arrived at Foy's apartment in Winooski, VT. See, e.g., In re Tahair, No. 2:09-mc-34, ECF 3-2, Paragraph 36. Several weeks earlier, on February 13, 2009, the DEA trailed Mr. Aguiar as he and Foy visited multiple car dealerships in the Burlington area and Vergennes.

On March 30, 2009, a person cited for traffic violations by the BPD agreed to work with police as a drug informant. The newly-minted cooperator later told the DEA that he had stopped by "Jeremy's" house on Hayward Street in Burlington on March 27, 2009 to discuss purchasing cocaine from "Jeremy." Based on Corp Ten's GPS tracking data, the DEA already knew that on February 22, 2009 and March 27, 2009, Mr. Aguiar's 2008 Impreza had been parked in the area of 113 Hayward Street where Jeremy Mackenzie lived with his mother. Mackenzie was no stranger to case agent Justin Couture. Several years earlier, Detective Couture had been a member of a team who had arrested Mackenzie for selling drugs in a local park. In March 2009, Mackenzie was being supervised by the Vermont Department of Corrections while serving a furlough sentence for a second state drug conviction. See In re Tahair, No. 2:09-mc-34, ECF 13-3, Paragraphs 50-53.

On April 1st, 3rd, and 16th, 2009, the DEA used its informant to purchase cocaine from Mackenzie at his Hayward Street home. In April 2009, the DEA tracked Mr. Aguiar's Impreza as it travelled between Hayward Street and Harvest Lane, where codefendant Jason Opalenik's employer, Natural Provisions, was located. See ECF 614 at 161-162.

Following the GPS-related lead that the 644 Columbia Road Dorchester, MA apartment was a suspected drug source location, see id. at 170, Vermont DEA contacted Boston DEA on April 7, 2009 to conduct surveillance of the Columbia Road apartment revealed by the GPS evidence. Id at 205. The DEA had concluded that Mr. Aguiar would pick up drugs from someone who lived at that address while on his way to Vermont and drop off money at that address before heading home to Quincy.

After Mr. Aguiar arrived, the Boston DEA saw a 2008 Subaru Impreza drive to the Columbia Road apartment building and park in the driveway. The Boston DEA then saw Mr. Aguiar get out of the car and walk toward the apartment. The Boston DEA then took surveillance photographs of Mr. Aguiar carrying a duffle bag as he walked to the 644 Columbia Road apartment and back to his car -- photographs later introduced at Mr. Aguiar's trial. See ECF 484, Exhibits 115(a)-115(h); ECF 616 at 210.

On April 3, 2009, investigators filed in the district court the first of five applications requesting hybrid pen register/trap and trace orders for a number of cell phones that the DEA suspected were being used by Mr. Aguiar and his newly-discovered coconspirators that authorized the DEA to obtain cell site data, signaling information, and other data from service providers based on the leads and evidence developed from Corp Ten's GPS data that provided critical information to investigators and allowed them to corroborate information from informants and link Mr. Aguiar to targets of other ongoing drug investigations.

Thus Agent Couture's affidavit made the following references to Corp Ten's GPS data and police surveillance made possible by it: See In re Tahair, No. 2:09-mc-34, ECF 1-2, Paragraphs 24-25 (on January 23, 2009, BPD officers observe Mr. Aguiar's car at 409 Farrell Street and at Casella Waste Management's 175 Lakeside Avenue parking lot shortly before Gaboriault purchases cocaine from Tahair); 31 (on March 27, 2009, Mr. Aguiar's car is parked in the area of 113 Hayward Street in Burlington where convicted drug dealer Jeremy Mackenzie lives); 36-37 (investigators have established that Mr. Aguiar travels regularly from VT to MA before coming to VT. On his return trips to MA, Mr. Aguiar stops at the same address in Dorchester, MA before returning to his Quincy home. Surveillance made possible by GPS data places Mr. Aguiar "at the residences of several of the TARGET SUBJECTS."); 39 (GPS data shows Mr. Aguiar stopping regularly at Nate Fleming's Foster Street home); 43 (GPS data shows that Mr. Aguiar spends a great deal of time at Lisa Foy's apartment at 36 Main Street in Winooski, VT).

****See In re Tahair, No. 2:09-mc-34, ECF 3-2, Paragraphs 2-5, 29-36 (D. Vt. 2009)(Apr. 14, 2009 Pen Register/Trap and Trace Affidavit); see also id., ECF 13-3, Paragraphs 14, 40, 50, 75, 77, 113, 126, 127-131, 152-159, 170-171 (June 18, 2009 Title III Affidavit); see also Aguiar, No. 2:09-cr-90, ECF 614 (GPS tracking system tracks Mr. Aguiar's 2008 Impreza to Natural Provisions where Jason Opalenik, not "Jeremy Fitzgerald [sic]" worked); see also id., ECF 521 at 110 (trial transcript of cooperating codefendant Jason Opalenik testimony).

On June 3, 2009, the United States Attorney's Office filed with the district court a Department of Justice-authorized Title III application to intercept Mr. Aguiar's conversations of his cell phone. The district court granted the application and issued the first of four wiretap orders authorizing the DEA to intercept Mr. Aguiar's calls.

As with the applications for the hybrid pen register/trap and trace orders, the first (and subsequent) Title III applications also relied on information developed from the GPS data sent to Corp Ten's server that the DEA reportedly collected. Thus Agent Couture's June 18, 2009 Title III affidavit made the following references to the GPS data and the police surveillance made possible by it: See In re Tahair, No. 2:09-mc-34, ECF 13-3, Paragraphs 14 (Aguiar is believed to be obtaining drugs from, and channeling cash payments to, an individual named Edwin Reyes of 644 Columbia Road in Dorchester, MA, making weekly trips between his Quincy, MA home and Burlington, VT); 40 (January 23, 3009 surveillance of Aguiar's Impreza preceding Justin Gaboriault's purchase of cocaine from Brian Tahair); 50 (Mar. 27, 2009 surveillance of Aguiar near Jeremy Mackenzie's Hayward Street home in Burlington, VT); 75 (surveillance of Aguiar visiting Nate Fleming at his Foster Street Burlington home in February 2009); 126 (surveillance of Aguiar at Reyes's home in Dorchester, MA, April 7, 2009, noting Aguiar with a duffle bag in Vermont on Feb. 25, 2009 similar to the one seen in Dorchester in April, and discussing his weekly trips to Vermont from Massachusetts); 130-131 (investigators observe Aguiar's vehicle at Jessica Adcock's Buell Street home in April and May 2009); 137 (surveillance of Aguiar visiting Nate Fleming's home on Foster Street on May 15, 2009); 152-159 (summary of surveillance of Aguiar made possible by the use of GPS tracking devices, connections to Reyes, Adcock, Foy, Fleming, Tahair, and Mackenzie).

On July 30, 2009, the DEA used Corp Ten's tracking system to locate Mr. Aguiar's movements to Vermont to effect his arrest. See ECF 614 at 150. On July 31, 2009, Mr. Aguiar appeared before the district court and the court again appointed Attorney Williams -- the same attorney who misadvised Mr. Aguiar in his 2000-2001 criminal proceedings -- as CJA defense counsel.

On September 3, 2009, the district court issued a pretrial order directing the government to turn over, disclose and/or make available to the defense all discoverable evidence under Federal Rules of Criminal Procedure 16. See ECF 109.

In February 2010, Attorney Williams contacted prosecutors via e-mail directing prosecutors to allow him access all Title III-referenced GPS-related discovery and specifically requested access to the original GPS evidence possessed by the government. See ECF 766-5. AUSA Wendy Fuller's e-mail responses were elusive. Id. AUSA Fuller advised Attorney Williams falsely that the discoverable GPS evidence was in the form of only documents, see id., despite knowing that AUSA Fuller could have easily permitted Attorney Williams to access Corp Ten's server to access Mr. Aguiar's authentic GPS tracking file and integrated software using the DEA's end-user laptop. See ECF 807-1, Attachment 2, Paragraphs 16-17. AUSA Fuller instead impeded Attorney Williams's access to the the government's reported GPS evidence. Attorney Williams was therefore forced to meet the March 3, 2009 suppression filing deadline and blindly move the district court suppress all GPS-related tracking evidence. See ECF 171. Ignoring repeated requests for this original GPS evidence, the government knowingly, willfully, and intentionally violated Fed. R. Crim. P. 16 and the DEA's agency policy***** and destroyed Mr. Aguiar's authentic GPS evidence from Corp Ten's server in or about August 2010. See ECF 807-1, Attachment 2, Paragraphs 16-17.

During the August 2010 district court omnibus motion proceedings, the defense again objected to the GPS surveillance and complained about the defense's inability to challenge the Title III warrants and other evidence based on the government's failure to reveal, to turn over, or to make available to the defense its purported GPS surveillance evidence and about where the GPS units were installed on Mr. Aguiar's vehicles. See ECF 622 at 48-52.

It was not until November 4, 2010, however, that the government provided the defense as part of discovery inaccurate surveillance data in the form of GPS spreadsheets well after the authentic GPS tracking evidence of Mr. Aguiar's 2009 movements had been destroyed -- evidence material to the success of the government's Title III warrants relied on to intercept Mr. Aguiar's calls as detailed above and later induce those arrested to cooperate with the government in this case as detailed below. After the government provided its defendants with its false and inaccurate GPS evidence on November 4, 2010 to justify the surveillance prong requirement of its Title III applications and prevent defendants' suppression of that evidence that would be fatal to the government's case, Attorney Williams conducted no further investigation of the government's GPS evidence despite Mr. Aguiar's demands that Attorney Williams do so.

In November 2010 [and again in January 2011], Attorney Williams insisted that Mr. Aguiar should accept the government's plea offer and plead guilty to conspiracy, see ECF 737-4, but Mr. Aguiar insisted that he was innocent and demanded that counsel give Mr. Aguiar all evidence relevant to his defense.

Because Mr. Aguiar refused to plead guilty in the drug conspiracy case and began studying the law and investigating all aspects of his defense, Attorney Williams feared that Mr. Aguiar may discover Attorney Williams's past unethical conduct and deficient performance in Attorney Williams's earlier CJA representations of Mr. Aguiar and knowingly and intentionally violated the Vermont Rules of Professional Conduct by: (1) ceasing to fully inform Mr. Aguiar about his constitutional and statutory rights; (2) not allowing Mr. Aguiar to receive or review vital legal documents of his 1994-1995, 2000-2001, or 2009-2014 criminal cases; (3) giving Mr. Aguiar only bits and pieces of information about his defense; (4) strategically choosing which of Mr. Aguiar's letters to answer and ignore; (5) knowingly and intentionally abandoning Mr. Aguiar's every attempt to communicate

***** See DEA Agent Manual Section 6211.6(C); (G) (2002) (requiring retention of surveillance notes until case closing); see also id. Sections 6232.31(B); 6232.32(A) (defining case closing as a time when "final judicial action" has been completed).

with Attorney Williams by e-mail and telephone; and (6) knowingly and intentionally misadvising Mr. Aguiar about his federal cases by giving Mr. Aguiar false and misleading information about his rights to influence and manipulate Mr. Aguiar's course of action and about how and when to pursue such rights and post-conviction claims including those in his drug conspiracy case motion under 28 U.S.C. Section 2255. See, e.g., Aguiar v. Williams, No. 1042-12-18 CnCv (Vt. Super. Ct. 2019), remanded, 2021 VT 8, LEXIS 13 (Vt. Feb. 19, 2021)(resolved amended complaint upon remand alleging conversion of property, breach of fiduciary duty, and common law fraud).

In or about December 2010, while representing Mr. Aguiar in Aguiar, No. 2:09-cr-90, Attorney Williams knowingly and intentionally destroyed his Firm's ("Sleigh and Williams") records of Mr. Aguiar's 2000-2001 legal file and documents related to his 2000-2001 CJA representation of Mr. Aguiar in Aguiar, No. 2:00-cr-119, see, e.g., Aguiar, No. 2:00-cr-119, ECF 100-1, Exhibit J (Dec. 21, 2016 letter from Sleigh Law confirming that such records were destroyed in or about Dec. 2010), that was used to increase Mr. Aguiar's drug conspiracy case punishment under 21 U.S.C. Section 851, see ECF 396, and United States Sentencing Guidelines ("U.S.S.G.") Sections 4A1.1; 4A1.2; and 4B1.1. See 2011 PSR, Paragraphs 88; 110; 112; 113; 118.

In December 2010, Mr. Williams next acted against Mr. Aguiar's interests, violated the Vermont Rules of Professional Conduct, and created an obvious conflict of interest in Mr. Aguiar's drug conspiracy case, see ECF 807-1, Attachment 1, and hired Defense Investigator James Brigham -- the former lead investigating BPD detective and arresting officer in Aguiar, No. 2:00-cr-119, responsible for Mr. Aguiar's 2001 drug conviction that was likewise used to increase Mr. Aguiar's drug conspiracy case punishment under Section 851 and the Guidelines -- to investigate Mr. Aguiar's drug conspiracy case defense. See ECF 807-1, Attachment 1; but see p.1 of this motion (detailing that Det. Brigham had arrested Mr. Aguiar on Nov. 6, 2000).

Attorney Williams shut Mr. Aguiar out of his own criminal case by denying Mr. Aguiar access to his own property, i.e., his legal files, as held by the Vermont Supreme Court. See Aguiar v. Williams, 2021 VT 8, LEXIS 13 (Vt. Feb. 19, 2021)(holding that Plaintiff's legal files possessed by former Attorney Defendant related to the representation of Plaintiff in his federal criminal cases belong to the client under Vermont State property law and the Vermont Rules of Professional Conduct). Mr. Aguiar fell victim to Attorney Williams's misconduct during which time the government falsified evidence and committed fraud on the courts before trial, after trial, and on appeal during which time Mr. Aguiar could not meaningfully participate in his own defense.

After the government violated Fed. R. Crim. P. 16 by providing its defendants as part of discovery false and inaccurate GPS surveillance evidence in the form of 351 pages of spreadsheets containing GPS data, the government engaged in further misconduct that included violating Federal Rules of Evidence 1002 and committing fraud on the courts. Before Mr. Aguiar's trial, the government concealed the existence of Corp Ten's role in the DEA's investigation and instead purchased a generic GPS online tracking program and manually uploaded to its newly-purchased program the false evidence of its GPS spreadsheets. See, e.g., ECF 484, Exhibit 68(d).

On April 1, 2011, prosecutors knowingly and intentionally violated the confrontation clause under the Sixth Amendment by concealing the existence of Corp Ten's tracking system that recorded Mr. Aguiar's 2009 movements on DEA's behalf, see, e.g., Aguiar, No. 1:14-cv-240, ECF 87-3; 93-1 (D.D.C. 2015), and committed fraud on the courts through prosecutors' material government witness, DEA Agent Richard Carter, by introducing false evidence and testimony at Mr. Aguiar's trial. See ECF 614.

Prosecutors committed fraud on the district court through Agent Carter first by introducing at trial the fraudulent spreadsheets of false GPS data, see ECF 484, Exhibits 67(a)-67(f), as Agent Carter testified falsely that the DEA searched Mr. Aguiar's movements from January 23 to May 14, 2009, see id., Exhibit 67(a) using a "single device." See 614 at 120; but see ECF 766-3 (DEA notes reporting that the Jan. 23, 2009-installed GPS unit malfunctioned on Jan 30, 2009 and was replaced on Jan. 31, 2009). Prosecutors next coordinated Agent Carter's commission of fraud on the court as Agent Carter swore under oath that the DEA tracked Mr. Aguiar's 2009 movements using a "computer server" that [the DEA] maintain[ed]" which was a "DEA system" and "software" that collected the surveillance evidence. See ECF 614 at 24-25. Agent Carter also claimed fraudulently that the introduced screen shots, see, e.g., ECF 484, Exhibits 68(b)-68(d), were "the actual image[s] from [his] screen [while he was] monitoring the tracking device[s in 2009 that showed] the actual date, time, longitude and latitude that the Aguiar vehicle[s were] at." See ECF 614 at 151-152. Agent Carter committed fraud on the court further by swearing that Exhibit 68(b) contained "an actual view of the software that we utilize[d] with this tracking device." Id. at 137.

Agent Carter convincingly testified further about the GPS surveillance and how it was material to identifying Mr. Aguiar's codefendants and obtaining wiretaps. See ECF 614. The faux GPS maps introduced by prosecutors depicted Mr. Aguiar's travel routes, surveillance photographs of him in Massachusetts and Vermont, and wiretapped conversations each made possible by the unprovided original evidence of Corp Ten's tracking data that bolstered the allegations that Mr. Aguiar aided the sale of cocaine by alleged coconspirators Brain Tahair and Jeremy Mackenzie. Prosecutors also introduced wiretapped conversations and damning government witness testimony of investigators and cooperating codefendants that were each made possible by the unprovided original evidence of Corp Ten's tracking data. On April 11, 2011, Mr. Aguiar was convicted. See ECF 479.

On August 11, 2011, the court noticed Mr. Aguiar that he would be sentenced on December 12, 2011. See ECF 534. Despite Mr. Aguiar's conviction, Attorney Williams continued refusing to give Mr. Aguiar his legal documents. See ECF 807-1.

On December 12, 2011, Attorney Williams violated the Fifth and Sixth Amendments and committed fraud on the court by telling the court that he had received a copy of the still sealed imported August 2009 supervised release warrant petition, allowed the court to revoke Mr. Aguiar's term of supervision in Aguiar, No. 2:00-cr-119, based on sealed events on the district court's docket, and misled Mr. Aguiar about his rights to appeal. See ECF 807-1 at 5-17. Next, Attorney Williams: (1) failed to consult Mr. Aguiar about his appeal; (2) lied to Mr. Aguiar about his appeal rights and the district court's mishandling about Mr. Aguiar's pro se letter to contemporaneously appeal his drug conspiracy case/revocation of supervised release case convictions and sentences; (3) knowingly and intentionally failed to perfect Mr. Aguiar's appeal; and (3) knowingly and intentionally misled and misadvised Mr. Aguiar's understanding about the law, his rights, and his post-conviction deadlines and claims during the entire time Mr. Aguiar was on direct appeal. Id.

As Mr. Aguiar proceeded on appeal and this Court decided Attorney Williams's intentionally-constricted appeal limited to only Mr. Aguiar's drug conspiracy case, this Court decided that the argued unlawful warrantless search of Mr. Aguiar's iPhone WAS HARMLESS. See United States v. Aguiar, 737 F.3d 251, 263 (2d Cir. 2013). Concluding that the GPS evidence in Mr. Aguiar's case WAS NOT HARMLESS, this Court proceeded to the merits of Mr. Aguiar's unlawful GPS evidence claim under false pretenses. Id. at 254-262. Indeed, this Court was fraudulently misled to believe that the "GPS device[s] transmitted a live signal to a DEA server" and that "[t]he DEA [had] developed software that allow[ed agents to save, track and analyze the data generated by the GPS device[s]." Id. at 255; but see ECF 807-1, Attachment 2. This Court concluded, however, that the good faith exception to the exclusionary rule applied and affirmed Mr. Aguiar's wrongfully-obtained convictions that resulted from the government's misconduct. See id. In October 2014, the United States Supreme Court denied Mr. Aguiar's petition for review. See Aguiar v. United States, 574 U.S. 959 (2014).

In 2015, relying on Attorney Williams's misdirection about his post-conviction rights, see ECF 807-1, Mr. Aguiar unsuccessfully moved the court to obtain legal documents of his revocation of supervised release and drug conspiracy conviction cases. See ECF 807-1. At the misdirection and misadvice of Attorney Williams, Mr. Aguiar also filed with the district court a 28 U.S.C. Section 2255 motion in the drug conspiracy case raising integrated and interdependent claims of ineffective assistance of counsel ("IAC") about Attorney Williams's conflict of interests and conflictedly-ineffective representation of Mr. Aguiar in BOTH HIS REVOCATION OF SUPERVISED RELEASE AND DRUG CONSPIRACY CASES. See ECF 723-1. Mr. Aguiar's pro se-articulated IAC claims related directly to Attorney Williams not giving Mr. Aguiar his legal documents for BOTH CASES. Id. at 88-92; see also ECF 708; 728. Without his COMPLETE legal files, Mr. Aguiar moved the court to supplement and expand the record to include his prior 2000-2001 case. See ECF 728; 735. Mr. Aguiar also argued IAC because trial counsel failed to investigate the government's false GPS evidence and request a taint hearing. Through a Freedom of Information Act action, see Aguiar, No. 1:14-cv-240 (D.D.C. 2015), Mr. Aguiar further discovered the possible involvement of a private company related the DEA tracking his 2009 movements using GPS and moved the court to further supplement his pro se-articulated Section 2255 motion, see ECF 756, and to strike Agent Carter's testimony and GPS-related evidence. See ECF 757.

The government continued its commission of fraud this time on the habeas court in response to Mr. Aguiar's Section 2255 post-conviction claims. Specifically, the government misled the district court about the so-called DEA software and swore under oath that the "software did not independently generate its own GPS coordinate." See ECF 747 at 31-32 n.19; but see, ECF 807-1, Attachment 2, Paragraphs 16-17 (evidence from a high-level DEA official detailing that the DEA employed the use of the private company's server and software TO RECORD Mr. Aguiar's 2009 movements using GPS).

Magistrate Judge John M. Conroy's Report and Recommendation ("R & R") decided to not address the merits of Mr. Aguiar's GPS-related pro se-articulated TRIAL COUNSEL IAC claim and instead constrictedly evaluated the IAC claim of ONLY APPELLATE COUNSEL. See ECF 767 at 68 n.25. Nor did the R & R address Mr. Aguiar's raised pro se-integrated revocation of supervised release/drug conspiracy IAC claims that counsel withheld and destroyed Mr. Aguiar's legal documents in Aguiar, No. 2:00-cr-119, that were used to enhance his drug conspiracy sentence and revoke his supervised release without due process and its effect on appeal and that Attorney Williams had hired former BPD Detective Brigham as his drug conspiracy case defense investigator. See ECF 767 at 63-68. The R & R also recommended that the district court not address Mr. Aguiar's pro se claim to be resentenced once Mr. Aguiar's prior convictions are vacated and hold the claim in abeyance. Id. at 75. The R & R further recommended that the motion to strike Agent Carter's testimony and related evidence be denied as moot. Id. at 79.

In his pro se objections to the R & R, Mr. Aguiar objected, see ECF 776 at 32-40, specifically that the R & R had failed to address counsel's conflict of interest that implicated counsel's employing former Det. Brigham as Mr. Aguiar's drug conspiracy case defense investigator and engaging in attorney misconduct to cover up his past mistakes in Aguiar, No. 2:00-cr-119, each of which violated the Fifth and Sixth Amendments. Id. Accordingly, Judge Sessions -- who also had a conflict of interest in this case -- issued only a five page flawed opinion and order adopting the R & R in full that likewise failed to address all the objections or pro se articulated claims that Mr. Aguiar had raised in his Section 2255 motion. See ECF 780.

In August 2018, Mr. Aguiar moved the district court to reopen his habeas proceedings because the court failed to address all of the combined and integrated drug conspiracy/revocation of supervised release pro se articulated IAC claims that

Attorney Williams had directed Mr. Aguiar to raise in his drug conspiracy case Section 2255 motion. See ECF 792. Mr. Aguiar also moved the district court to consolidate those interdependent and interrelated not yet addressed post-conviction claims raised in Aguiar, No. 2:00-cr-119, with those raised in his drug conspiracy case. See ECF 794. Mr. Aguiar further moved the court to amend his Rule 60(b) motion each time his diligent efforts revealed new facts and evidence to support his not yet addressed pro se-articulated claims that he raised in his drug conspiracy case Section 2255 motion. See ECF 797; 803; 807. The government did not oppose any of Mr. Aguiar's initial or subsequent motions to reopen the habeas proceeding.

On April 21, 2020, the district court denied all of Mr. Aguiar's motions as beyond the scope of Rule 60(b). See ECF 819. On May 15, 2020, Mr. Aguiar moved the court to alter or amend its judgment under Fed. R. Civ. P. 59(e). See ECF 820.

In January 2023, the Vermont Superior Court issued and executed numerous nunc pro tunc orders of expungement expunging Mr. Aguiar's prior criminal convictions which are the aggregated product of Mr. Aguiar's harsh December 2011-imposed sentence. See ECF 825, Exhibit A; see also ECF 827.

On March 8, 2023, however, the court denied Mr. Aguiar's Rule 59(e) motion to alter or amend judgment and related motions. See ECF 824. Before the 60 day appeal deadline, Mr. Aguiar swiftly filed in the district court a combined motion to be resentenced, to strike, to amend, to revise, and conform to the evidence as a result of the harm being suffered by Mr. Aguiar after having his prior criminal convictions expunged, see ECF 825; 827, but the motion went unanswered and Mr. Aguiar was forced to file a-timely notice of appeal. See ECF 826. This timely request for a COA follows:

IV. A CERTIFICATE OF APPEALABILITY MUST ISSUE IN THIS CASE

Jurists of reasons would disagree with the district court's resolution of Mr. Aguiar's pro se-articulated claims and would conclude that the issues that Mr. Aguiar presented deserved encouragement to proceed further. A COA on the following issues is warranted and deserving under the legal standard of a COA as articulated by the Supreme Court:

1. WHETHER PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING FOR FRAUD ON THE TRIAL COURT, THE APPEALS COURT, THE SUPREME COURT, AND THE HABEAS COURT IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b) AND WHETHER THE PETITIONER IS ENTITLED TO AN OPPORTUNITY TO SHOW THAT THE GOVERNMENT'S FRAUD ON THE COURTS STEMMING FROM ITS ILLEGALITY TAINTED A SUBSTANTIAL PART OF THE GOVERNMENT'S CASE AGAINST THIS PETITIONER
   See Gonzalez v. Crosby, 545 U.S. 524, 532 n.5 (2005);
   United States v. Aguiar, 737 F.3d 251, 254 (2d Cir. 2013);
   Aguiar v. Carter, No. 2:17-cv-121, 2018 U.S. Dist. LEXIS 139751 (D. Vt. Aug. 17, 2018);
   Wong Sun v. United States, 371 U.S. 471 (1963);
   United States v. Vilar, 530 F.Supp. 2d 616, 641 (S.D.N.Y. 2008);
   Drake v. Portuondo, 321 F.3d 338 (2d Cir. 2003);
   United States v. Magaddino, 496 F.2d 455, 460 (2d Cir. 1974);
   United States v. Vozzella, 124 F.3d 389 (2d Cir. 1997);
   United States v. Huss, 482 F.2d 38, 46-49 (2d Cir. 1973);
   Demjanjuk v. Petrovsky, 10 F.3d 338, 352 (6th Cir. 1993)

2. WHETHER PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING TO CONSIDER PETITIONER'S 28 U.S.C. SECTION 2255 PRO SE-ARTICULATED CLAIMS RAISED THAT THE DISTRICT COURT EITHER AVOIDED OR DID NOT ADDRESS ON THEIR MERITS IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b)
   See Spitznas v. Boone, 464 F.3d 1213, 1225 (10 Cir. 2006);
   In re Hartzog, 444 Fed. App'x. 63, 67 n.3 (5th Cir. Oct. 7, 2011);
   Hourani v. United States, 239 F. App'x 194, 197 (6th Cir. Aug. 10, 2007)

3. WHETHER PETITIONER WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL
   See Santiago v. Laclair, 588 Fed. App'x 1, 2 (2d Cir. Oct. 6, 2014);
   Eze v. Senkowski, 321 F.3d 110 (2d Cir. 2003);
   Hanna v. United States, 84 Fed. Appx. 129, 130 (2d Cir. Dec. 31, 2003);
   Love v. McCray, 413 F.3d 192, 193 (2d Cir. 2005);
   Forte v. LaClair, 354 Fed. App'x 567, 568 (2d Cir. Dec. 2, 2009)

4. WHETHER THE COURT IS REQUIRED TO REEVALUATE THE CUMULATIVE EFFECT OF TRIAL COUNSEL'S ERRORS COMBINED WITH BOTH THE NEW EVIDENCE OF THE GOVERNMENT'S FRAUD ON THE COURT AND THE PETITIONER HAVING EXPUNGED HIS PRIOR CONVICTIONS
   See Porter v. McCollum, 558 U.S. 30, 40-41 (2009);
   Lindstadt v. Keane, 239 F.3d 191, 199, 202 (2d Cir. 2001)

5. WHETHER PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING TO CONSIDER THE MERITS OF HIS PRO SE-ARTICULATED 28 U.S.C. SECTION 2255 CLAIM OF CONFLICT OF INTEREST OF COUNSEL THAT THE DISTRICT COURT AVOIDED DECIDING OR INVESTIGATING AND WHETHER ITS FAILURE TO INVESTIGATE VIOLATED SECOND CIRCUIT BINDING AUTHORITY IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b)
See Martinez v. Kirkpatrick, 486 Fed. Appx. 158 (2d Cir. June 20, 2012);
United States v. Levy, 25 F.3d 146 (2d Cir. 1994)

6. WHETHER THE VERMONT SUPERIOR COURT'S NUNC PRO TUNC ORDERS OF EXPUNGEMENT EXPUNGING PETITIONER'S STATE CONVICTIONS THAT ARE THE AGGREGATED PRODUCT OF PETITIONER'S HARSH SENTENCE ARE BEYOND THE SCOPE OF HIS UNOPPOSED FEDERAL RULE OF CIVIL PROCEDURE 60(b) MOTION
See United States v. Cox, 245 F.3d 126, 130 (2d Cir. 2001);
In re Weathersby, 717 F.3d 1108, 1111 (10th Cir. 2013);
In re Jones, 54 F.4th 947 (6th Cir. 2022);
United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014);
United States v. Obeid, 707 F.3d 898, 903 (7th Cir. 2013);

V. STANDARD OF REVIEW

Jurist of Reason Supreme Court Justice Sonja Sotomayor has expressed material concern about the correct standard of review being made by lower courts through the process of reviewing applications for certificates of appealability:

> The federal courts handle thousands of noncapital habeas petitions each year, only a tiny fraction of which ultimately yield relief. See N. King, Non-Capital Habeas Cases After Appellate Review: An Empirical Analysis, 24 Fed. Sentencing Reporter 308, 309 (2012) (Table 2) less than 1% of randomly selected cases in an empirical study). While the volume is high, the stakes are as well. Federal's judges grow accustomed to reviewing convictions with sentences measured in lifetimes, or in hundreds of months. Such spans of time are difficult to comprehend, much less to imagine spending behind bars. And any given filing-though it may feel routine to the judge who plucks it from the top of a large stack-could be the petitioner's last best shot at relief from an unconstitutionally imposed sentence. Sifting through the haystack of uncounseled filings is an unglamorous but vitally important task. COA inquiries play an important role in the winnowing process. The percentage of COA requests granted is not high, see id., at 308 (study finds that 'more than 92 percent of all COA rulings were denials'), but once that hurdle is cleared, a nontrivial fraction of COAs lead to relief on the merits, see id., at 309 (Table 2) (approximately 6%). At its best, this triage process focuses judicial resources on processing the claims most likely to be meritorious. Cf. Miller-El, 537 U.S., at 337, 123, S. Ct. 1029, 154 L. Ed. 2d 931 (AEDPA's COA requirement 'confirmed the necessity and the requirement of differential treatment for those appeals deserving attention from those that plainly do not'). Unless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down. A court of appeals might inappropriately decide the merits of an appeal, and in doing so overstep the bounds of its jurisdiction. See Buck, 580 U.S., at ___, 137 S. Ct. 579, 187 L. Ed. 2d 931(slip op., at 13); Miller El, 537 U.S., at 336-337, 123 S. Ct. 1029. A district court might fail to recognize that reasonable minds could differ. Or, worse, the large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp, especially for pro se litigants. We have periodically had to remind lower courts not to unduly restrict this pathway to appellate review. See, e.g., Tharpe v. Sellers, 583 U.S. ___, 138 S. Ct. 545, 199 L. Ed. 2d 424 (2018)(per curiam); Buck, 580 U.S. ___, 137 S. Ct. 759, 197 L. Ed. 2d 1; Tennard v. Dertke, 542 U.S. 274, 124 S. Ct. 2562, 159 L Ed. 2d 384 (2004).

McGee v. McFadden, ___ U.S. ___, ___, 139 S. Ct. 2608, 2611 (2019)(J. Sotomayor dissenting from the denial of a writ of certiorari). Justice Sotomayor also succinctly articulated the low threshold legal standard for granting a COA under the United States Supreme Court's jurisprudence:

> At the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Buck v. Davis, 580 U.S. ___, ___ 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017)(slip op., at 13)(quoting Miller-El Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003)).This 'threshold' inquiry is more limited and forgiving than 'adjudication of the actual merits.' Buck, 580 U.S., at ___, 137 S. Ct. 759, 197 L. Ed. 2d 1 (slip op., at 13)(quoting Miller-El, 537 U.S. at 337, 123 S. Ct. 1029, 154 L. Ed. 2d 931); see also id., at 336 (noting that 'full consideration of the factual or legal bases adduced in support of the claims' is not appropriate in evaluating a request for a COA)." Id. at 2609 (some internal quotations removed).

VI. PETITIONER-APPELLANT MEETS THE LEGAL STANDARD FOR A CERTIFICATE OF APPEALABILITY

1. JURISTS OF REASON WOULD DISAGREE WITH THE DISTRICT COURT'S RULING THAT PETITIONER'S MOTION TO REOPEN HABEAS PROCEEDING ALLEGING A CLAIM OF FRAUD ON THE HABEAS COURT IS BEYOND THE SCOPE OF FEDERAL RULES OF CIVIL PROCEDURE 60(b) AND THAT THE CLAIM PRESENTED DOES NOT DESERVE ENCOURAGEMENT TO PROCEED FURTHER

Justice calls on this Court to grant a COA on this three part-issue. A jurist of reason would disagree with the district court's ruling (A) that Mr. Aguiar's claim of fraud on the habeas court exceeds the scope of Fed. R. of Civ. P. Rule 60(b); (B) that Mr. Aguiar's fraud on the habeas court claim under Rule 60(b) is denied without resolving the merits of the issue; and (C) that Mr. Aguiar's fraud on the habeas court claim does not deserve encouragement to proceed further given that binding legal authority requires that Mr. Aguiar be given a meaningful opportunity to show that the evidence surrounding the government's fraud on the courts and its destruction of Mr. Aguiar's original, authentic, and accurate GPS evidence [that the government replaced with false GPS evidence] tainted a substantial part of the direct and derivative evidence introduced against Mr. Aguiar at his trial.

A. FRAUD ON THE HABEAS COURT IS PROPERLY RAISED UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)

A motion under Fed. R. Civ. P. 60(b) alleging a claim of fraud on the habeas court attacks a defect in the integrity of the federal habeas proceeding and is appropriately brought under Rule 60(b). See Gonzalez v. Crosby, 545 U.S. 524, 532 n.5 (2005). Any jurist of reason would disagree with the district court's March 2023 order wrongly resolving Mr. Aguiar's fraud on the habeas court claim under Rule 60(b). See Appendix B, p.5. In denying Mr. Aguiar's Rule 60(b) motion, the district court misapplies this Court's 28 U.S.C. Section 2244-related appellate ruling that Mr. Aguiar did not meet 28 U.S.C. Section 2255(h)'s legal standard equally to the legal standard required under Fed. R. Civ. P. 60(b). See id. The strict legal standard of 28 U.S.C. 2255(h), i.e., new evidence showing that no reasonable fact finder would find a movant guilty or a new rule of law made retroactive by the Supreme Court, however, is not applicable to the liberal legal standard of Rule 60(b), i.e., attacking a defect in the integrity of the habeas court proceeding. Because the district court's resolution of Mr. Aguiar's motion to reopen habeas proceeding alleging a claim of fraud on the court could be decided differently among jurists of reason and the Supreme Court's holding in Gonzalez nullifies any ruling that Mr. Aguiar's claim is beyond the scope of Rule 60(b), a COA must issue.

B. THE GOVERNMENT COMMITTED FRAUD ON THE HABEAS COURT

This Court concluded that the "data gathered by the GPS [units in Mr. Aguiar's 2009 criminal investigation] aided law enforcement in identifying avenues of investigation, supported applications for wiretap warrants, and led investigators to other evidence collected and introduced at trial...[and] constitutes a 'search' for Fourth Amendment purposes." United States v. Aguiar, 737 F.3d 251, 254 (2d Cir. 2013)(internal citation and quotation marks omitted). Reasonable Jurist William K. Sessions likewise concluded that the "[GPS] tracking techniques utilized by the DEA [agents] played a fundamental role in the criminal investigation [and that the e]vidence obtained from [the] GPS played a correspondingly significant role in Aguiar's trial and conviction." Aguiar v. Carter, No. 2:17-cv-121, 2018 U.S. Dist. LEXIS 139751 (D. Vt. Aug. 17, 2018).

Therefore, any "evidence obtained by illegal means and the fruits of such evidence must be suppressed." United States v. Maggaddino, 496 F.2d 455, 459 (2d Cir. 1974). "This exclusionary rule reaches not only primary evidence obtained by an illegal search or seizure, but also evidence later discovered and found to be derivative of an illegality or 'fruit of the poisonous tree'" United States v. Cacase, 796 F.3d 176, 188 (2d Cir. 2015)(internal citations omitted). "Evidence obtained by the exploitation of a primary illegality is regularly excluded under traditional taint analysis as the 'fruit of the poisonous tree.'" United States v. Morales, 788 F.2d 883, 885 (2d Cir. 1988)(citing Wong Sun v. United States, 371 U.S. at 487-88).

Therefore, the question is "whether granting establishment of the primary illegality, the evidence to which the instant objection is made has been come at by the exploitation of that illegality...." Wong Sun v. United States, 371 U.S. 471, 488 (1963). The significance of the destruction of evidence and then compelling a party who objects to use of that evidence to go forward with a showing of taint and then to withhold from him the means or tools to meet that burden is to create an absurdity in the law. See United States v. Huss, 482 F.2d 38, 47 (2d Cir. 1973). "The government may not knowingly use false evidence including false testimony, to obtain a tainted conviction." United States v. Alston, 899 F.3d 135, 147 (2d Cir. 2018)(internal citations omitted).

To show fraud on the court, Mr. Aguiar "must prove by clear and convincing evidence that the [government] interfered with the judicial system's ability to adjudicate impartially and that the acts of the [government] must have been of such a nature as to have prevented [Mr. Aguiar] from fully and fairly presenting a case or defense." Mazzei v. The Money Store, 62 F.4th 88, 92 (2d Cir. 2023). This Court holds that fraud on the court includes "fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." Hadges v. Yonkers Racing Corp., 48 F.3d 1320, 1325 (2d Cir. 1995)(internal citation and quotation marks omitted). Undeniably, "prosecutors [] are officers of the court...." Donnelly v. De Christoforo, 416 U.S. 637, 651 (1974). This Court also holds that "the intentional governmental suppression of evidence useful to the defense at trial will mandate a virtual automatic reversal of a criminal conviction." United States v. Stofsky, 527 F.2d 237, 243 (2d Cir. 1975).

Mr. Aguiar's entire court proceedings after his 2009 arrest were conducted under fraudulent pretenses. As detailed above, see pp.2-6 of this motion, the government knowingly and intentionally destroyed Corp Ten's original, authentic, and accurate GPS data and replaced the destroyed evidence with its own version of false GPS-related evidence used to support its Title III wiretap warrants consisting of 351 pages of spreadsheet documents containing GPS units allegedly used by the DEA and GPS tracking data. See id. Mr. Aguiar unknowingly and unwillingly lost his due process right to seek suppression of all of the direct and derivative GPS-related evidence that the government destroyed and covered up before, during, and after his trial. But for his FOIA action, Mr. Aguiar would never have known about neither the government's fraud on the courts nor his having been deceived by its intentional misconduct.

In his 2015 Section 2255 motion, Mr. Aguiar raised pro se-articulated IAC claims in the district court suggesting that the government violated the rules of discovery and evidence, Brady v. Maryland, and the due process and confrontation clauses of the Fifth and Sixth Amendments, see ECF 723-1, during the time that his FOIA action was ongoing. The government's court-filed oppositional response falsely stated:

> In advance of trial, the government provided the latitude and longitude coordinates for Aguiar's vehicles as generated by the GPS devices....The software used by the DEA merely sends the GPS generated latitude and longitude coordinates to Google maps and directs Google maps to plot the coordinate on a map...It was not novel or complicated and THE SOFTWARE DID NOT INDEPENDENTLY GENERATE ITS OWN GPS COORDINATE...AGUIAR RECEIVED ALL OF THE RAW DATA FROM THE GPS DEVICES AND HAS NOT, AND CANNOT, ESTABLISH THAT RECEIPT OF THE SOFTWARE WOULD HAVE IMPACTED THE RESULT OF HIS TRIAL.

ECF 747 at 31-32 n.19 (emphasis added). This, was intentional fraud on the habeas court. See ECF 807-1, Attachment 2, Paragraphs 16-17 (declaration of top level DEA official revealing that the private company's server and software was used to read and record Mr. Aguiar's 2009 movements -- movement data that the government destroyed in or about August 2010).

In November 2015, Mr. Aguiar received documents in his ongoing FOIA action that supported his suspected GPS-related IAC claims. Mr. Aguiar moved the district court: to supplement his IAC claims, see ECF 756; to appoint counsel to investigate, see ECF 735; and to strike Agent Carter's fraudulent testimony and all tainted direct and derivative GPS-related evidence. See ECF 757. In its opposition, the government continued its fraud on the habeas court by stating:

> Aguiar has not, and cannot, establish that the government suppressed information about a GPS tracking 'software program' or that the information would have been favorable to him...Aguiar fails to prove that...the DEA even had such a program...[and] that the so-called mapping software used to plot the coordinates generated by the GPS device[s] on Aguiar's vehicles was simply Google maps, not some proprietary program used by the DEA or any so-called contractor employed by the DEA.

ECF 763 at 2-3; but see ECF 807-1, Attachment 2. Undeniably, the government continued "its fraud perpetrated by the officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." Hadges, 48 F.3d at 1325. Indeed, the court's impartial task of adjudging this case was impeded by the the fraud on the habeas court as evidenced by the R & R's adverse ruling that "beyond affirming the EXISTENCE of the contractor's service, I cannot discern whether such a service was used in Aguiar's case." ECF 767 at 74 (emphasis in the original); but see ECF 807-1, Attachment 2. Moreover, prosecutors' fraud caused the R & R rejecting Mr. Aguiar's "unproven" claims surrounding Agent Carter's false testimony. See ECF 767 at 74-75.

Here, Mr. Aguiar has established by clear and convincing evidence that officers of the court committed fraud on the defense; the trial court; the appeal court; the Supreme Court; and the habeas court before, during, and after Mr. Aguiar's trial about GPS-related evidence and all direct and derivative evidence must be excluded as fruit of the poisonous tree.

C. BINDING LEGAL AUTHORITY ENTITLES PETITIONER THE OPPORTUNITY OF A TAINT HEARING

Mr. Aguiar has shown by clear and convincing evidence that the government committed fraud on the court surrounding the GPS-related evidence. As detailed above, this Court held on appeal that the search of Mr. Aguiar's iPhone was harmless. See p.6 of this motion. Concluding that the GPS evidence in Mr. Aguiar's case was NOT harmless, this Court made clear that the "data gathered by the GPS [units in Mr. Aguiar's 2009 criminal investigation] aided law enforcement in identifying avenues of investigation, supported applications for wiretap warrants, and led investigators to other evidence collected and introduced at trial...." United States v. Aguiar, 737 F.3d 251, 254 (2d Cir. 2013)(internal quotation marks and citation omitted), and proceeded to the merits of the DEA's search of Mr. Aguiar's 2009 movements while being simultaneously misled about the means by which the DEA tracked and recorded those movements in its 2009 investigation. Reasonable jurist Judge Sessions has further made clear that the "[GPS] tracking techniques utilized by the DEA [agents] played a fundamental role in the criminal investigation [and that the e]vidence obtained from [the] GPS played a correspondingly significant role in Aguiar's trial and conviction." Aguiar v. Carter, No. 2:17-cv-121, 2018 U.S. Dist. LEXIS 139751 (D. Vt. Aug. 17, 2018).

"Evidence obtained by the exploitation of a primary illegality is regularly excluded under traditional taint analysis as the 'fruit of the poisonous tree.'" Morales, 788 F.2d 883, 885 (citing Wong Sun, 371 U.S. at 487-88). Nor may the government "knowingly use false evidence including false testimony, to obtain a tainted conviction." Alston, 499 F.3d at 147 (internal citations omitted).

"The overwhelming weight of authority favors the view that, given a 'primary illegality,' the defendant must be given some opportunity to resolve the issues of taint -- either at a 'full evidentiary hearing' or a trial on the merits." United States v. Vilar, 530 F.Supp. 2d 616, 641 (S.D.N.Y. 2008); United States v. Aguiar, No. 2:09-cr-90, 2016 U.S. Dist. LEXIS 182703, n.13 (D. Vt. Aug. 12, 2016)(accord). "Where a defendant seeks a 'taint' hearing, the question presented is whether the evidence to which the objection is made has been obtained by the exploitations of illegal government conduct." United States v. Mullens, 451 F.Supp. 2d 409, 440 (W.D.N.Y. 2006). "The intentional destruction of evidence relevant to proof of an issue at trial can support an inference that the evidence would have been unfavorable to the party responsible for its destruction." Kronisch v. United States, 150 F.3d 112, 126 (2d Cir. 1998). "[T]he destruction of th[e GPS] evidence cannot be understated in this case. To compel a party who objects to use of that evidence and to go forward with a showing of taint and then to withhold from him the means or tools to meet that burden is to create an absurdity in the law." Huss, 482 F.2d at 47.

Reasonable jurists would debate whether the issue presented here deserves encouragement to proceed further and a COA should be granted on whether Mr. Aguiar should be given his opportunity to show that direct and derivative GPS evidence tainted a substantial part of evidence introduced at his trial. Indeed, Mr. Aguiar has shown that the government violated his rights, the United States Constitution, and countless court rules of the trial, appeal, Supreme, and habeas courts and reasonable jurists of this Court and even Judge Sessions have each concluded that the GPS evidence in this case was material to the DEA's investigation and Mr. Aguiar's 2011 trial and conviction.

2. JURISTS OF REASON WOULD DISAGREE WITH THE DISTRICT COURT'S RULING TO DENY PETITIONER'S UNOPPOSED MOTION TO REOPEN HABEAS PROCEEDING UNDER FEDERAL RULES OF CIVIL PROCEDURE 60(b) TO CONFRONT HIS PRO-SE ARTICULATED RAISED INTEGRATED REVOCATION OF SUPERVISION AND DRUG CONSPIRACY CASE CLAIMS THAT THE HABEAS COURT FAILED TO ADDRESS

Reasonable jurists would debate whether the district court wrongly denied the Rule 60(b) motion claiming that the habeas court failed to confront or resolve Mr. Aguiar's pro se-articulated raised Section 2255 claims that trial counsel provided IAC: (A) by failing to fully investigate and suppress before trial all direct and derivative false and inaccurate GPS evidence; and (B) by not allowing Mr. Aguiar access to this legal documents of both his revocation of supervised release and drug conspiracy cases and failing to perfect Mr. Aguiar's appeal to include his revocation of supervised release. See ECF 807-1.

The Tenth Circuit holds that a Fed. R. Civ. P. 60(b) motion alleging a claim that the district court failed to consider a claim raised in a previous 28 U.S.C. Section 2255 petition constitutes a "true 60(b) motion" that attacks a "defect in the integrity of the proceedings" within the meaning of Gonzalez and its progeny. See Spitznas v. Boone, 464 F.3d 1213, 1225 (10th Cir. 2006). Other courts have made similar determinations. See, e.g., Marmolejas v. United States, No. 05 Civ. 10963, 99 Cr. 1048, 2010 U.S. Dist. LEXIS 92070 (S.D.N.Y. Sept. 2, 2010)(concluding that petitioner's claim of fraud on the court and that the court failed to consider several arguments previously advanced in his amended petition attacks the integrity of the proceeding and not the merits of his claims asserts a proper Rule 60(b) claim); In re Hartzog, 444 Fed. Appx 63, 67 n.3 (5th Cir. Oct. 7, 2011)(assuming petitioner's Rule 60(b) motion that the district court failed to rule on certain claims is non-successive and constitutes a proper Rule 60(b) motion); see also United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2019)(finding "[i]f the purported defect did not ripen, until after the conclusion of the previous petition, the later petition on that defect may be non-successive").

A. THE DISTRICT COURT REFUSED TO CONSIDER PETITIONER'S PRO SE-ARTICULATED RAISED GPS-RELATED IAC OF TRIAL COUNSEL CLAIM FOR FAILING TO CONDUCT A PRETRIAL INVESTIGATION AND MOVE THE DISTRICT COURT TO CONDUCT A TAINT HEARING FROM THE GPS EVIDENCE

As detailed above, jurists of reason would disagree with the district court denying Mr. Aguiar's "claims that the Magistrate Judge failed to address certain issues" and that "as to any claims that were not addressed...Aguiar has had ample opportunity to present his arguments to this Court...." Appendix B, p.4. This reasoning is circular. Indeed, Mr. Aguiar has repeatedly advanced these arguments before the court under Rule 60(b) since he first filed in Rule 60(b) motion in 2018. See ECF 792. Mr. Aguiar's Section 2255 motion raised a GPS-related pro se-articulated claim suggesting an IAC claim of both trial and appellate counsel. ECF 723-1 at 92-100. The R & R failed to confront or resolve the IAC of trial counsel claim. See ECF 767 at 68 n.25. Objecting to the R & R, Mr. Aguiar made clear to the district court that his pro se-articulated GPS-related claims raised included IAC of trial counsel. See ECF 776 at 40-51. The objection was ignored. See ECF 780.

Based on the above-cited law and facts, reasonable jurists would disagree with the district court and instead conclude that the unopposed Rule 60(b) motion filed below claiming that the district court failed to address Mr. Aguiar's GPS-related trial counsel IAC claim is a true 60(b) motion. A COA is therefore warranted on the this issue.

B. THE DISTRICT COURT REFUSED TO CONSIDER PETITIONER'S PRO SE-ARTICULATED SECTION 2255 CLAIM THAT COUNSEL FAILED TO ALLOW PETITIONER ACCESS TO HIS LEGAL DOCUMENTS THAT INCLUDED BOTH HIS REVOCATION OF SUPERVISED RELEASE AND DRUG CONSPIRACY CASES AND FAILED TO PERFECT PETITIONER'S APPEAL TO INCLUDE THE REVOCATION OF SUPERVISION CASE

Reasonable jurist would likewise disagree with the district court's flawed reasoning surrounding Mr. Aguiar's claim under Rule 60(b) that the court failed to address his raised Section 2255 pro se-articulated claim that Attorney Williams refused to allow Mr. Aguiar to access his legal documents that included BOTH his revocation of supervised release and drug conspiracy

cases and failed to perfect Mr. Aguiar's direct appeal. See ECF 807-1. To be clear, the district court's improper spontaneous joinder of Mr. Aguiar's revocation of supervised release case to his drug conspiracy case without advance notice at his December 12, 2011 drug conspiracy case sentencing created court-created confusion for Mr. Aguiar about how to proceed and aided Attorney Williams's intentional misadvice. Id.

The record shows that Mr. Aguiar's motion to supplement the record made clear to the habeas court that Attorney Williams refused to give Mr. Aguiar requested legal documents of both his revocation of supervision and drug conspiracy cases. See ECF 728. Mr. Aguiar also sought permission to file the revocation of supervised release-related IAC claims beyond past the Section 2255 filing deadline. Id. Notwithstanding this claim, Mr. Aguiar's Section 2255 motion also claimed that Attorney Williams had denied Mr. Aguiar's access to legal documents that included those of his revocation of supervised release case. See ECF 723-1 at 88-92. Mr. Aguiar's pro se-articulated claims explained that Attorney Williams's action to not perfect the appeal prevented Mr. Aguiar from raising his revocation of supervised release issues on direct appeal, see id. at 88, in a pro se capacity or participating in any decision about the direct appeal filed. Id. at 90. Mr. Aguiar articulated that he needed his legal documents that included those of his revocation of supervised release case from Attorney Williams to file a pro se appeal because Attorney Williams intentionally misadvised Mr. Aguiar in 2012 that he could not file an appeal in his revocation of supervised release case and Mr. Aguiar would have perfected his own appeal and filed a pro se appeal. See ECF 723-1 at 91. Mr. Aguiar made clear to the court that Attorney Williams denied his access to his own legal documents from January 2011 and beyond his appeal and told Mr. Aguiar not to speak at sentencing or he would receive a life sentence. See id. at 90.

The R & R, however, did not address the revocation of supervised release-related aspect of Mr. Aguiar's pro se-articulated IAC claim that counsel withheld his revocation of supervised release case documents and failed to perfect Mr. Aguiar's direct appeal, see ECF 767 at 63-68, and stated that there is "no indication that Aguiar would have been permitted to proceed pro se on appeal." Id. at 67. The district court adopted the R & R's incomplete resolution of Mr. Aguiar's IAC claim. See ECF 780.

In his Rule 60(b) motion, Mr. Aguiar fully detailed Attorney William's sinister actions and the habeas court's failure to confront or resolve Mr. Aguiar's previously raised complicated IAC claim on this point, see ECF 807-1, but the district court's nonsensical response simply stated that "as to any claims that weren't addressed [by the habeas court, Mr.] Aguiar has had ample opportunity to present his arguments to this Court." Appendix B, p.4. In sum, jurists of reason would disagree with the district court's ruling and would conclude that Mr. Aguiar's Rule 60(b) motion claiming the the habeas court failed to confront, address, or resolve his complicated pro se-articulated Section 2255 claims here is a true Rule 60(b) motion and that his claims deserve encouragement to proceed further. Therefore, a COA must be granted.

3. REASONABLE JURISTS WOULD DISAGREE WITH THE DISTRICT COURT AND FIND THAT ATTORNEY WILLLIAMS PROVIDED PETITIONER INEFFECTIVE ASSISTANCE OF COUNSEL AND COMMITTED FRAUD ON THE COURT

The district court appointed Attorney Williams as counsel in November 2000, see Aguiar, No. 2:00-cr-119, ECF 3, and July 2009 to represent Mr. Aguiar under the CJA. See Aguiar, No. 2:09-cr-90, ECF 47. A COA must issue about whether Attorney Williams provided Mr. Aguiar IAC and his claims must be considered in the aggregate. See ECF 807-1

Mr. Aguiar's pro se articulated unopposed Rule 60(b) motion explained that Attorney Williams failed to adequately investigate his case and and committed fraud on the court at Mr. Aguiar's drug conspiracy case sentencing and sent AUSA Wendy Fuller a 2015 e-mail containing intentional misrepresentations that prosecutors then drafted to oppose Mr. Aguiar's Section 2255 motion that the habeas court relied on over Mr. Aguiar's certified declarations under penalty of perjury. Id.; see also supra.

Additionally, in Aguiar v. Williams, 2021 VT 8, 2021, LEXIS 13 (Feb. 19, 2021), the Vermont Supreme Court held Mr. Aguiar's legal files that Attorney Williams destroyed and/or refused to give Mr. Aguiar belonged to Mr. Aguiar. Id. Therefore, Attorney Williams violated Mr. Aguiar's Constitutional right to his legal documents, i.e., his property, that counsel withheld and destroyed. Moreover, the habeas court violated Mr. Aguiar's right to due process because in order to consider the merits of Mr. Aguiar's IAC claims in Aguiar, No. 2:09-cr-90, it had to first consider the merits of the interdependent IAC claims of Aguiar, No. 2:00-cr-119, ECF 100-1. A COA should therefore be granted on Attorney Williams's IAC in the aggregate.

4. JURISTS OF REASON WOULD DISAGREE WITH THE DISTRICT COURT'S RULING TO DISMISS PETITIONER'S CLAIMS RAISED IN HIS UNOPPOSED FEDERAL RULES OF CIVIL PROCEDURE 60(b) MOTION WITHOUT REEVALUATING THE CUMULATIVE EFFECT OF COUNSEL'S ERRORS COMBINED WITH THE NEW EVIDENCE OF THE GOVERNMENT'S FRAUD ON THE COURT AND PETITIONER HAVING EXPUNGED HIS PRIOR CONVICTIONS

Second Circuit and Supreme Court legal authority requires that this Court consider all errors in Mr. Aguiar's case in the aggregate. See Lindstadt v. Keane, 239 F.3d 191, 199 (2d Clr. 2001); Wiggins v. Smith, 539 U.S. 510 (2003); Porter v. McCollum, 558 U.S. 30, 40-42 (2009).

The district court wrongly dismissed Mr. Aguiar's Rule 60(b) motion and wrongly faulted Mr. Aguiar for following Attorney Williams's misadvice. See ECF 807-1. Nor did the court properly consider Mr. Aguiar's claims involving new evidence that also warrant a COA in this case. This Court is asked to intervene and grant a COA in this case in the interest of justice on this issue.

5. PETITIONER MEETS THE LEGAL STANDARD OF A COA TO CONSIDER THE MERITS OF HIS PRO SE-ARTICULATED SECTION 2255 CLAIM OF CONFLICT OF INTEREST OF COUNSEL THAT THE DISTRICT COURT AVOIDED DECIDING OR INVESTIGATING AND WHETHER ITS FAILURE TO INVESTIGATE VIOLATED BINDING CIRCUIT AUTHORITY IS BEYOND THE SCOPE OF FEDERAL RULE OF CIVIL PROCEDURE 60(b)

Under the Sixth Amendment, if a defendant has a constitutional right to counsel, he also has a constitutional right to representation that is free of any conflict of interest. Wood v. Georgia, 450 U.S. 261, 271 (1981). "[D]efense attorneys have the obligation, upon discovering a conflict of interests, to advise the court at once of the problem." Holloway v. Arkansas, 435 U.S. 475, 485-86 (1978)(internal citation and quotation marks omitted).

A presumption of prejudice under Cuyler v. Sullivan, 466 U.S. 335 (1980), is appropriate if counsel actually represented conflicting interests and the "actual conflict of interest adversely affected his lawyer's performance." Id. at 348. "[A] 'significant conflict of interest arises' when an attorney's 'interest in avoiding damage to his own reputation' is at odds with his client's 'strongest argument-i.e., that his attorneys had abandoned him.'" Christeson v. Roper, 574 U.S. 373, 378 (2015)(quoting Maples v. Thomas, 564 U.S. ___, ___, n.8, 132 S. Ct. 912, 925 n.8 (2012)(second alteration in original).

Moreover, "where a defendant's [IAC] claim is based on an alleged conflict of interest, a defendant is entitled to a presumption of prejudice if he can demonstrate that his attorney labored under an actual conflict of interest and the actual conflict of interest adversely affected his lawyer's performance. United States v. Davis, 239 F.3d 283, 286 (2d Cir. 2001)(internal citation and quotation marks omitted).

"When the court is sufficiently apprised of even the possibility of a conflict of interests, the court...has an inquiry obligation." United States v. Levy, 25 F.3d 147, 153 (2d Cir. 1994). "To show a lapse in representation, a defendant need not demonstrate prejudice - that the outcome of [the] trial would have been different but for the conflict - but only that some other plausible alternative defense strategy or tactic might have been pursued but was not and that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests." Amiel v. United States, 209 F.2d 195, 199 (2d Cir. 2000).

Multiple courts cited above have held claims that the habeas court failed to address a previous Section 2255 claim is a true Rule 60(b) motion. See p.11 of this motion. In this case, the habeas court did not confront, address, or resolve Mr. Aguiar's pro se-articulated Section 2255 conflict of interest claim nor did the court investigate this suggested claim, see ECF 723-1 at 88-93; 728, as required by Levy, 25 F.3d 147, despite Mr. Aguiar's objections to the R & R clarifying this claim. See ECF 776 at 33; 36.

In his amended Rule 60(b) motion, see ECF 807-1, Mr. Aguiar asked the district court to revisit grounds of the habeas proceeding because the court failed to read, address, confront, or resolve his very complicated and integrated revocation of supervised release and drug conspiracy case-related pro se claims that his Section 2255 motion had suggested including that counsel operated under a conflict of interest. See id. Mr. Aguiar's Rule 60(b) motion directed the district court's attention to the fact that Attorney Williams's previous IAC in Aguiar II created an obvious conflict of interest compromising counsel's 2009-2014 CJA representation of Mr. Aguiar in both his drug conspiracy and revocation of supervised release cases from the start. See id.; see also Aguiar, No. 2:00-cr-119, ECF 100-1.

Mr. Aguiar's Rule 60(b) motion also informed the district court that his original Section 2255 motion's pro se-articulated conflict of interest claim also included the claim that Attorney Williams improperly hired former Burlington, Vermont police Detective James Brigham as Mr. Aguiar's drug conspiracy case defense investigator IN THIS CASE who had arrested Mr. Aguiar in 2001 and was responsible for Mr. Aguiar's prior 2001 drug conviction used to increase Mr. Aguiar's drug conspiracy case sentence to the 30 year prison term he now serves. See ECF 807-1 at 4-5; see also id., Attachment 1. Indeed, Mr. Aguiar had moved the district court to expand the record, see ECF 720, supplement the record, see ECF 728; and appoint counsel in this case, see ECF 735, to help him better articulate and develop his conflict of interest claims given that Mr. Aguiar has mental health disorders including a diagnosed traumatic brain injury and has had to continually rely on other prisoners to fully pursue his rights and present his claims to the courts in a legally coherent form. See, e.g., 2011 PSR, Paragraphs 128-129.

Mr. Aguiar's Rule 60(b) motion also clarified to the district court that his unresolved and unaddressed Section 2255 motion's claim of a conflict of interest included that Attorney Williams committed fraud on the court by telling the district court at Mr. Aguiar's December 12, 2011 sentencing that he had received a copy of Mr. Aguiar's [sealed] August 2009 Massachusetts district court-filed violation of supervised release petition that was imported still filed under seal when he, in fact, had not, see ECF 807-1 at 5-7, and deceived Mr. Aguiar to believe that Attorney Williams had received a copy of Mr. Aguiar's NEVER TRANSFERRED June 2009-filed violation of supervised release petition as detailed inaccurately in the 2011 PSR. Id.; see also 2011 PSR, Paragraphs 110; 118; and p.45. Indeed, Mr. Aguiar's Rule 60(b) motion fully evidenced Attorney Williams's deceitful conduct and conflict of interest and failure to perfect Mr. Aguiar's direct appeal to include appeal issues surrounding his 2001 case that thwarted Mr. Aguiar's relentless diligent efforts to pursue his rights in the courts, see id. at 6-23, and adversely affected how, and the way in which, Mr. Aguiar raised his post-convictions claims that Mr. Aguiar had in fact raised to the district court. To date, Judge Sessions [who also has a conflict of interest in this case. see ECF 12 (motion to recuse and supporting evidence filed on this Court's docket)] has repeatedly condoned and excused Attorney Williams's IAC and deliberate misconduct even in the face of clear and convincing evidence proving Mr. Aguiar's claims were properly raised in the habeas court from the start.

In sum, Mr. Aguiar raised the above-evidenced conflict of interest claim in his Section 2255 motion, but the district court never confronted, addressed, or resolved this suggested claim supported by clear and convincing evidence of law and fact. Thus, jurists of reason would disagree with the district court that Mr. Aguiar's motion is beyond the scope of Rule 60(b), see Appendix A; B, because he seeks resolution of the habeas court's failure to resolve his previously raised conflict of interest claim and the habeas court's failure to investigate this claim as required by this Court's holding in Levy. Accordingly, a COA is warranted on whether Mr. Aguiar's conflict of interest claim was raised and deserves encouragement to proceed further and whether the district court was required to investigate the pro se-articulated conflict of interest claim that Mr. Aguiar had in fact suggested.

6. JURISTS OF REASON WOULD DISAGREE WITH THE DISTRICT COURT DENYING PETITONER'S UNOPPOSED FEDERAL RULES OF CIVIL PROCEDURE 60(b) MOTION TO REOPEN HABEAS PROCEEDING AND FIND THAT PETITIONER'S SECTION 2255 CLAIM CHALLENGING HIS PRIOR CONVICTIONS USED TO INCREASE HIS SENTENCES AND HAVING HIS PRIOR CONVICTIONS EXPUNGED IS PROPERLY RAISED UNDER RULE 60(b) AND WARRANTS.EITHER A COA OR, IN THE ALTERNATIVE, A REMAND FOR RESENTENCING

The expungement of convictions redefines a defendant's status to the position he or she occupied before the event. See United States v. Fryer, 402 F.Supp. 831, 834 (N.D. Ohio 1975), aff'd 545 F.3d 11 (6th Cir. 1976); Commonwealth v. J.T., 279 Pa. Super. 127, 420 A.2d 1064, 1065-66 (Pa. Super. Ct. 1980)(same).

Reasonable Jurists of the Fourth, Tenth, and Eleventh Circuits have held that grounds for challenging federal sentences that do not exist until after a movant files his or her first motion to vacate under Section 2255 specifically in the context of moving a court to reopen the habeas proceeding after expunging state convictions is properly raised in a motion to reopen habeas proceeding under Fed. R. Civ. P. 60(b). See, e.g., United States v. Hairston, 754 F.3d 258, 261 (4th Cir. 2014). This Court has held that resentencing is appropriate when a defendant has expunged a prior Vermont State conviction. See United States v. Beaulieau, 959 F.2d 375, 380-81 (2d Cir. 1992); see also United States v. Cox, 245 F.3d 126, 130 (2d Cir. 2001). The Supreme Court has also held that "[w]hen a defendant is sentenced under an incorrect Guidelines range - whether or not the defendant's ultimate sentence falls within the correct range - the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error." Molina-Martinez v. United States, 578 U.S. 189, 198 (2016).

After his December 2011 sentencing, Mr. Aguiar diligently sought to challenge his prior convictions in the Burlington, Vermont Superior Court. In his Section 2255 motion, Mr. Aguiar's also raised challenges to his 1995 and 2001 federal proceedings and sought to be resentenced and moved the habeas court to hold his claims in abeyance so that Mr. Aguiar might develop his claims at a later date. See ECF 723-1 at 100. Despite Mr. Aguiar's objections to the R & R on the issue, see ECF 776 at 60-61, however, the claim was dismissed. See ECF 780.

In January and April 2023 respectively, the Vermont State Superior Court entered numerous nunc pro nunc orders of expungement expunging each of Mr. Aguiar's prior Vermont State criminal convictions that are the aggregated product of his increased punishment in this case. See, e.g., ECF 825, Exhibit A; 828. The nunc pro tunc intent of each expungement order insists that Mr. Aguiar be treated in all respects as if he was never arrested, convicted or sentenced for any of the offenses that were subject to the expungements. Id.

Applying the reasoning of the Fryer Court that the expungement of convictions redefines a defendant's status to the position he occupied before the event and conforming to the evidence of Mr. Aguiar's now expunged prior convictions and applying this new evidence to Mr. Aguiar's federal court proceedings affects each of Mr. Aguiar's criminal histories and sentences of each of his federal cases that he raised in his Section 2255 motion culminating in an estimated revised United States Sentencing Guideline range of 188-235 months****** well below the 240 month statutory minimum to which Mr. Aguiar was required to be sentenced under 21 U.S.C. Sections 841(a)(1); (b)(1)(A); 851.

Additionally, having the aforementioned convictions now expunged also adversely affected the decision of prison officials to not allow Mr. Aguiar to be released to home confinement under the CARES Act. See ECF 12, Exhibit C of this Court's docket (copy of e-mail of prison officials' decision to deny Mr. Aguiar release to home confinement under the CARES Act based on his violation of supervised release that Mr. Aguiar was never allowed to contest on appeal). Furthermore, the expunged convictions are still listed as valid convictions in each of Mr. Aguiar's PSRs in the possession of the United States Federal Bureau of Prisons ("FBOP") and prison officials have used, are using, and will continue to use in the future Mr. Aguiar's now expunged convictions to make prejudicial decisions against Mr. Aguiar while incarcerated. Id.

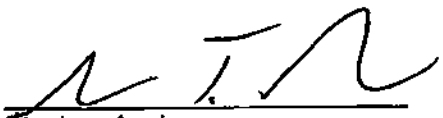
Here, this Court should grant Mr. Aguiar a COA on the issue of whether the new evidence of Mr. Aguiar having expunged his prior convictions warrants a remand to the district court to be resentenced or, alternatively, allow Mr. Aguiar to reopen his habeas proceeding on the ground to correct the now inaccurate information possessed by the district court and the FBOP that is affecting Mr. Aguiar's liberty interests while incarcerated.

****** This estimated Guideline range includes the application of U.S.S.G. App. C, Amend. 782 (2014) and U.S.S.G. Section 4A1.1 (eliminating status points) (2023). See http://www.ussc.gov.

VII. CONCLUSION

This Court's evaluation of whether to grant a COA turns on whether reasonable minds could debate the reasoning of the district court or whether jurists of reason could conclude that the claims presented in Mr. Aguiar's Rule 60(b) motion deserve encouragement to proceed further. The above-cited facts and law make clear that Mr. Aguiar meets the legal standard that deserves a COA on the issues presented. Mr. Aguiar therefore prays that this Court will follow the instructions of reasonable jurist Supreme Court Justice Sotomayer, see p.8 of this motion, and conclude that a COA is warranted in this case and that the isssues presented minimally deserve encouragement to proceed further under Supreme Court precedent.

Respectfully submitted,



Dated: July 20, 2023

Stephen Aguiar, pro se
Reg. No. 03722-082
FMC Devens
P.O. Box 879
Ayer, MA 01432

JUDICIAL MISCONDUCT

Judicial Council of the Second Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). The Rules for Judicial-Conduct and Judicial-Disability Proceedings, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The Rules are available in federal court clerks' offices, on individual federal courts' websites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Stephen Aguiar, Reg. No. 03722-082

   Contact Address: FCC Petersburg Medium, Legal Mail - Open Only In Presence of Inmate, P.O. Box 1000, Petersburg, VA 23804

   Daytime telephone: (804) 504-7200

2. Name(s) of Judge(s): William K. Sessions III

   Court: Burlington, Vermont United States District Court

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

   ☒ Yes ☐ No

   If "yes," give the following information about each lawsuit:

   Court: Burlington, Vermont United States District Court

   Case Number: 2:94-cr-65; 2:00-cr-119; 2:09-cr-90; 2:17-cv-121

   Docket number of any appeal to the 2nd Circuit: 11-5262; 17-684; 17-2547 20-1210; 20-1279

   Are (were) you a party or lawyer in the lawsuit?

   ☒ Party ☐ Lawyer ☐ Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

David Williams (CJA Attorney in my criminal cases, attended law school with Judge Sessions) 95 St. Paul Street, Burlington, VT 05401 (802) 658-9411

4. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

5. **Declaration and signature:**

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature) _____ (Date) September 24, 2020

cc: President Donald Trump
Vermont Senator Patrick Leahy
Vermont Senator Bernie Sanders
Attorney General William Barr
New York ACLU
National Action Network

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

I. Introduction

Complainant Stephen Aguiar ("Mr. Aguiar") files this complaint against United States District Court Judge William K. Sessions III ("Judge Sessions") of Vermont about improper ex parte communications with a prosecutor related to efforts to make adverse rulings against Mr. Aguiar in his 2009-2011 proceedings of his criminal cases and later collateral proceedings of his criminal and civil cases. Because of the alleged improper motives of the rulings made in Mr. Aguiar's cases, he asks that Judge Sessions be removed from presiding in any and all cases involving Mr. Aguiar. Mr. Aguiar requests that United States District Court Judge Christina Reiss be appointed to replace Judge Sessions to preside over any and all present or future criminal or civil cases involving Mr. Aguiar and that all of Mr. Aguiar's past and present criminal or civil case involving Judge Sessions be revisited and reviewed de novo.

II. Statement of Facts

In 1994, Mr. Aguiar was indicted in the Vermont court and the court appointed David Williams under 18 U.S.C. § 3006A to represent him. U.S.A. v. Aguiar, No. 2:98-cr-65 (D. Vt. 1995) ("Aguiar I"). Counsel lied to Mr. Aguiar about the law and the facts of the case to plead guilty and to withdraw his pending appeal. Aguiar I, ECF 28 (No. 95-1256).

In 2000, Mr. Aguiar was again indicted in the Vermont court and the court again appointed Attorney Williams as CJA counsel. U.S.A. v. Aguiar, No. 2:00-cr-119 (D. Vt. 2001) ("Aguiar II"). Attorney Williams, the prosecutor, and Judge Sessions misadvised Mr. Aguiar about the law and the facts of the case to plead guilty and failed to correct or redress that the government had not filed a 21 U.S.C. § 851 information as required resulting in his enhanced sentence. Id. In July 2007, Judge Sessions ordered that jurisdiction of Mr. Aguiar's supervised release be transferred to Massachusetts after he was released from custody. Aguiar II, ECF 27.

In 2009, the Vermont United States Attorney's Office ("USAO") and Drug Enforcement Administration ("DEA") began investigating Mr. Aguiar for drug trafficking. The USAO/DEA prepared and submitted to Judge Sessions four Title III wiretap applications under 18 U.S.C. § 2510 et seq. In re Brian Tabaie, No. 2:09-mc-34, ECF 7; 13; 17; 19 (D. Vt. 2009). On July 2, 2009, however, Judge Sessions reviewed the July 2, 2009 wiretap application that did not contain a complete Department of Justice authorization, see id., ECF 17, but nevertheless signed an order authorizing the government to intercept Mr. Aguiar's calls. Id. ECF 18.

On July 30, 2009, Mr. Aguiar was charged in the Vermont court for a drug conspiracy and the court yet again appointed Attorney Williams as CJA counsel and Judge Sessions again presided. U.S.A. v. Aguiar, No. 2:09-cr-90 (D. Vt. 2011) ("Aguiar III"). At his August 5, 2009 detention hearing, Attorney Williams gave Mr. Aguiar copies of the wiretap warrants filed with the court. Mr. Aguiar told counsel during his detention hearing that a vital page was missing from the DOJ in the July 2, 2009 wiretap warrant, but Attorney Williams did not act. Because the clerk's office retains original filed pleadings for only 30 days, the original July 2, 2009 wiretap warrant was destroyed on August 6, 2009 leaving only the

electronic case filing ("ECF") of the original July 2, 2009 wiretap application. See Attachment; see also In re Tahaic, No. 2:09-mc-34, ECF 17.

Only later did Attorney Williams file a March 9, 2010 motion to suppress arguing that a vital page was missing from the DOJ at the time Judge Sessions signed the July 2, 2009 wiretap and Title III required that Judge Sessions be presented with evidence that the DOJ had authorized the wiretap application at the time he signed it and cited U.S.A. v. Staffeldt, 451 F.3d 578 (9th Cir. 2006), to support his position. Aguiar III, ECF 171 at 6. After months of what Mr. Aguiar believes to be was Judge Sessions's ex parte communications with a prosecutor, prosecutors' sworn response claimed that "[u]pon [the court clerk's] receipt of the [July 2, 2009 wiretap] application packet, the clerk's office date-stamped the packet indicating that it was 'RECEIVED.' The clerk's office then made a complete copy of the filing for the government's records. The government saved a copy of this application packet for its file and the copy received by the clerk's office on July 6, 2009 is attached as Govt. Ex. E." Id., ECF 216 at 15-16; see also Attachment. Prosecutors' alleged copy of the July 2, 2009 wiretap application was fraudulent because it was stamped "RECEIVED" with an incorrect date stamp of July 2, 2000. Id.; see also Aguiar III, ECF 216-5; but see In re Tahaic, No. 2:09-mc-34, ECF 17 at 1 (ECF version of the original July 2, 2009 wiretap application missing a complete DOJ authorization stamped "FILED" and having been date and time stamped July 6, 2009 at 12:01 p.m. and further initialed by the court clerk); see also Attachment (formal complaint against Vermont prosecutors that no agency is willing to better investigate).

During Mr. Aguiar's August 4, 2010 suppression hearing, Judge Sessions accepted the representations and obviously fraudulent supporting evidence of prosecutors "in good faith," Aguiar III, ECF 624 at 86:22-24, despite counsel's specific argument that the July 2, 2009 DOJ wiretap authorization page was missing at the time Judge Sessions signed the wiretap warrant. Id. at 76-87. Despite multiple meritorious motions to suppress the government collected investigative evidence authorized by Judge Sessions, Judge Sessions denied them all. Id., ECF 371; 377; 428.

In January 2011, Attorney Williams insisted that Mr. Aguiar accept the government's plea offer and plead guilty to conspiracy, but Mr. Aguiar instead insisted he was innocent and wanted to obtain all evidence relevant to his defense. Attorney Williams retaliated by withholding from Mr. Aguiar all of his legal documents despite his requests for documents related to his prior 1994-1995; 1999; 2000-2001 federal cases and those of his drug conspiracy case. Mr. Aguiar complained many times to Judge Sessions by mail and filed court motions, but his complaints went unanswered. Aguiar III, ECF 673-728.

At his scheduled December 13, 2011 sentencing for what Mr. Aguiar thought was for only his conspiracy case, Aguiar III, ECF 577, Judge Sessions is again believed to have had ex parte communications with a prosecutor prior to sentencing about a still filed under seal August 2005 violation of supervision allegation in Aguiar II, ECF 30 (government entering a Dec. 13, 2011 appearance), imported from Massachusetts and sealed events that neither Mr. Aguiar nor Attorney Williams were aware of. Aguiar II, ECF 31-32. Judge Sessions: (1) ambushed Mr. Aguiar during the scheduled drug

conspiracy case sentencing with only a verbal reference to the still sealed supervision violation allegation, Aguiar III, ECF 629 at 2; (2) did not appoint Mr. Aguiar conflict-free counsel under 18 U.S.C. §§ 3006A(a)(1)(C); (a)(1)(E), Aguiar II, ECF 31-32 et seq.; (3) improperly misjoined the drug conspiracy case and revocation case proceedings, Aguiar III, ECF 629; (4) spontaneously revoked Mr. Aguiar's 2001-imposed term of supervision without first giving him evidence of a violation or warrant as required by the Fifth Amendment; Fed. R. Crim. P. 32.1; and 18 U.S.C. § 3583(e), Aguiar II, ECF 31-33; Aguiar III, ECF 629; and (5) without subject matter jurisdiction, sentenced Mr. Aguiar for revocation of supervised release under 18 U.S.C. § 3583(e)(3) to 36 months in prison by failing to satisfy Congress's jurisdictional prerequisite under § 3583(e) to consider first the sentencing guidelines, the grade of violation that Mr. Aguiar allegedly violated, the applicable guideline range under § 7B1.4(a), or § 3553(a) factors in failing to adequately explain his chosen sentence. Aguiar III, ECF 629 at 27; but see § 3583(e).

After sentencing, Mr. Aguiar continued efforts to obtain all evidence relevant to his defense. He sent repeated letters to both Attorney Williams and Judge Sessions complaining that he needed his legal documents. While Mr. Aguiar was unknowingly being misled by Attorney Williams about the law and his rights, he began asking other inmates for legal help and began filing claims in the courts both criminal and civil, see, e.g., Aguiar I, ECF 46; 49; Aguiar II, ECF 37; 67; Aguiar III, ECF 717; 798; 807; Aguiar v. Myspace, No. 2:17-CV-5520 (C.D. Cal. 2017); Aguiar v. DEA, No. 1:14-CV-240 (D.D.C. 2015); Aguiar v. Carter, No. 2:17-CV-121 (D. Vt. 2020), as he relentlessly continued to seek all evidence relevant to his defense to redress the violations of his rights resulting in his 30 year prison term and to uncover the misconduct by prosecutors and Judge Sessions that he never knew about. Each post-conviction criminal and civil action that Mr. Aguiar has filed in the Burlington, Vermont court has been denied by Judge Sessions: Aguiar I, ECF 58; Aguiar II, ECF 48; 62; 93; Aguiar III, ECF 780; 819; Aguiar, No. 2:17-CV-121, ECF 103; 113; 115; 128; 131; 132. The legal reasoning of Judge Sessions's opinions and orders, however, cherry pick the facts and rely on inapplicable governing law given that any favorable outcome in any of Mr. Aguiar's criminal cases would result in him potentially vacating his 30 years prison term and exposing Judge Sessions's misconduct resulting in his current incarceration.

III. Judge Sessions Improperly Communicated With a Prosecutor Off the Record to Repeatedly Expose Mr. Aguiar to an Inapplicable 21 U.S.C. § 851 Statutory Enhancement and to Impede and Deny Mr. Aguiar's Post-Conviction Claims

In 2000-2001, Judge Sessions Knowingly and Intentionally conducted off record communications with a prosecutor about plea negotiations to convince Mr. Aguiar to plead guilty and accept a disputed guilty plea and substantively invalid plea agreement in imposing an inapplicable 21 U.S.C. § 851 enhancement. Aguiar II, ECF 30 at 2 (July 23, 2001 sentencing transcript); ECF 86-1 (amended post-conviction claims); United States v. LaBonte, 520 U.S. 751, 754 n.1 (noting that absent the filing of a § 851 information, "the lower sentencing range will be applied even though the defendant may be eligible for that increased penalty").

In 2000-2001, Judge Sessions sentenced Mr. Aguiar to an inapplicable six year statutory mandatory minimum term of federal supervision. Aguiar II, ECF 86-1. On December 12, 2011, Judge Sessions colluded with a prosecutor, id., ECF 30 (docketed entry of AUSA appearance), about sealed docket activity, id., ECF 32 (sealed event of an imported from Massachusetts USPO-filed under seal August 2009 supervision violation petition that Mr. Aguiar did not know existed), to revoke Mr. Aguiar's 2001-imposed term of supervision and to prevent him from discovering Judge Sessions's misconduct. See pp. 2-3 of this complaint. Judge Sessions did not appoint Mr. Aguiar conflict-free counsel and spontaneously revoked this term of supervision based on a still filed under seal August 2009 warrant petition imported from Massachusetts two hours earlier, see Aguiar II, ECF 30-34, without giving Mr. Aguiar advance notice during what he understood to be his scheduled sentencing for only his drug conspiracy case. Aguiar III, ECF 577 (scheduling order); ECF 629 (Dec. 12, 2011 sentencing transcript). Notwithstanding that Judge Sessions lacked authority to revoke Mr. Aguiar's term of supervision under § 3583(e)(2) because he failed to satisfy Congress's jurisdictional prerequisite under § 3583(e) that he must first consider multiple 18 U.S.C. § 3553 factors, Aguiar III, ECF 629 at 27, Judge Sessions also exceeded his authority by sentencing Mr. Aguiar over the authorized statutory maximum under 18 U.S.C. §§ 3559(a)(2); 3583(e)(2) for his revocation based on his original offense and 21 U.S.C. §§ 841(a)(1); (b)(1)(C) conviction. Judge Sessions's misconduct is evidenced by denying Mr. Aguiar's post-conviction claims using legal reasoning that does not objectively comport with the law as Mr. Aguiar remains in prison when he would otherwise be resentenced to time served given the invalidity of his prior proceedings.

IV. Judge Sessions signed the July 2, 2009 Title III Wiretap Application that Did Not Contain a Proper Authorization from the DOJ at the Time it was Signed; Improperly Communicated With a Prosecutor; and Used the Business of the Courts to Rule Against Mr. Aguiar with an Improper Motive in Both his Pretrial and Post-Conviction Proceedings

On July 2, 2009, a Burlington, Vermont prosecutor presented Judge Sessions with a Title III wiretap application as part of a criminal investigation against Mr. Aguiar for drug trafficking. The July 2, 2009 wiretap application, however, was missing a complete United States Department of Justice ("DOJ") authorization from the Criminal Division as required by 18 U.S.C. § 2516. See In re Tabair, ECF 17. Despite the lack of the required complete DOJ authorization that the prosecutor alleged was attached as an exhibit, see id. at 1-2, Judge Sessions nevertheless issued an order authorizing the government to intercept Mr. Aguiar's calls. In re Tabair, ECF 18.

At his August 5, 2009 detention hearing, Mr. Aguiar told his attorney about the lacking DOJ authorization in the July 2, 2009 wiretap warrant, but his attorney did nothing until March 20 well after the original wiretap had been destroyed. Id. In response to Mr. Aguiar's attorney's motion to suppress, prosecutors fabricated a U.S. District Court stamp, superimposed that stamp on a copy of a July 2, 2009 wiretap from its records, and swore under oath that its proffered exhibit was a copy of the original. Id. Mr. Aguiar told his attorney about the fabricated evidence filed by prosecutors, but his

attorney never once mentioned the inconsistent statements made, against the evidence offered, by prosecutor. Id.

Judge Sessions presided over proceedings to suppress his own authorized evidence collected. After improper ex parte contact with a prosecutor, Judge Sessions accepted prosecutors' fabricated and inconsistent story and evidence "in good faith." Aguiar III, ECF 624 at 86. Mr Aguiar raised the issue in a post-conviction action, id., ECF 723-1 at 80-84, and specifically pointed out to Judge Sessions that trial counsel's failure to investigate prosecutors' fabricated court stamp and inconsistent statements was materially prejudicial, id., ECF 776 at 29-32, but Judge Sessions used the business of the court to sanction prosecutors' misconduct without an evidentiary hearing and for an improper motive and purpose. Id., ECF 780. If this is not enough, Mr. Aguiar later tried to file a complaint against prosecutors about the misconduct and fabricated evidence, see Attachment, but was not successful and needs court intervention.

Judge Sessions's dislike, bias, and judicial misconduct against Mr. Aguiar continued in his presiding over Mr. Aguiar's civil complaint against government officials alleging claims surrounding the fabricated court stamp, Aguiar, No. 2:17-CV-121, ECF 3, ruling with an improper motive to dismiss Mr. Aguiar's claim because there "[was] no plausible allegation that the Current AUSA Defendants acted fraudulently or unfairly...." Id., ECF 115 at 15; but see Attachment.

V. Conclusion

Mr. Aguiar has established by clear and convincing evidence that Judge Sessions Knowingly and intentionally has taken, is taking, and will continue to take partial and conflicted steps in his central role as judicial factfinder in each of Mr. Aguiar's cases over which he has, is, and will potentially preside to use the business of the court to rule with an improper motive to prevent Mr. Aguiar from having his day in court so that he can expose the truth surrounding the mistakes and misconduct that transpired over the course of decades that resulted in Mr. Aguiar's convictions and 30 year prison term. Justice calls on this reviewing body to fully investigate Mr. Aguiar's plausible allegations here because Judge Sessions is the conflicted gatekeeper disallowing Mr. Aguiar from enjoying impartiality in the district court where he has sought relief for many years.

VI. Declaration

I, Stephen Aguiar, do hereby certify under penalty of perjury, 28 U.S.C. § 1746; 18 U.S.C. § 1621, the statements and affirmations made, advanced, or alluded to above are true and correct to the best of my knowledge and recollection.

Respectfully submitted,

Dated this 24th of September, 2020

Stephen Aguiar
Reg. No. 03722-082
P.O. Box 1000
Petersburg, VA 23804

20-90098-jm
March 2, 2021
Chief Judge

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

----------X

In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 20-90098-jm

----------X

DEBRA ANN LIVINGSTON, *Chief Judge*:

On September 29, 2020, the Complainant filed a complaint with the Clerk's Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364 (the "Act"), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the "Rules"), charging a district judge of this Circuit (the "Judge") with misconduct.

BACKGROUND

The Complainant was a defendant in three criminal cases, filed in 1994, 2000, and 2009. All three cases were assigned, at least in part, to the Judge. In the 1994 case, the Complainant was convicted of stealing a firearm and drug distribution. The case was initially assigned to another judge, who sentenced the Complainant to 63 months' imprisonment. But the Judge presided over certain

post-judgment proceedings, including denying the Complainant's petitions for writ of error coram nobis. The 2000 and 2009 cases also resulted in convictions for drug distribution; the Judge sentenced the Complainant to 92 months' imprisonment in the 2000 case, and 360 months' imprisonment in the 2009 case, and has continued to preside over post-judgment motions in both cases.

The misconduct complaint relates in large part to events that allegedly occurred decades ago. The Complainant claims, for example, that the Judge, in either 2000 or 2001, took part in inappropriate "off the record" ex parte conversations with the prosecutor "to convince [the Complainant] to plead guilty." No further details are provided. Similarly, he alleges that the Judge "is again believed to have had ex parte communications with a prosecutor" around the time of his December 2011 sentencing.

The remainder of the complaint challenges many of the Judge's rulings. The complaint alleges that the Judge "improperly misjoined" the Complainant's criminal case with a proceeding regarding the revocation of supervised release; erroneously revoked supervised release without providing evidence of a violation; sentenced the Complainant for violating supervised release without subject matter jurisdiction to do so; signed an incomplete wiretap application;

and "cherry-picked" facts and relied on inapplicable law to deny the Complainant's various post-judgment motions. The Complainant asks for his criminal cases to be re-assigned to another judge.

DISCUSSION

The complaint is dismissed.

The allegations of inappropriate ex parte communications occurred between 11 and 21 years ago, and the Complainant does not explain why he neglected to file a misconduct complaint earlier. Accordingly, the complaint's allegations are dismissed as stale. *See* Rule 11 cmt. ("Dismissal is . . . appropriate when a complaint is filed so long after an alleged event that memory loss, death, or changes to unknown residences prevent a proper investigation."). Moreover, if these allegations were not stale they would be dismissed for failing to provide sufficient evidence to raise an inference that misconduct has occurred. *See In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009) (misconduct complaint "must be more than a suggestion to a Chief Judge that, if [s]he opens an investigation and the investigating body looks hard enough in a particular direction, [s]he might uncover misconduct. It must contain a specific allegation

of misconduct supported by sufficient factual detail to render the allegation credible.").

The remaining allegations, including alleged improper joinder, lack of subject matter jurisdiction, signing an incomplete warrant, and relying on inapplicable law, challenge the merits of the Judge's rulings. In other words, these are claims that the Judge got it wrong, not that he engaged in misconduct. Accordingly, the allegations are dismissed as "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling . . . ."); 11(c)(1)(B). Purely merits-related allegations are excluded from the Act to "preserve[] the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling." Rule 4 cmt. If the Complainant wishes to challenge those rulings, he may do so, to the extent the law allows, only through normal appellate procedures.

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 20-90098-jm

Before the Judicial Council of the Second Circuit:

A complaint having been filed on September 29, 2020 alleging misconduct on the part of a District Judge of this Circuit, and the complaint having been dismissed on March 2, 2021 by the Chief Judge of the Circuit, and a petition for review having been filed timely on April 1, 2021.

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated March 2, 2021.

The clerk is directed to transmit copies of this order to the complainant and to the District Judge whose conduct is the subject of the underlying complaint.

Dated: May 12, 2021
New York, New York