

Criminal Docket For Case # 1:15-cr-00243-1

- A) Page 10 – 11 Dated 07/01/2016 USA Sealed Plea agreement,
- B) Stricken the Quantity Allegation from Count I which is the only Count. No Quantity No detectable amount.
- C) Plead Guilty to attempt to posses No drugs / Quantity

9) Petition Pursuant to 28 USC 2255 No. 15 CR 243

I hired two attorneys that screwed my 2255 up. I told them to correct so many things which they did not and would not communicate with me.

First sentence of Motion:

Mr. Allegra pleaded guilty to possession of controlled substance and transporting the controlled substance from Mexico to Chicago.

- A) I did not plea guilty to any such charge
- B) No controlled substance, Cocaine was stricken from the Indictment
- C) The allegation was stricken from the indictment
- D) Never charged with Transportation
- E) Edward Genson had terminal cancer that he never disclosed
- F) Many things in the 2255 that were incorrect or he didn't present

Government Memorandum in Opposition to Defendants Motion to Vacate, Set Aside or Correct Sentence

- A) Again On April 19th, 2015 the Indictment was corrected on July 1st, 2016 see court Docket or transcripts.
- B) Drug quantity / weight was stricken
- C) Allegation was stricken
- D) I said No to Intent to Distribute see Court Records / Transcripts
- E) Federal Prosecutor stated in Open Court they only had books and suitcases No Drugs. Which means he lied to the Grand Jury when he went to the Grand Jury. See my 60(B) Motion.
- F) See page 4 they the court lacked Jurisdiction, the sentence was filed in Violation to Constitutional Law.
- G) Page 6 When I asked Probation Officer about Probation I was not influencing her but trying to verify that there is no legal charge or sentence for "Attempt to Posses"
- H) In the PRS report she asked the prosecutor and my attorney for a recommendation of sentence for she could not determine nor find one.

PreSentence Investigation Report
Prepared by Laura O'Connor
Date Report Prepared: November 3, 2016

Page 4 Paragraph 3. The Court agree to the Motion to strike the quantity allegation from the Count One of the Indictment. **Each party is free to recommend whatever sentence it deems appropriate.** In addition, the defendant has agreed to waive any right, title and interest he has in the property indicated in the plea agreement.

(When talking to her she stated she had no code to judge this crime by once they eliminated the drugs!)

Page 6 Paragraph 15: Count 1: Attempt to Possess With Intent to Distribute Cocaine

You must have Cocaine or a Drug to be charged with "Intent to Distribute"
On 07/01/16 the court dropped the drug allegation and admitted no drugs were present, therefore no detectable amount meaning the Prosecutor lied to get an Indictment.

Page 17 Paragraph 67: Restitution, they clearly stated that I could make installment payments, during a period of supervised release.

The government took a Million dollar building a new Bentley Convertible all my business and personal items in my business valuing over 250,000.00 along with a IRA account of just under \$100,000.00 and went and hired my ex-wife's accountant to close my books on just one of my 5 business's that my ex-wife forged a signature to and made her President to. I tried to move my stuff out but the gov't would not allow my agent entry into the building to move anything. The gov't even as of today is trying to get a title to a car my company did a cash donation to along with a donation but the donation company never gave me my write off so I asked for the car back. This goes back to 2016 and they are going in front of Bucklo on February 17th, 2022 to correct a title that I have never authorized.

Paragraph 68 & 69 clearly is completely different then when they said, in paragraph 3:
Each party is free to recommend whatever sentence it deems appropriate

Paragraph 70: they removed the plane in calculations but with it in the FAA has revoked my Pilot Privileges. I need this cleaned up or the revocation so I can fly again.

What is in the 2241 Motion

Brief Summary of the 2241 Motion Writ of Habeas Corpas

- 1) Constitution was not Followed
- 2) My Rights were Violated
- 3) Laws were not Followed
- 4) Actual Innocence
- 5) No Crime was Committed
- 6) BOP is not Following the First Step Act of 2018 (FSA)

Page 5:

- 1) Actual Innocence
 - (i) Indictment is insufficient
 - (ii) Gov't Fabricated Evidence
 - (iii) Entrapment-use or place Post Arrest in Docket from the 60B Motion Filed in Chicago with Judge Bucklo.
 - (iv) November I filed a 59B and Judge Bucklo still has not ruled on that Motion (Fraudulent Indictment) it is now going into two years without a ruling by the Judge.

Page 6:

Plea Agreement was Not Knowing and Voluntary

Page 7:

Plead Guilty to No Weight zero grams (No Cocaine) Allegation was Stricken from the Indictment. Only One Count Indictment. No Crime
(ii) Ineffective Counsel

Page 8:

(ii) Insufficient Indictment - No Material facts this is Flawed Indictment, (Only a Statue)

Page 9:

(iii) Fraudulent Plea Agreement
Facts are not in the Indictment
False Evidence
Withdrew Drug Quantity
Fraudulent Plea Agreement
Never a Detectable amount of Cocaine
Gov't Admits to lying to the Grand Jury & procured the Indictment thru Fraud (See Motion in front of Judge Bucklo) Motion 60B & 59

Page 10:

FSA Being held past my imposed Sentence
FSA started December 21st, 2018
Just released December 28th, 2021 was informed I should have been released last year. This is exactly what I fought for in my Motion

Page 11:

We requested a Evidentiary Hearing it was approved in the First 2241 Motion
We requested Legal Counsel, never appointed, The Judge never denied either.
This all should of been approved in the 2241 Motion

Now Comes the Memorandum of Law

Page 2:

Robert Allegra is entitled to Under the 6th Amendment Effective Counsel

Page 3:

5th Amendment Violation during Plea Colloquy did not Knowing or Voluntary and Violated the Due Process of the 5th Amendment

Without a warrant or Due Process of Law, Unlawfully seized 2014 Bentley (Automobile)

Page 5:

Indictment is insufficient as a matter of Law Rule 7(c)(1) No Material Facts. 5th Amendment Violation

Page 7:

4th Amendment Violation, Attorneys Deficient Performance

28 USC 846 Address's "Attempt and Conspiracy" But fails to Allege any facts that would constitute the Offense. 5th Amendment Violation

Page 8:

Forfeiture Allegation within the Indictment is insufficient, is a matter of Law and Violates the 5th Amendment

Unlawful Seizure of the Bentley Violated the 5th Amendment

Page 11:

Unlawful Seizure of the Bentley Violated the 4th & 5th Amendment to the Constitution

Page 12:

Government Knowingly fabricated Evidence Violated 5th Amendment Right to Due Process of law

Page 14:

Misconduct (Entrapment)

Page 15:

The Plea Agreement was Not Knowing and Voluntary 6th Amendment Privilege for Rights to Effective Assistance of Counsel

Guilty Plea was born from Intentional and Outrage Prosecutorial Misconduct and Gross Ineffective Assistance of Counsel that Violated 5th Amendment Right to Due Process of Law and the 6th Amendment Right to Effective Assistance of Counsel

Page 16:

5th Amendment Violation: **No Person Shall Be Held to Answer For A Capital, or Otherwise Infamous Crime, Unless on A Presentment or Indictment of a Grand Jury. The Plea Agreement Relies On Facts Not Presented to The Grand Jury.**

Page 17:

5th Amendment Forbids Amendment of an Indictment other than by the Grand Jury. This Indictment was never a True Bill.

Page 18:

6th Amendment Violation: Defendant only has to answer to the Charges actually brought by the Grand Jury

Page 19 - 20:

5th Amendment Violation Right to Due Process of the Law. **Plea was Not Knowing and Voluntary**

Pages 22 - 23:

5th Amendment Right to Due Process of Law being Violated by Deficient Attorney's performance

Page 24:

Attorney rendered ineffective Assistance of Counsel, and violated 6th Amendment Right to Effective Assistance of Counsel

Page 24 - 33:

5th Amendment Constitutional Right to Liberty

Page 30:

Robert Allegra faces Irreparable Harm Due to his Unlawful Imprisonment and Resulting Violation of his Constitutional Rights.

This Unlawful Imprisonment also Violates my Constitutional Rights, including my Right to Liberty under the 5th Amendment.

The BOP finally released me to Probation on December 28th, 2021 stating they held me 10 months past my out date based on the FSA of 2018

Index for Robert Allegra Case # 15 CR 243 and proceeding Case's and Motions

- 1) Filing of 60(b) November 18th, 2020 Judge Bucklo Denied it with no explanation
- 2) Filing of 59(e) Requesting clarification of Rule 60(b) which Judge Bucklo has never responded to.
- 3) Court Transcripts, Review of 11 of them: May 29th, 2015 – July 2nd, 2015 – August 12th, 2015 – Sept 17th, 2015 – Oct. 6th, 2015 – Oct. 13th, 2015 – Nov. 20th, 2015 – December 8th, 2015 – Dec. 18th, 2015 – May 13th, 2016 - July 1st, 2016

2255 Rebuttal on Bucklo –

- 4) Sentencing 3) Transcripts July 19th, 2017 10:30AM
- 5) 2241 Motion: Petition For Writ of Habeas Corpus Under 28USC 2241 and Request For Emergency Relief

Memorandum Of Law In Support Of Petition For Writ Of Habeas Corpus Under 28USC 2241 And Request For Emergency For Emergency Relief

(ENCLOSED BRIEF SUMMARY OF WHAT IS IN THE 2241)

- 6) Government's Response and Brief Opposing Petitioner's Application for Writ Of Habeas Corpus
- 7) Criminal Docket For Case #: 1:15-cr-00243-1
- 8) Plea Agreement Filed Jul 1-2016
- 9) Petition Pursuant to 28 USC 2255
- 10) Government Memorandum In Opposition To Defendant's Motion To Vacate, Set Aside Or Correct Sentence
- 11)

**Government's Response and Brief Opposing Petitioner's Application
for Writ of Habeas Corpus**

- 1) First off I exhausted my administrative remedies with the BOP. The staff at Milan Michigan would not give me BP forms so I had to write such on the documents I sent to the staff. Furthermore because of Covid we were also relaxed in having to file the BP Forms and it allowed us to go directly to the Courts.
- 2) Page 2 in the FSA I earned over 1400 credit hours for my relief to go home one (1) year earlier. BOP lied at this time Once I got to the Halfway House in Chicago they informed me that I was 10+ months past my out date.
- 3) Page 3 I exhausted my remedies via all the documentation I have
- 4) Page 5 BOP was required by Law under the First Step Act of 2018 to issue credits from December 2018 forward and apply them to all inmates that maintain a Minimum or Low Recidivism rating. I was always Minimum.
- 5) Page 6 The programing started in 2018 not 2022
- 6) Page 8 & 9 A 2241 Motion was and is the correct manner to bring this forward for in my Motion I clearly claim Actual Innocence
- 7) Worth noting in December of 2019 I was charged with an Escape From Home Confinement. This was 17 days after I filed my 60B Motion and my 59 Motion accusing the gov't of a fraudulent Indictment and the Prosecutor lied to the Grand Jury. My wife has a relationship with Joe Stewart the AUSA and I went to Gibson's Restaurant while on a Pass from Home Confinement. When I arrived at the Chicago Halfway House one year later the lady in charge of the DHO who should of seen me and I would of been sanctioned 7 days at home stated to me I need to SUE the BOP and the Halfway House for I did not escape and that she was never informed why the US Marshals were waiting for me when I showed up at the Halfway House. Her words!
- 8) I have a perfect prison record with no violations and earned over 1400 hours of credit. I took over 35 class's taught Yoga and had a job the whole time.
- 9) Again in this package you will see in the 2255 that the previous Attorney that filed the 2255 did not do it correctly and would not listen to me nor correct any of their mistakes. Furthermore if they read my case and documents they would have clearly understood what I did or did not plea to. This is the opening line of my 2255 which is completely incorrect. "Mr. Allegra pleaded guilty to Possession of a Controlled substance and transporting the controlled substance from Van Nuys, California to Chicago."

- A) I did not plead guilty to possession to a Controlled SubStance
- B) I was never charged with Transportation
- C) I never flew from Van Nuys to Chicago.

Defendant Robert Allegra's Notice of Appeal

On 10/09/2018 Colleen M. Hurley, Attorney Filed a Notice of Appeal and never followed up on the Appeal.

Edward Genson my original trial Attorney at the end of my case filed for a Appeal and was then Hospitalized and my Appeal once again was a never accomplished...

These are all major issues!

October 9, 2018 My Appellate Case No: 18-3150 was recognized by the Courts

November 21, 2018 They dismissed my request for the Attorneys never filed.

Plea Agreement Filed Jul 1-2016

2. I was not charged with attempted possession with Intent to Distribute a controlled Substance, namely a mixture and substance containing a detectable amount of cocaine, A Scheduled II Controlled Substance, in Violation of 21 USC 846

Prosecutor under Oath and in Court on July 1st, 2016 stated they only had Weights and Books in the suit cases.

- A) No Cocaine
- B) No Substance
- C) Dropped Allegation
- D) In Court I stated I did not Intend to Distribute
- E) Not a Scheduled II Controlled Substance
- F) Not in Violation of 21 USC 846

3. Indictment was changed on July 1st, 2016

A) I plead guilty to the new charge of No Drugs

5. I did not plea guilty to the charges for my charges were dropped in Court on July 1st, 2016

6. Indictment was changed on 07/01/16

The indictment was only for 5 days.

All dates prior to the date of March 20th, 2015 are irrelevant

7. Maximum Statutory Penalties for No Drugs doesn't exist

8. Guidelines, again No drugs and I stated I was not going to Distribute Nor is there a Charge of "Intent to Distribute without drugs"

14. Forfeiture: The car never did anything involved in a crime Nor did I ever commit a crime to buy the said car.

[On July 1st, 2016 in the Transcripts this is what was stated plus she did state it was only books and weighted suitcases...](#)

MS JENKINS: Good afternoon, your Honor. Lindsay

Jenkins for the United States...

MS JENKINS: Your Honor, I don't mean to interrupt you, but I did want to put something on the record before we get into the heart of the plea. The government is moving orally to strike the quantity allegations from Count 1 of the indictment. The plea agreement that's before you and the plea agreement that was tendered to the Court yesterday reflects that no mandatory minimum will be -- the government will not seek the mandatory minimum in this case. We're moving to strike those allegations. And the plea agreement in front of you reflects the accurate maximum possible penalties in the penalty section.

The Govt' needed to stop at this point and clarify the crime.

No Drugs: Can't have Intent to Distribute. Which you will see I clearly stated on the record I wasn't going to distribute.

No Detectable Cocaine as stated in the Indictment.

My Motion 60B that Judge Bucklo will not rule on under my Motion 59 for Clarification has been sitting now since November of 2019.

023

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT ALLEGRA
Petitioner

V.

JOHN R. HEMINGWAY
Warden, Milan FCI
Respondent

No.

Judge:

**PETITION FOR A WRIT OF HABEAS CORPAS UNDER 28 USC § 2241 AND
REQUEST FOR EMERGENCY RELIEF**

Now comes the movant, Robert Allegra, ProSe, and respectfully moves this Honorable Court, pursuant to 28 U.S.C. § 2241, to correct the sentenced entered under the color of law and in violation of the Constitution of the United States.

JURISDICTION

28 USC § 2241 grants the District Court authority to grant a prisoner relief if ;

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(c)(1) *he is in custody under or by color of the authority of the United States.*

(c)(3) *He is in custody in violation of the Constitution or laws or treaties of the United States.*

Robert Allegra is in custody at FCI Milan, located in the Eastern District of Michigan, Southern Division, Robert Allegra is properly before this court.

In support of this motion, Robert Allegra offers the following facts:

Personal Information

1. Full Name: Robert V. Allegra
2. Place of Confinement;
 - (a) Name of Institution:
FCI Milan
 - (b) Confinement Site:
FCI Milan
4004 East Arkona Road
Milan, MI 48160
 - (c) Identification Number: 47926-424
3. Robert Allegra is currently being held on orders by Federal Authorities:
4. Robert Allegra is currently serving a sentence after being convicted of a crime, in the United States District Court for the Northern District of Illinois.
 - (a) Honorable Elaine Bucklo was presiding Judge.
 - (b) Docket number of criminal case: 15 CR 243
 - (c) Date of Sentencing: July 19, 2017

Decision or Action that is the Subject of this Petition

5. This Petition raises a challenge to how the sentence is being carried out, calculated or credited by the Bureau of Prisons (BOP).

6. On or about December 18, 2020, Petitioner, Robert Allegra submitted a written formal request to the BOP, in the form of a “BP-9” Request for Administrative Remedy, via email and fax, requesting the BOP to apply the Earned Time Credits (ETC) pursuant to the First Step Act of 2018, 18 USC § 3632.

(a) As of the filing of this Petition, the BOP has failed to respond.

(b) Request for Administrative Remedy was sent to:

The Bureau of Prisons / Designation & Sentence Computation Center
U.S. Armed Forces Reserve Complex
346 Marine Forces Dr.
Grand Prairie, TX 75051
Phone: (972) 352-4400
Fax: (972) 352-4395
Email: GRA-DSC/Policycorrespondence@bop.gov

Earlier Challenges of This Decision or Action

7. First Appeal:

(a) Robert Allegra filed a Petition under 28 USC § 2255

(b) Date of Filing: July 20, 2018

(c) Result: Petition Denied

⚡ (d) Issues Raised: Robert Allegra DID NOT raise this issue in his 28 USC § 2255 Petition.

8. This Petition IS NOT a Motion under 28 USC § 2255(h)

9. A successive § 2255(h) petition would be inadequate or ineffective to test the legality of his detention.

10. The "savings clause" in 28 USC § 2255 (e) authorizes a federal prisoner to file a § 2241 petition in limited circumstances, that is when § 2255 is "inadequate or ineffective to test the legality of his detention. *See Poe v. LaRiva*, 834 F. 3d 770 - *Court of Appeals*, (7th Cir. 2016)

11. Second Appeal:

(a) Robert Allegra Filed a BP-9 Request for Administrative Remedy with the Bureau of Prisons, Designation and Sentence Computation Center.

(b) Date of Filing: November 18, 2020

(c) Result: No Response from BOP

(d) Issues Raised: The BOP has failed to apply Earned Time Credits pursuant to the First Step Act of 2018, 18 USC § 3632 which has resulted in a constitutional violation and incarceration beyond the lawful release date pursuant to the application of the Earned Time Credits, earned pursuant to the First Step Act of 2018, 18 USC § 3632.

12. Third Appeal:

(a) Robert Allegra is excused from exhausting his administrative remedies because he faces irreparable harm from the violation of his constitutional rights.

13. This case DOES NOT concern immigration proceedings.

14. Robert Allegra HAS NOT raised these issues in any Court Proceedings.

GROUND FOR CHALLENGE IN THIS PETITION

I. ACTUAL INNOCENCE

(i) THE INDICTMENT IS INSUFFICIENT AS A MATTER OF LAW

15. The Indictment fails to state any facts of the alleged charge under 21 USC § 846

16. The Indictment contains knowingly fabricated evidence and statements

(ii) GOVERNMENT FABRICATED EVIDENCE

17. The government fabricated the “*five kilograms or more of a mixture and substance containing a detectable amount of cocaine*” as charged in the indictment.

18. The government knowingly and willfully fabricated evidence to the grand jury and to the district court, with the sole purpose of getting a conviction for a crime that does not exist.

19. There was never, any schedule II, controlled substances in or around Robert Allegra as charged in the indictment.

20. The Government used a suitcase with weighted vests and books to

21. There was never any substance that contained a detectable amount of cocaine.

22. There was never a substance that was lab or field tested, that had a detectable amount of cocaine.

(iii) GOVERNMENT MISCONDUCT (ENTRAPMENT)

23. Robert Allegra was unknowingly induced and entrapped with the sole purpose of being a government informant.

24. Robert Allegra had no predisposition of criminal activity.
25. The government knowingly and willfully, fabricated and set up, a fictitious crime for the sole purpose of tricking Robert Allegra into thinking he committed a crime.
26. The government knowingly and willfully targeted and induced Robert Allegra with the intent of tricking him into thinking he committed a fabricated crime, with the sole intent to make Robert Allegra a government informant.
27. Robert Allegra is Actually Innocent, both factually and legally.

(iv) THE PLEA AGREEMENT WAS NOT KNOWING AND VOLUNTARY

28. Robert Allegra was under duress and his plea was not knowing and voluntary
29. During the plea colloquy with the court, Robert Allegra failed to meet the legal standard required by the court to accept his plea when he failed to acknowledge a required element of the charged offence.
30. The trial court violated Robert Allegra's 5th amendment right of Due Process when it accepted his plea that was not knowing or voluntary.
31. Attorney Edward Genson, failed to object to the court accepting the fraudulent plea agreement when Robert Allegra failed to acknowledge a required element of the offence, this ineffective assistance of counsel violated Robert Allegra's 5th amendment right of Due Process and 6th amendment right of effective assistance of counsel.
32. Robert Allegra was under the influence of the assistance of his attorney, Edward Genson, who was mentally incapacitated by the terminal illness of cancer, an illness that attorney, Edward Genson concealed from Robert Allegra.

33. No reasonable person would knowingly accept a plea agreement that increased the alleged drug quantity by 9 times the amount that was charged in the indictment.

34. No reasonable person would voluntarily accept a plea agreement that increased the alleged drug quantity by 9 times the amount that was charged in the indictment.

35. No reasonable person would knowingly accept a plea agreement that contained an allegation of ^{4.5}~~90~~ kilograms of a substance that contained a detectable amount of cocaine, when in fact, there never was any substance that contained a detectable amount of cocaine.

36. No reasonable person would voluntarily accept a plea agreement that contained an allegation of ^{4.5}~~90~~ kilograms of a substance that contained a detectable amount of cocaine, when in fact, there never was any substance that contained a detectable amount of cocaine.

37. The ineffective assistance of Robert Allegra's attorney, prejudiced Robert Allegra and caused irreparable harm in violation of the 6th amendment of the Constitution of the United States.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

38. Robert Allegra's attorney provided ineffective assistance of counsel that prejudiced Robert Allegra and caused Robert Allegra to be irreparable harmed, by the wrongful conviction and imprisonment that violated the 6th amendment of the Constitution of the United States.

(i) COUNSEL FAILED TO DISCLOSE TERMINAL ILLNESS

39. On or about April 14, 2020, Robert Allegra's Attorney, Edward Genson passed away from a long battle with cancer.

40. Attorney, Edward Genson omitted, concealed, withheld, covered up and failed to disclose to Robert Allegra, his ongoing battle with cancer when he was retained by Robert Allegra.

41. Attorney, Edward Genson, had an ethical duty to disclose his illness to Robert Allegra, prior to him retaining his legal representation.

42. At times relevant to this case, Attorney, Edward Genson, made statements to the court in which he was so incapacitated, he did not know what day it was.

43. The Trial court failed to recognize several obvious signs of the deterioration of Attorney, Edward Genson's mental and physical health.

44. Attorney, Edward Genson's, concealment, cover up and failure to disclose his terminal illness, prior to agreeing to represent Robert Allegra, prejudiced Robert Allegra, caused irreparable harm and violated the 6th amendment of the Constitution of the United States of America.

(ii) COUNSEL FAILED TO CHALLENGE LEGALLY INSUFFICIENT INDICTMENT

45. On or about April 29, 2015, the government knowingly and willfully filed an indictment charging Robert Allegra with one count of a violation of 21 USC § 846. (15 CR 243)

46. The indictment in case 15 CR 243 failed to state any material facts that would support Robert Allegra being charged with an offence under 21 USC § 846 and is insufficient as a matter of law.

47. Robert Allegra's Attorney failed to make any challenge of the legally insufficient indictment which prejudiced Robert Allegra and caused irreparable harm.

48. If not for Robert Allegra's attorney's ineffective assistance, Robert Allegra would not have been wrongfully convicted, sentenced and imprisoned.

(iii) COUNSEL FAILED TO RAISE CHALLENGE TO FRAUDULENT
PLEA AGREEMENT

49. On or about July ^{1st 2016} ~~30, 2017~~, the government presented to the court a plea agreement that stated facts that were not ever alleged in the indictment.

50. The government knowingly and willfully presented knowingly false evidence and made knowingly false statements to the court.

51. The government knowingly, willfully and voluntarily withdrew the drug quantity allegation from the indictment (5 kilograms)

52. The government knowingly and willfully presented to the court a fraudulent plea agreement that contained an allegation of ⁴⁵ ~~90~~ kilograms of a substance that contained a detectable amount of cocaine.

53. Attorney, Edward Genson, failed to object to the fraudulent allegation of ⁴⁵ ~~90~~ kilograms of a substance that contained a detectable amount of cocaine, this failure prejudiced Robert Allegra and caused irreparable harm.

54. The government admits that there was never 5 or ⁴⁵ ~~90~~ kilograms of a substance that contained a detectable amount of cocaine.

55. The government admits that it knowingly and willfully presented knowingly false evidence and testimony to the court.

56. It is inconceivable for an attorney to assist a client to plea to a drug quantity that is 9 times higher than the quantity alleged in the indictment, a quantity that the government just withdrew from the indictment.

57. Attorney, Edward Genson, provided ineffective assistance that far surpasses the Strickland Standard.

58. Attorney, Edward Genson's ineffective assistance prejudiced Robert Allegra and caused irreparable harm and violated the 6th amendment of the Constitution of the United States.

III. 5TH AMENDMENT CONSTITUTIONAL RIGHT OF LIBERTY

(i) ROBERT ALLEGRA IS BEING HELD UNDER THE COLOR OF LAW, BEYOND THE LEGAL TERM OF HIS SENTENCE IMPOSED BY THE COURT

59. Robert Allegra should have been released from custody and transfer to supervised release on March 26, 2021, pursuant to the First Step Act of 2018, 18 USC § 3632.

60. The Bureau of Prison have not applied Earned Time Credits pursuant to the First Step Act of 2018, 18 USC § 3632.

61. The Bureau of Prisons have not applied Earned Time Credits that are equal to the remainder of the term of Robert Allegra's imposed term of imprisonment pursuant to 18 USC § 3624(g)(1)(a).

62. The Bureau of Prisons has failed to transfer Robert Allegra to Supervised Release pursuant to the First Step Act of 2018, 18 USC § 3632(4)(c) and 18 USC § 3624(g)(1)(a).

IV. REQUEST FOR EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL

63. under 18 USC § 3006A (a)(2) this court has the authority to appoint counsel.

64. The facts alleged in this Petition for a Writ of Habeas Corpus under 28 USC § 2241, if proved, would entitle Robert Allegra relief.

65. Although the facts stated on the face of the indictment and plea agreement prove to show that Robert Allegra is entitled to relief, an evidentiary hearing should be granted in order for Robert Allegra to present facts and evidence of his Actual Innocence.

66. Robert Allegra is currently incarcerated at FCI Milan, and has no meaningful assets or source of income in which he could afford to hire private counsel.

67. This is a case in which the interests of justice would require an appointment of counsel

EMERGENCY RELIEF REQUESTED

68. Emergency relief is necessary and warranted because the *Prima Facie* evidence presented to this court, proves that Robert Allegra is factually and legally, Actually Innocent, and has suffered irreparable harm.

69. Any delay in the release of Robert Allegra would continue to cause irreparable harm

70. The facts alleged in this Petition for a Writ of Habeas Corpus under 28 USC § 2241, if proved, would entitle Robert Allegra relief.

71. Robert Allegra has made a claim of Actual Innocence and he is being held under the color of law in violation of his Constitutional right to liberty.

72. Despite Robert Allegra's actual innocence, he has served the full length of his sentence imposed by the court and is being held under the color of law.

73. Robert Allegra respectfully request that this honorable court vacate his conviction and order the Bureau of Prisons to immediately Release him from custody.

74. Or in the alternative, immediately admit Robert Allegra to bail during the adjudication of this Petition for a Writ of Habeas Corpus under 28 USC § 2241.

75. Or in the alternative, Robert Allegra, respectfully requests that this Honorable Court order the Bureau of Prisons to apply any and all Earned Time Credits pursuant to the First Step Act of 2018, and transfer Robert Allegra to Supervised Release and grant Robert Allegra any and all relief to which he may be entitled to.

Respectfully Submitted,


Robert V. Allegra

Date: 04-19-2021

Declaration Under Penalty of Perjury

I declare under penalty of perjury that I am the Petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution of perjury.


Robert V. Allegra

Date: 04-19-2021

Robert V. Allegra
Inmate No. 47926-424
FCI Milan
4004 East Arkona Road
Milan, MI 48160

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Judge:

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Robert Allegra is in custody at FCI Milan, located in the Eastern District of Michigan, Southern Division, Robert Allegra is properly before this court.

The Supreme Court has held that “*pro se pleadings are "to be liberally construed," and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers"* “*In determining the sufficiency of a pro se complaint, the Court must be mindful to construe it liberally in favor of the plaintiff*”. See *Erickson v. Pardus*, 551 US 89 (Supreme Court 2007).

In support of this motion, Robert Allegra offers the following:

INTRODUCTION

Robert Allegra is an innocent man, both factually and legally, the claims that Robert Allegra has raised in the petition and this memorandum of law will prove clearly and convincingly that no crime had ever occurred and the government knowingly and willfully induced and entrapped Robert Allegra into thinking he had committed a crime that was fabricated by the government.

Robert Allegra’s attorney knowingly and willfully withheld the material fact that he was in an ongoing battle with terminal cancer and in no way was he able to perform and function in any capacity that would have provided Robert Allegra with Effective Assistance of Counsel in which he is entitled to under the 6th Amendment of the Constitution of the United States.

The evidence will show that Robert Allegra was under the duress of a fabricated government investigation and being maliciously prosecuted under a fraudulent indictment.

Robert Allegra, following the guidance of his attorney, not knowing that his attorney, Edward Gensen was in an ongoing battle with terminal cancer and in no way able to function as a

competent attorney or give effective assistance of counsel, not fully knowing and involuntarily attempted to enter into a fraudulent plea agreement.

Robert Allegra, under the guidance of his attorney was ill advised to enter in to a plea agreement that was fraudulently negotiated by his medically disabled attorney that would have had him pleading to an offence that alleged a quantity that was 9 times larger than the quantity that was charged in the indictment.

The facts and evidence will show that Robert Allegra was never in possession of, and never attempted to possess and distribute a substance with a detectable amount of a controlled substance, as required by 18 USC § 846.

The facts and evidence will show that Robert Allegra stated in open court, to the court, during the plea colloquy, that "*he did not intend to distribute*" his plea was under duress and not knowing or voluntary and violated the Due Process clause of the 5th Amendment to the Constitution.

The facts and evidence will show that Robert Allegra is Actually innocent and legally innocent and that it is more likely than not, that no reasonable juror would have convicted him.

Justice requires that the Writ for Habeas Corpus must issue.

PROCEDURAL HISTORY

On or about or about April 21, 2015, the FBI under the guidance of the United States Attorney's Office for the Northern District of Illinois, without a warrant or due process of law, unlawfully seized a 2014 Bentley Continental Convertible from Petitioner, Robert Allegra.

On or about April 29, 2015 a one count Indictment was filed against Robert Allegra in the District Court for the Northern District of Illinois (15 CR 243).

On or about May 7, 2015, Robert Allegra self-surrendered to the court for an arraignment hearing in which Robert Allegra was granted bail and released.

On or about July 1, 2016 the Court granted the governments oral motion to strike the quantity allegation from count I of the indictment. (dkt.no.51)

On or about July 1, 2016, Robert Allegra withdraws Not Guilty plea and enters a plea of guilty.

On or about May 30, 2017, the court grants a continuance of Robert Allegra's sentencing date, because of Robert Allegra's attorney citing health reasons.

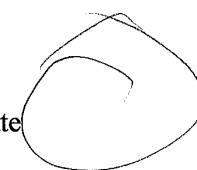
On or about ^{July}~~September~~ 17, 2017 Robert Allegra is sentenced and taken into custody.

On or about July 20, 2018, Robert Allegra, through his attorney filed a Petition under 28 USC § 2255.

On or about September 25, 2018, the court denied Robert Allegra's § 2255 petition.

STATEMENT OF MATERIAL FACTS

1. Robert Allegra was charged under 18 USC § 846
2. Robert Allegra did not at any time attempt to possess or distribute a controlled substance
3. The record of this case is absence any evidence of a controlled substance
4. The government admits that it used weighted Suitcases
5. Robert Allegra stated in open court that he did not intend to distribute



6. The First Step Act was signed into law on December 21, 2018
7. The First Step Act provides for Earned Time Credits
8. Robert Allegra's Earned Time Credits surpass his remaining sentence

I. ACTUAL INNOCENCE

The Supreme Court has held "to establish a credible claim of actual innocence, a petitioner must "support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial" and that *"It provides that a procedural default may be excused if the petitioner presents evidence of "actual innocence" that is "so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of non-harmless constitutional error [.]"* See *Schlup v. Delo*, 513 US 298 (Supreme Court 1995)

(i) The Indictment is Insufficient as a Matter of Law

The Supreme Court has held that *"Where a defendant has procedurally defaulted a claim by failing to raise it on direct review, the claim may be raised in habeas only if the defendant can first demonstrate either cause and actual prejudice, or that he is actually innocent."* See *Bousley v. United States*, 523 US 614 (Supreme Court 1998)

On April 28, 2015 the Special September 2014 Grand Jury returned a one count indictment against Robert Allegra in violation of 28 USC § 846.

The indictment on its face is insufficient because it fails to allege any material facts of the alleged offence as required by law.

Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires an indictment to provide "a plain, concise and definite written statement of the essential facts constituting the offense charged." *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) ("The Supreme Court has instructed that an indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant of the charges against which he must defend, and enables him to enter a plea without fear of double jeopardy.") (citing *Hamling v. United States*, 418 U.S. 87, 117 (1974)); see also *Collins v. Markley*, 346 F.2d 230, 232 (7th Cir.) (en banc) ("The sufficiency of an indictment is to be measured by certain guide lines. First, the indictment standing alone must contain the elements of the offense intended to be charged, and it must be sufficient to apprise the accused of the nature of the offense. Second, after conviction, the record of the case must be sufficient so that the accused can plead the judgment in bar of any subsequent prosecution for the same offense."), cert. denied, 382 U.S. 946 (1965).

Here, the indictment fails to allege any material facts that would contain the elements of the offence charged, in fact the only facts alleged is the alleged timeframe of the offence and the alleged drug quantity which in and of itself is fraudulent. See 506 F.2d at 989-90 (holding that the indictment, which pleaded little more than the statutory language without any fair indication of the nature or character of the scheme or artifice relied upon, or the false pretenses, misrepresentations or promises forming a part of it, was fatally defective)

COUNT ONE The SPECIAL SEPTEMBER 2014 GRAND JURY charges: Beginning on or about March 20, 2015, and continuing until on or about March 25, 2015, at Aurora, in the Northern District of Illinois, Eastern Division, and elsewhere, ROBERT ALLEGRA, defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, namely, fi.ve kilograms or more of a mixture and substance containing a

detectable amount of cocaine, a Schedule II Controlled Substance; In violation of Title 21, United States Code, Section 846

Here, the same must apply, the indictment charges Mr. Allegra under 28 USC §846 which specifically addresses “attempt and conspiracy” for other offences described in the subchapter, but fails to allege any facts that would constitute the offence, as a matter of law the indictment is insufficient and violated Mr. Allegra’s 5th amendment right to due process of law.

This knowingly and willfully omission of any material facts, prejudiced Mr. Allegra and caused irreparable harm.

Mr. Allegra’s attorney’s deficient performance resulted in Mr. Allegra’s 4th amendments rights being violated, the government unlawfully seized a 2014 Bentley Continental Convertible from Mr. Allegra, without a warrant, and without presentation of probable cause to any court, and this seizure happened before Mr. Allegra was indicted.

Mr. Allegra’s attorney’s failure to motion the court to force the government to return the vehicle that was unlawfully seized, prejudiced Mr. Allegra and caused irreparable harm.

The forfeiture allegation in the indictment fails to allege any material facts as required by the statute 21 USC § 853 (a), the government fails to allege the part of §853(a) that Mr. Allegra allegedly violated.

Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires an indictment to provide “*a plain, concise and definite written statement of the essential facts constituting the offense charged.*” *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993). Here, there are no facts alleged in the indictment that would comply with 21 USC §853(a), further the government fails to identify which section of §853 (a) that the forfeiture allegation is based on. “*The sufficiency of*

an indictment is to be measured by certain guide lines. First, the indictment standing alone must contain the elements of the offense intended to be charged, and it must be sufficient to apprise the accused of the nature of the offense. Second, after conviction, the record of the case must be sufficient so that the accused can plead the judgment in bar of any subsequent prosecution for the same offense."), cert. denied, 382 U.S. 946 (1965).

Here, the governments outrageous and intentional misconduct fails to follow any semblance of established rules or law, not only does count I of the indictment fail to state any claim of wrong doing by Mr. Allegra, but the forfeiture allegation contained in the indictment, again fails to state any claim of wrong doing that would make the alleged property subject to forfeiture under 21 USC §853 (a).

The law is very clear and well settled, the indictment "*must be sufficient to apprise the accused of the nature of the offense*" (382 U.S. 946 (1965)). Here, Mr. Allegra has no possible idea as to the nature of the offence that he is supposed to defend.

The forfeiture allegation within the indictment is insufficient is as a matter of law and violates the 5th amendment making the indictment Void as a matter of law, this constitutional violation prejudices Mr. Allegra and has caused irreparable harm and must be dismissed and the conviction be vacated.

The Unlawful Seizure of the Bentley Violated the 5th Amendment's Right to Due Process

The facts in this case are disturbing and undisputable, the governments misconduct can only be described as outrageous and intentional with malicious intent.

On April 21, 2015 the government did in fact seize a 2014 Bentley Continental Convertible Vin# SCBGT3ZA0EC089032 from Mr. Allegra, with no warrant or court order allowing the

government to seize the automobile. What makes this seizure so disturbing, is that Mr. Allegra was not indicted until April 29, 2015 [see dkt.no.1].

The 5th amendment of the constitution states;

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation (emphasis added)*

Here, the government unlawfully seized Mr. Allegra's 2014 Bentley Continental Convertible eight days before he was indicted, this clearly and indisputably violated the 5th amendment to the constitution, this unlawful seizure was not executed after the grand jury returned the indictment against Mr. Allegra, in fact the indictment does not even allege any facts were presented to the grand jury that would have complied with any law authorizing the seizure of the vehicle. One would have to ask "what if the "grand jury did not return an indictment" against Mr. Allegra ?" that could only be described as "grand theft auto" by the government, certainly this rises well past any established bar for Prosecutorial Misconduct.

The governments brazen misconduct does not stop there, no, the government filed a motion with the court on 9/23/15 [dkt.no.32] for "interlocutory sale of vehicle subject to forfeiture" here, the government knowingly and willfully makes an attempt to obtain permission from the court to sell

Mr. Allegra's Bentley Continental Convertible before Mr. Allegra was convicted of any offence. This outrageous misconduct is in stark contradiction of the indictment, which clearly states;

“upon conviction of the offence” “defendant shall forfeit to the United States any property”
the governments motion was well before any conviction, further the governments motion fails to state any authority in which they had to seize the Bentley in the first place.

The government in their motion for interlocutory sale of vehicle [dkt.no.32] admits that the Bentley Continental Convertible was unlawfully seized by the government.

The government's motion, paragraph 3 states in fact;

“The Bentley was seized by the FBI on April 21, 2015 for the purpose of initiating administrative forfeiture proceeding”

This admission is fatal for the government, first, the indictment only allows for forfeiture upon conviction, the fact that the Bentley was seized before the indictment issued, is clear and convincing evidence that the seizure of the Bentley was executed with no warrant, no order from any court authorizing the seizure.

In fact, the court never issued any order authorizing the seizure of Mr. Allegra's Bentley Continental Convertible, that is because the government unlawfully seized the vehicle without ever asking the court for permission. The record of this case is barren of any request, motion or application in which the government presented to the court any probable cause to seize Mr. Allegra's Bentley Continental Convertible.

This outrageous and intentional prosecutorial misconduct violated the 4th and 5th amendment to the constitution, it prejudiced Mr. Allegra and caused irreparable harm, this court must dismiss the indictment and vacate the conviction against Mr. Allegra.

The Unlawful Seizure of the Bentley Violated the 4th Amendment to the Constitution

The 4th amendment to the constitution was established in 1789 and states in pertinent part;

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”.

Here the government unlawfully seized Mr. Allegra’s Bentley Continental Convertible without a warrant, without showing any probable cause, supported by oath or affirmation to any court, in fact the government unlawfully seized Mr. Allegra’s Bentley before he was even indicted.

The evidence of the brazen intentional and outrageous misconduct in this case is staggering, and shows the governments total disregard for the constitution of the United States and established law.

The government admits that Mr. Allegra’s Bentley Continental Convertible was seized by the FBI on April 21, 2015, this was eight days prior to a grand jury returning an indictment against Mr. Allegra.

The Bentley was unlawfully seized without any warrant issued by any court, in fact the government never even attempted to get a warrant to seize the Bentley, not even after the Bentley was unlawfully seized.

The evidence is overwhelming and undisputable, that on April 21, 2015 the government did knowingly and willfully seize a 2014 Bentley Continental Convertible, Vin# SCBGT3ZA0EC089032 from Mr. Allegra without a warrant, without presenting any probable cause, under oath or affirmation to any court, and this before the grand jury returned an indictment.

The government did knowingly and willfully violate the 4th and 5th amendment to the constitution, rendering the indictment and the entire proceeding Void, this intentional and outrageous misconduct has prejudiced Mr. Allegra and caused irreparable harm, this court must dismiss the indictment and vacate the conviction.

(ii) The Government Knowingly Fabricated Evidence

The Constitution does not prescribe the kind of evidence used by a grand jury, but I assume that there is a right to not be indicted based on perjury intentionally presented by the prosecution (a right grounded in either the Constitution or some judicial supervisory authority over federal grand juries). *See Costello v. United States*, 350 U.S. 359, 362 (1956); *United States v. Udziela*, 671 F.2d 995, 1000–01 (7th Cir. 1982).

Here, the governments outrageous and intentional misconduct is staggering, the government knowingly and willfully made and used a false writing document containing a false, fictitious and fraudulent statement by means of the indictment presented to the grand jury in order to obtain an indictment against Mr. Allegra. The indictment alleges “*defendant herein, did attempt to knowingly and intentionally possess with intent to distribute a controlled substance, namely, five kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II Controlled Substance.*”

However, this is a complete fabrication of evidence, first the government states “*substance containing a detectable amount of cocaine*” this would require that a substance (drugs) were present, it also infers that the substance was sent to a lab or even possibly field tested and the revealed a positive result for the presence of cocaine, this is simply not true, and the court need not take Mr. Allegra’s word for this, the government admits this fact themselves.

“on or about March 25, 2015 undercover officers posing as narcotics traffickers brought weighted suitcases to defendant at the Van Nuys airport, which defendant believed to contain 45 kilograms of cocaine” (see plea agreement)

Weighted suitcases are not in any way considered a “substance containing a detectable amount of cocaine” this can only be described as intentional and outrageous Prosecutorial Misconduct that violated Mr. Allegra’s 5th amendment right to due process of law.

There is a very high if not certain probability that the grand jury would have not returned an indictment if they had been told that there was no “detectable amount of cocaine” but only a weighted suitcase.

“T] he fabrication of evidence harmed the defendant before and not just during the trial, because it was used to help indict him” “[I] t was established law by 1985 (indeed long before)... that... fabricating evidence against a criminal defendant was a violation of due process.” See Fields v. Wharrie, 740 F. 3d 1107 - Court of Appeals, 7th Circuit 2014

Here, the statement about the “detectable amount of cocaine” was fabricated, the government knew it was false and the knowingly false statement was material to the charges alleged against Mr. Allegra.

The government further acknowledges this fact at the change of plea hearing [dkt.no.51]

“Government's oral motion to strike the quantity allegations from Count I of the indictment is granted”

Here, the government acknowledges that there was no “detectable amount of cocaine” the governments gross misconduct is fatal, and the court must dismiss the indictment and vacate the judgment of conviction.

(iii) Government Misconduct (Entrapment)

The evidence in this case does not prove any offence committed by Mr. Allegra, in fact what the evidence does prove, is that Mr. Allegra did not knowingly and willfully commit the alleged charges in this case, that in fact he was induced by the government and recruited for the alleged and fabricated offence, that never happened.

The evidence is overwhelming and undeniable that Robert Allegra was not engaging in any illegal activity, when he was approached by a paid government informant and was introduced to the idea of transporting passengers who may be carrying drugs.

After Mr. Allegra repeatedly declined the advances and offers from the paid government informant, he was induced and entrapped by a government agent for the sole purpose of being recruited to be an informant, there simply is no crime here.

The evidence will show that two government agents detained Robert Allegra at an airport in Van Nuys California, where they planted weighted suitcases in the airplane that Robert Allegra was the pilot of.

The evidence will show that the government agents knowingly and willfully admit during the interview that it was for the sole purpose of making Robert Allegra a government informant.

The evidence will prove that the government fabricated the charges against Robert Allegra, only after he refused to be a government informant.

The evidence will prove that Robert Allegra was not predisposed to commit any crime, but was induced by government agents, who knowingly and willfully fabricated an offence that did not exist.

For the reasons stated above, justice requires that the Writ of Habeas Corpus Issue.

(iv) The Plea Agreement Was Not Knowing and Voluntary

The sixth amendment to the constitution provides that a defendant in a criminal proceeding be provided the right to effective assistance of counsel.

The Supreme Court in Strickland v. Washington 466 U.S. 688 (1984) set the standard in which effective assistance of counsel is based, to prevail on a claim of ineffective assistance of counsel, a petitioner must show that:

(1) *his counsel's performance was deficient, and*

(2) *the deficient performance prejudiced his defense. Here, Mr. Allegra easily surpasses both requirements.*

Rule 11 (3) of the Federal Rules of Criminal Procedure state; “*Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.*”

Mr. Allegra’s guilty plea was born from intentional and outrageous prosecutorial misconduct and gross ineffective assistance of counsel that violated his 5th amendment’s right to due process of law and 6th amendment right to effective assistance of counsel.

There is no factual basis for the plea, the Indictment fails to allege any facts that are included in the defective plea agreement, the court can not accept a plea agreement that alleges facts that are different from what the grand jury issued the indictment, this violates the 5th amendment of the constitution of the United States.

The 5th amendment of the constitution states, “ ***No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation***”. (emphasis added)

The plea agreement in this case relies in facts that were not presented to the grand jury, the court violated Due Process when it accepted the plea agreement that relied on facts that were not presented to the grand jury or alleged in the indictment, this specifically violated Mr. Allegra’s 5th amendment right to due process.

The general rule is that indictments cannot be amended in substance. "An amendment to an indictment occurs when the charging terms of an indictment are altered." *United States v. Cancelliere*, 69 F.3d 1116, 1121 (11th Cir. 1995). This follows from the fundamental distinction between the information and the indictment (*see* this Manual at 235) which must be returned by a grand jury. If the indictment could be changed by the court or by the prosecutor, then it would no longer be the indictment returned by the grand jury. Indeed, in *Russell v. United States*, 369 U.S. 749, 769 (1962), the Court pointed out that a consequence of amending the indictment is that the defendant "could then be convicted on the basis of facts not found by, and perhaps not even

presented to, the grand jury which indicted him." "Thus, the Fifth Amendment forbids amendment of an indictment by the Court, whether actual or constructive." *United States v. Wacker*, 72 F.3d 1453, 1474 (10th Cir. 1995), *petition for cert. filed*, (Jun. 10, 1996)(No. 95-9284)

Here, that is exactly what happened, the indictment is so defective that it does not, by any reasonable construction charge an offence for which the defendant plead guilty to, in fact, one of the only facts alleged in the indictment were struck by the court on the request of the government.

On July 1, 2016 the court held a "change of plea hearing) [dkt.no.53] and at that hearing Judge Bucklo stated in open court "***Government's oral motion to strike the quantity allegations from Count I of the indictment is granted***" this order is fatally flawed.

First, the quantity allegation in the indictment is a fundamental material fact in which the grand jury relied on when it returned the indictment against Mr. Allegra, if that alleged fact was not presented to the grand jury, there is a better than not chance the grand jury would have not returned an indictment, certainly striking 5 kilograms from an indictment could have an effect on whether a grand jury would chose to issue a True Bill or indictment.

Even more troublesome is the fact that the government admits that there were no actual drugs in the alleged offence when Robert Allegra was arrested on March 25, 2015, "*On or about March 25, 2015 undercover officers posing as narcotics traffickers brought weighted suitcases to defendant at the Van Nuys airport, which defendant believed to contain approximately 45 kilograms of cocaine*".(See Plea Agreement)

This is clear and convincing evidence that the government knowingly and willfully fabricated evidence when they presented the indictment to the Grand Jury, in which the government alleges “5 kilograms of a substance that contained a detectable amount of cocaine”.

“[I]t was established law by 1985 (indeed long before), when the fabrication is alleged to have occurred, that a government lawyer's fabricating evidence against a criminal defendant was a violation of due process.” See *Fields v. Wharrie*, 740 F. 3d 1107 - Court of Appeals, 7th Circuit 2014.

The specificity requirement of the Sixth Amendment serves to insure that a defendant only has to answer to charges actually brought by the grand jury and not a prosecutor's interpretation of the charges, that the defendant is apprised of the charges against him in order to permit preparation of his defense, and that the defendant is protected against double jeopardy. See *United States v. Haas*, 583 F.2d 216 (5th Cir.), *reh'g denied*, 588 F.2d 829, *cert. denied*, 440 U.S. 981 (1978).

Striking the quantity allegation from the indictment would now cause the need for the government to obtain a superseding indictment based on the now removed 5 kilos from the indictment. Further, removing the quantity allegation now brings to question “where is the crime” if the 5 kilos that were alleged in the indictment are now gone, where is the crime?

As stated above, it is abundantly clear as to why the government, upon oral motion asked for the quantity allegation to be struck, because it never existed in the first place.

By the government's own admission, there never was 5 kilos of a substance that contained a detectable amount of cocaine as alleged in the indictment and presumably presented to the grand jury.

By the government's own admission, in the plea agreement, the alleged substance containing an detectable amount of cocaine, was actually a weighted suit case. (see plea agreement @ pg.4)

The most fatal part of the plea hearing happened during the allocution, when Judge Bucklo the following exchange took place;

The court: ***"and did you intend to distribute it ?"***

Mr. Allegra: ***" no, I did not your honor"***

The court: ***"what did you intend to do with it ?"***

Mr. Allegra: ***"I was just flying it from Chicago to Aurora"***

The court: ***"from California - -"***

Mr. Allegra: ***"from California to Aurora"*** (see hearing transcript @ pg.14)

At this point, Mr. Allegra's plea was no longer knowing and voluntary, intent to distribute is an essential element to the offence in which Mr. Allegra entered into a plea agreement, at the point that Mr. Allegra stated that he did not intend to distribute, Judge Bucklo could no longer accept the plea of guilty.

It was clear that Mr. Allegra claimed both actual innocence and legal innocence and that the guilty plea was not knowing and voluntary. This fact is also supported by probation, where they stated in the Pre-Sentence Report, that there was no evidence that Mr. Allegra intended to distribute. (see PSR)

The Seventh Circuit has recognized three general situations that warrant withdrawals of guilty pleas:

(1) where the defendant shows actual innocence,

(2) where the defendant shows legal innocence,

(3) and where the guilty plea was not knowing and voluntary. *See United States v. Graf*, 827 F.3d 581, 583 (7th Cir. 2016) (citing *United States v. Mays*, 593 F.3d 603, 607 (7th Cir. 2010))

In the instant case, Mr. Allegra did not need to motion the court to withdraw his guilty plea, the court was ethically obligated and legally required to **not accept Mr. Allegra's guilty plea**.

When the court accepted Mr. Allegra's guilty plea, despite Mr. Allegra's allocution stating that he did not intend to distribute it, the court did knowingly and willfully violated Mr. Allegra's 5th amendment right to due process of law.

For the reasons stated above, justice requires that the Writ of Habeas Corpus Issue.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

The Supreme Court set the standard for ineffective assistance of counsel in *Strickland v. Washington*, 466 US 668 (Supreme Court 1984).

The Strickland court stated that "*The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different*", that standard is easily met and far surpassed in the instant case.

(i) Counsel Failed to Disclose Terminal Illness

On or about March 2015, Petitioner, Robert Allegra hired and retained Attorney, Edward Genson, at no time did attorney, Edward Genson, ever disclose his ongoing battle with terminal cancer to Robert Allegra.

On April 15, 2020, Attorney, Edward Genson passed away after a long battle with terminal cancer.

(ii) Counsel Failed to Challenge Legally Insufficient Indictment

The Supreme Court has held that “*defendant must show that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment "and that defendant was prejudiced by the deficient performance"* and that “*This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial"* See *Strickland v. Washington*, 466 US 668 – (Supreme Court 1984)

The evidence in the instant case shows just that, Mr. Allegra’s counsel’s performance was deficient from the very start, Mr. Allegra’s attorney’s failure to bring a pre-trial motion to dismiss the indictment for failing to allege any material facts of the charged offence prejudiced Mr. Allegra and caused irreparable harm.

The law is very clear, Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires an indictment to provide “a plain, concise and definite written statement of the essential facts constituting the offense charged.” *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) (“*The Supreme Court has instructed that an indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant of the charges against which he must defend, and enables him to enter a plea without fear of double jeopardy.*”) (citing *Hamling v. United States*, 418 U.S. 87, 117 (1974)); see also *Collins v. Markley*, 346 F.2d 230, 232 (7th Cir.) (en

banc) (*"The sufficiency of an indictment is to be measured by certain guide lines. First, the indictment standing alone must contain the elements of the offense intended to be charged, and it must be sufficient to apprise the accused of the nature of the offense. Second, after conviction, the record of the case must be sufficient so that the accused can plead the judgment in bar of any subsequent prosecution for the same offense."*), cert. denied, 382 U.S. 946 (1965).

The evidence here, undeniably shows that a pre-trial motion to dismiss the indictment would have resulted in the indictment being dismissed, Mr. Allegra's attorney's deficient performance prejudiced Mr. Allegra and caused irreparable harm.

(iii) Counsel Failed to Raise Challenge to Fraudulent Plea Agreement

The Supreme Court has held *"We have long held that a plea does not qualify as intelligent unless a criminal defendant first receives real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process"* See *Bousley v. United States*, 523 US 614 (Supreme Court 1998).

Here the same must apply, the government never gave any kind of real notice to Robert Allegra as to any material facts that alleged the true nature of the charges against him, in fact, an inspection of the case docket will prove to be absent of any allegation of material facts that allege that Robert Allegra ever committed the charged offence.

Mr. Allegra's attorney's deficient performance prejudiced Mr. Allegra when he represented Mr. Allegra at the change of plea hearing and allowed the government to strike the quantity allegation in the indictment without objection. His attorney's deficient performance also prejudiced Mr. Allegra when he did not object to the court accepting a plea agreement in which

Mr. Allegra denied an essential element of the offence during his allocution, this failure prejudice Mr. Allegra and caused irreparable harm.

Mr. Allegra's attorney's most deficient performance came when he counseled Mr. Allegra to unknowingly enter into a plea agreement that alleged facts that were not alleged in the indictment.

It is unconscionable to imagine that any attorney would instruct a defendant in a criminal proceeding to sign a plea agreement that relied on facts that were not alleged in the indictment, that were not presented to the grand jury, and do not substantiate facts required to meet the elements of the charged offence. Not only was Mr. Allegra's attorney's performance deficient, his attorney participated in Mr. Allegra's 5th amendment right to due process of law being violated.

It is unconscionable that Mr. Allegra's attorney would have him agree to a plea agreement that increased the drug quantity alleged in the indictment of 5 kilograms that were then "the quantity allegation" was struck from the indictment, only to increase to 45 kilograms in the plea agreement, this deficient performance prejudiced Mr. Allegra and caused irreparable harm.

The indictment presumably returned by the grand jury, specifically alleged that the offence happened from March 20, 2015 to March 25, 2015, however the plea agreement alleges several other dates outside of that range.

The plea agreement has several fatal flaws, but none more blaring than on page 4, which states:

"On or about March 25, 2015 undercover officers posing as narcotics traffickers brought weighted suitcases to defendant at the Van Nuys airport, which defendant believed to

contain approximately 45 kilograms of cocaine”.

On the very next sentence of the plea agreement it states:

“Defendant acknowledged that he intended to distribute the 45 kilograms of cocaine”

It is a gross dereliction of duty, for an attorney to counsel his client into a plea agreement that states in one sentence that there were *“weighted suitcases”* and in the next sentence *“he intended to distribute 45 kilograms of cocaine”* when the government affirmatively admits that there was no cocaine and only *“weighted suitcases”*, that is correct, there was **NO COCAINE**.

It is very clear and the evidence is overwhelming, that if not for Mr. Allegra’s Attorney’s deficient performance, Mr. Allegra would have never entered into the unconstitutional plea agreement, in fact if not for Mr. Allegra’s attorney’s deficient performance, the indictment against Mr. Allegra would have been dismissed. It is clear that Mr. Allegra’s attorney did in fact render ineffective assistance of counsel, that far surpasses the Strickland standard, and violated Mr. Allegra’s 6th amendment right to effective assistance of counsel. This deficient performance prejudiced Mr. Allegra and caused irreparable harm.

For the reasons stated above, justice requires that the Writ of Habeas Corpus Issue.

III. 5TH AMENDMENT CONSTITUTIONAL RIGHT OF LIBERTY

(i) Robert Allegra is Being Held Under The Color of Law, Beyond the Legal Term of His Sentence Imposed by the Court

Robert Allegra, who has served a prison term for a crime that he did not commit, is now being held beyond the sentence imposed by the court.

The Supreme Court has told us that judges must enforce statutes as Congress wrote them and the President approved them, without adding or subtracting features that the judges deem to be wise policy. See, e.g., *Michigan v. Bay Mills Indian Community*, U.S., 134 S.Ct. 2024, 2033-34, 188 L.Ed.2d 1071 (2014) See *Fowler v. Butts*, 829 F. 3d 788 —(7th Circuit 2016).

The plain language of the First Step Act, allows for prisoners to earn time credits towards pre-release custody or Supervised Release, section §3632(4)(c) addresses the application of time credits toward pre-release custody or Supervised Release.

Section § 3632(4)(c) states:

Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities shall be applied toward time in pre-release custody or Supervised Release. The Director of the Bureau of Prisons shall transfer eligible prisoners, as determined under section §3624(g), into pre-release custody or Supervised Release.

Section § 3624(g)(3) specifically addresses the issue presented in the instant petition.

18 USC § 3624(g)(3) states:

(3)Supervised release.—

If the sentencing court included as a part of the prisoner's sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632.

The plain language of the statute provides that a prisoner shall earn time credits for the participation of productive activities.

18 USC 3632(4)(A) specifically addresses “Time Credits” that can be earned by a prisoner, except for an ineligible prisoner, section § 3632(4)(A) states:

(4) Time credits.-

(A) In general.-A prisoner, except for an ineligible prisoner under subparagraph (D), who successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits as follows:

(i) A prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

(ii) A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.(emphasis added)

The plain language of the statute states that a prisoner shall earn Time Credits towards their sentence, section § 3632(4)(B) addresses the availability of the Time Credits, which states:

(B) Availability.-

A prisoner may not earn time credits under this paragraph for an evidence-based recidivism reduction program that the prisoner successfully completed-

(i) prior to the date of enactment of this subchapter; or

(ii) during official detention prior to the date that the prisoner's sentence commences under section 3585(a).

The instant Petition makes clear that, Robert Allegra has been under the confinement of the Bureau of Prisons custody for 845 days since the enactment of the subsection § 3632, in which he has earned 422 days of “*Earned Time Credits*” in which he is entitled to apply towards Supervised Release.

We now address the application of the Earned Time Credits towards Supervised Release, in which the statute specifically addresses, section § 3632(4)(C) states:

(C) Application of time credits toward prerelease custody or supervised release.-

Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities shall be applied toward time in prerelease custody or supervised release. The Director of the Bureau of Prisons shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release.

The plain unambiguous language of the Act, clearly states that Robert Allegra has earned time credits and is entitled to apply those earned time credits based on the following facts:

- * Robert Allegra is eligible for earned credits under the Act.
- * Robert Allegra’s Case Manager did an initial needs assessment and found him to be at a “minimum” risk of recidivism, satisfying the requirement in 18 U.S.C. § 3632(a)(1).

* Robert Allegra was assessed as a minimum risk of recidivism for a second time, entitling him to 15 days' worth of time credits for every 30 days of Programming pursuant to 18 U.S.C. § 3632(4)(A)(i)(ii)

* A Case Manager "determined and assigned Productive Activities" for Robert Allegra at meetings held on or about August 14, 2018 and several meetings thereafter.

* These assignments met the requirements of the Act, and the Case Manager explicitly confirmed to Robert Allegra, that they qualified under the Act.

* Robert Allegra successfully participated (and continues to participate) in the productive activities pursuant to 28 USC § 3632 as defined by the statute.

* Robert Allegra has accumulated 748 days of credit, which, under the Act, serves to reduce his sentence by 374 days. *see* 18 U.S.C. § 3632(4); 3635.

Applying these facts to Robert Allegra's sentence, he should have been released on March 26, 2021. *See* 18 U.S.C. § 3632(4); 3635.

Statutory Interpretation Standard of Review

In cases of statutory interpretation such as this, courts apply the *Chevron* standard, which requires that the courts "give effect to the unambiguously expressed intent of Congress."

Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842 (1984). "When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete."

Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254 (1992) (quotation omitted). The Court should consider "not only the bare meaning of the critical word or phrase but also its placement

and purpose in the statutory scheme.” *Holloway v. U.S.*, 526 U.S. 1, 6 (1999) (quotation omitted).

“If the statutory language is unambiguous and the statutory scheme is coherent and consistent the inquiry ceases.” *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969 (2016) (quotation omitted). Here, the words and the intent of the statute are unambiguous.

The Act’s Plain Language Entitles Qualifying Prisoners to Receive the Earned Time Credit Beginning January 15, 2020

Section 3621(h)(1) states that on January 15, 2020, 180 days after the Attorney General completed and released the System, the BOP was to “implement and complete an initial risk and needs assessment for each prisoner” and “begin to assign prisoners to appropriate [Programs].” 18 U.S.C. § 3621(h)(1)(A). The BOP also was required to “**begin to expand the effective [Programs] and productive activities it offers** and add any new [Programs] and productive activities necessary to effectively implement the [System].” 18 U.S.C. § 3621(h)(1)(B). Finally, the BOP was also to “begin to implement the other risk and needs assessment tools necessary to effectively implement the System over time, *while prisoners are participating in and completing the effective [Programs] and productive activities.*” 18 U.S.C. § 3621(h)(1)(C) (emphasis added). These requirements all align with the plain language of the phase-in provision, which immediately follows this language and which requires that earned time credits start to be actively applied on January 15, 2020, the earned time credits that have been earned since the enactment of the Act on December 18, 2018.

Petitioner's Interpretation

The surrounding sections of the Act work in harmony with Petitioner's interpretation. In addition to Section 3621(h)(1), described above, Section 3621(h)(3) unambiguously describes the "[P]riority during phase-in" and requires that "[d]uring the 2-year period described in paragraph (2)(A), *the priority for such programs and activities shall be accorded based on a prisoner's proximity to release date.*" 18 U.S.C. § 3621(h)(3). Under Respondent's interpretation, there would be no need for "priority" to be assigned during the phase-in, because no one would have access to Programs and activities.(emphasis added)

Likewise, Section 104 of the Act allocated \$60,000,000 to the BOP for "each of fiscal years 2019 through 2023" to "implement the system under section 3621(h) of title 18, United States Code." First Step Act § 104. The appropriations pattern, like the rest of the statutory scheme, supports the plain language of the section.

Robert Allegra Faces Irreparable Harm Due to His Unlawful Imprisonment and the Resulting Violation of his Constitutional Rights

Robert Allegra has already earned sufficient credits under the Act to have earned his release on January 7, 2021. As such, he faces irreparable harm every day that his unlawful imprisonment continues. *See U. S. ex rel. Taylor v. Redman*, 500 F. Supp. 453, 460 (D. Del. 1980) ("continued unlawful incarceration" subjects prisoner to "immediate irreparable injury").

This unlawful imprisonment also violates his constitutional rights, including his right to liberty under the Fifth Amendment. *See* Pet. 5. "Deprivation of a constitutional right alone constitutes irreparable harm as a matter of law, and no further showing of irreparable harm is necessary."

Beattie v. Line Mountain Sch. Dist., 992 F. Supp. 2d 384, 396 (M.D. Pa. 2014); *Buck v. Stankovic*, 485 F. Supp. 2d 576, 586 (M.D. Pa. 2007).

The Court Should Release Robert Allegra During the Pendency of This Petition, Which It Also Should Hear on an Expedited Schedule

Robert Allegra has presented undisputed evidence that he earned credits under the Act, which warranted his release on March 26, 2021, as a result, he suffers irreparable harm each additional day that he spends in confinement, including while his petition is pending before the Court. *See Redman*, 500 F. Supp. at 460.

To minimize this harm, Petitioner respectfully requests that Robert Allegra be released immediately to supervised release, pending resolution of this litigation. Should his arguments ultimately fail to persuade the Court, Robert Allegra understands that he will be remanded to serve any sentence the Court determines to be remaining. The Court has the authority to provide conditional release in the context of a habeas petition. *Hensley v. Municipal Court*, 411 U.S. 345, 352 (1973) (habeas authority includes the power to “order [a] petitioner’s release pending consideration of his habeas corpus claim”) (citation omitted).

Robert Allegra is a first time offender of a “non-violent” offence, in which there were no individual victims. Robert Allegra has had no interaction with law enforcement outside of an occasional traffic ticket, he has no violence in his history and has been a model prisoner throughout his entire time in confinement.

IV. REQUEST FOR EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL

Petitioner, Robert Allegra has raised claims in his Petition for a Writ of Habeas Corpus under 28 USC § 2241 that if proven true would entitle him to relief.

Petitioner, Robert Allegra, respectfully requests that this honorable court grant him a prompt hearing in which he will present evidence that will prove his factual and legal innocence and prove prosecutorial misconduct with clear and convincing evidence in which no reasonable jury would find him guilty.

The Supreme Court has held that, "*A District Court must hold an evidentiary hearing when a Habeas Petitioner 'alleges facts which if proved, would entitle him to relief' and 'the Habeas Applicant did not receive a full and fair evidentiary hearing' on the issues*" See *Townsen v. Sain* 372 U.S. 293, 312-

Petitioner, Robert Allegra, in his §2241 petition, Robert Allegra raises claims that he is being held unlawfully under the color of law and in violation of the Constitution of the United States and alleges undeniable constitutional violations of Due Process and Ineffective Assistance of Counsel. The eleventh Circuit has held, "*the law is clear that, in order to be entitled to an evidentiary hearing. A Petitioner need only Allege - not prove - reasonably specific, non-conciliatory facts that, if true, would entitle him to relief*" (emphasis in original) see *Aron v. United States*, 291 F.3d 708, 715 n.6(11thCir.2002)

Rule 8(c) states:

"If an evidentiary hearing is warranted, the Judge must appoint an Attorney to represent a petitioner who qualifies to have counsel appointed under 18 USC 3006A".

18 USC 3006 A(2)(b) states:

Seeking relief under 2241, 2254 or 2255 of title 28" (2) "*whenever the United States Magistrate Judge or the Court determines that the interests of justice so require, representation may be provided for any financially eligible person who* -"(b) is seeking relief under section 2241,2254 or 2255 of title 28.

Petitioner, Robert Allegra, respectfully requests that this honorable court appoint him counsel to represent to represent him during the evidentiary hearing.

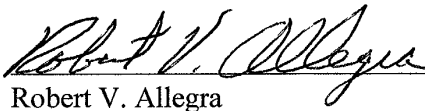
EMERGENCY RELIEF REQUESTED

Robert Allegra has made claims in which he is entitled to relief, Robert Allegra respectfully requests that this honorable court issue an order immediately releasing Robert Allegra from custody and vacating his conviction or in the alternative;

Issue an order immediately releasing Robert Allegra from Custody and placing him on bail pending the adjudication of his claims, or in the alternative;

Order the Bureau of Prisons to immediately release Robert Allegra from custody and immediately transfer Robert Allegra to supervised release and for any and all other relief in which this honorable court believed him to be entitled to.

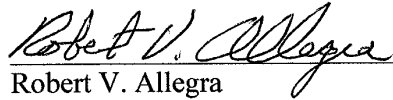
Respectfully Submitted,


Robert V. Allegra

Date: 04-19-2021

Declaration Under Penalty of Perjury

I declare under penalty of perjury that I am the Petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution of perjury.


Robert V. Allegra

Date: 04-19-2021

Robert V. Allegra
Inmate No. 47926-424
FCI Milan
4004 East Arkona Road
Milan, MI 48160

United States District Court
Eastern District of Michigan
Southern Division

Robert Allegra,

Petitioner,

Case No. 21-11143

v.

Hon. Terrence G. Berg
Mag. Anthony P. Patti

Jonathan Hemingway, Warden

Respondent.

**Government's Response and Brief Opposing Petitioner's
Application for Writ of Habeas Corpus**

The Court should deny federal inmate Robert Allegra's petition for a writ of habeas corpus. Allegra is not entitled to any post-conviction relief because he has not exhausted his administrative remedies, the Bureau of Prisons has correctly considered his good conduct time credits under the First Step Act, and any attacks on the validity of his conviction or sentence are not cognizable under 28 U.S.C. § 2241.

Respectfully submitted,

SAIMA S. MOHSIN
Acting United States Attorney

s/John B. Meixner Jr.
John B. Meixner Jr.

Assistant United States Attorney
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Detroit, MI 48226
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Dated: August 18, 2021

United States District Court
Eastern District of Michigan
Southern Division

Robert Allegra,

Petitioner,

Case No. 21-11143

v.

Hon. Terrence G. Berg
Mag. Anthony P. Patti

Jonathan Hemingway, Warden

Respondent.

**Government's Brief Opposing Petitioner's
Application for Writ of Habeas Corpus**

I. Background

Petitioner Robert Allegra is a federal prisoner currently serving a 65-month sentence at FCI Milan, Michigan for attempting to possess with intent to distribute cocaine, in violation of 21 U.S.C §§ 846 and 841(b)(1)(C). (Ex. 1: Declaration of Ryan Lea ¶ 4, Att. A).

After he was indicted, Allegra pleaded guilty. *United States v. Allegra*, No. 18 C 5061, 2018 WL 8898622, at *1 (N.D. Ill. Sept. 25, 2018). The district court sentenced him, and Allegra then filed a timely motion to reduce his sentence under 28 U.S.C. § 2255 in the Northern District of Illinois, arguing that his counsel had been ineffective in

various ways. *Id.* The court denied the motion. *Id.*; (*see also* Ex. 2: § 2255 Documents). Allegra's projected release date is March 27, 2022. (Ex. 1 ¶ 4).

Release Date
The First Step Act of 2018—which made several modifications to the BOP's good-time credit system—permits incarcerated people to earn 10 days of good-time credit for every 30 days of successful participation in certain evidence-based recidivism reduction programs. 18 U.S.C. § 3632(d)(4)(A)(i). Because Allegra was potentially eligible for those credits, the BOP assessed him under its risk-and-needs assessment program to assign him to appropriate programming. (Ex. 1 ¶¶ 2, 6–7). The BOP identified three current areas of criminogenic need for Allegra: cognitions, medical, and recreation/leisure/fitness. (*Id.* ¶ 6, Att. B). Following the assessment, Allegra has not completed any qualifying *see point* evidence-based recidivism reduction programming or productive activities in his areas of need. (*Id.* ¶ 10).

Without filing for any administrative remedies through the BOP, Allegra filed this petition, challenging his earned time credits. (Ex. 3: Declaration of Cynthia Suydam). In the petition, Allegra alleges that he has earned 422 days of earned time credits under the First Step Act,

and that the BOP has failed to apply these credits. (Petition, ECF No. 1, PageID.2–4, 10, 38–43). Allegra also raises various other challenges to his conviction and sentence. (*Id.* at 5–37).

II. Argument

A. Allegra's petition should be dismissed for failure to exhaust administrative remedies.


The Bureau of Prisons' administrative remedy procedure allows an inmate to seek formal review of a complaint relating to any aspect of his confinement. *See* 28 C.F.R. § 542.10 *et seq.* "Federal prisoners must exhaust their administrative remedies prior to filing" for collateral relief. *Fazzini v. Ne. Ohio Corr. Ctr.*, 473 F.3d 229, 231 (6th Cir. 2006). The exhaustion requirement allows "the Bureau of Prisons . . . the opportunity to consider the application of its policy to [a prisoner's] claim before the matter is litigated in the federal courts." *Urbina v. Thoms*, 270 F.3d 292, 295 n.1 (6th Cir. 2001).

Allegra has not exhausted his administrative remedies, and so the Court should dismiss his petition. In early 2020, Allegra filed an administrative remedy with the warden at FCI Terre Haute requesting halfway house placement, home confinement, good conduct time and time credits. (Ex. 3: Declaration of Cynthia Suydam, ¶ 3–4, Att. B). The

warden issued a response in April 2020, and Allegra did not appeal to the regional or central office. (*Id.*). Allegra also claims that in December 2020, he submitted a BP-9 request for administrative remedy “via email and fax, requesting the BOP to apply the Earned Time Credits (ETC) pursuant to the First Step Act of 2018, 18 USC § 3632” and “the BOP has failed to respond.” (Petition, ECF No. 1, PageID.3). But, a B9-9 cannot be emailed or faxed, and there is no evidence that Allegra submitted a request for administrative remedy to the proper location. (Ex. 3 ¶ 5).

Allegra should not be allowed to bypass the administrative remedy process afforded by the Bureau of Prisons and obtain judicial review of his claim on an incomplete record. As other courts have routinely done, this Court should dismiss Allegra’s petition. *See, e.g., Aron v. LaManna*, 4 F. App’x 232, 233 (6th Cir. 2001) (affirming dismissal because petitioner “has not shown that he exhausted his administrative remedies before requesting habeas relief in the district court”); *United States v. Gordon*, No. 17-20067, 2019 WL 5586966, *2 (E.D. Mich. Oct. 30, 2019) (same); *Campbell v. Barron*, 87 F. App’x 577 (6th Cir. 2004) (“As Campbell failed to exhaust his available

administrative remedies prior to filing his § 2241 action, any discussion on the [good-time credit] application . . . would be premature.”).

 **B. Allegra is not entitled to habeas relief because the Bureau of Prisons is not yet required to apply earned time credits under the First Step Act, and he has not met the criteria for receiving earned time credits.**

Even if the Court were to reach the merits, Allegra is not entitled to relief because he has not satisfied the First Step Act’s criteria.

Section 101 of the First Step Act of 2018, Pub L. 115-391, 132 Stat. 5194 (Dec. 21, 2018), directed the United States Attorney General to establish a system where an eligible inmate can participate in appropriate evidence-based recidivism reduction programs based on their specific criminogenic needs in order to earn time credits toward their sentence. *See* 18 U.S.C. § 3632(a) & (d)(4) (directing creation of the “Risk and Needs Assessment System”). The Act requires that the Bureau of Prisons use the risks-and-needs assessment system to (1) determine the recidivism risk and classify each inmate as having minimum, low, medium, or high risk of recidivism; (2) determine the type of evidence-based recidivism reduction programming appropriate for each inmate; and (3) implement a system of “time credits” and other incentives to encourage inmate participation in the programming. *See*

id. § 3632(a)–(d). Under the program, inmates can earn “10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” *Id.* § 3632(d)(4)(A)(i). And prisoners who, like Allegra, have a minimum or low risk of recidivism over two consecutive assessments can earn an additional five days of time credits per 30 days of successful participation. *Id.* § 3632(d)(4)(A)(ii). Under BOP interpretation, eight hours of programming or participation equals one day, so once an inmate completes 30 days (or 240 hours), he earns 10 days of time credits (or 15 days at the higher rate for low-risk inmates). (Ex. 1 ¶ 9). For each additional 30 days (240 hours), he earns an additional 10 (or 15) days. (*Id.*).

But Allegra’s programming does not yet qualify him for time credit. Under 18 U.S.C. § 3621(h)(2), the Bureau of Prisons is not required to apply earned time credits until the end of the First Step Act’s Risk and Needs Assessment System “phase-in” period on January 15, 2022. The statute makes implementation during the phase-in period permissive, not mandatory. *See Llewlyn v. Johns*, No. 5:20-cv-77, 2021 WL 535863, at *2 (S.D. Ga. Jan. 5, 2021), *report and recommendation*

adopted, 2021 WL 307289 (S.D. Ga. Jan. 29, 2021) (finding based on the language in the statute that “the First Step Act does not require actual implementation for each inmate until January 2022”). Numerous courts that have addressed this issue agree. *See Price v. Gilley*, No. 6:20-232-HRW, 2020 WL 8669870, at *1 (E.D. Ky. Nov. 24, 2020); *Churchville v. Bowers*, No. 3:20-V-208, 2021 WL 3161552 (N.D. W. Va. July 26, 2021); *Diaz v. Warden*, No. 9:21-CV-0738 (GTS/ATB), 2021 WL 3032694, at *2–*3 (N.D. N.Y. July 19, 2021); *Jones v. Hendrix*, No. 2:20-CV-00247-ERE, 2021 WL 2402196, at *3–*4 (E.D. Ark. June 11, 2021); *Ragsdale v. Cox*, No. 4:20-CV-04203-RAL, 2021 WL 1909780, at *2 (D. S. Dak. May 12, 2021); *Knight v. Bell*, No. JKB-20-3108, 2021 WL 1753791, at *3 (D. Mary. May 4, 2021); *Saleh v. Young*, No. 5:19-cv-00468, 2021 WL 1758711, at *1 (S.D. W. Va. May 4, 2021); *Kennedy-Robey v. FCI Pekin*, No. 20-cv-1371, 2021 WL 797516, at *2–*4 (C. D. Ill. Mar. 2, 2021).

And even if the BOP were required to apply the earned credits before that date, Allegra is still not entitled to relief because the BOP cannot apply earned time credits toward pre-release custody or supervised release until the accumulated credits are equal to the remainder of Allegra’s prison term. Allegra has approximately seven

months left on his sentence, and currently, he has not completed any approved programs and therefore has not earned any days of earned time credits under the First Step Act. (Ex. 1 ¶ 10). Allegra is simply incorrect when he states that he has earned 422 days of time credits. (Petition, ECF No. 1, PageID.39). To the contrary, he has not completed any hours of qualified programming and needs at least 240 hours to qualify for earned time credits under the First Step Act. If Allegra does not lose any earned time credits through the disciplinary process, when the BOP begins to apply earned time credits on January 15, 2022, he will be able to apply earned time credits once he has accumulated 240 hours of qualified programming or participation *and* his earned credits equal “the remainder of [his] imposed term of imprisonment.” 18 U.S.C. § 3624(g)(1)(A); (Ex. 1 ¶ 11). Thus, the Court should reject Allegra’s time-credit motion.

C. Allegra’s other arguments are not cognizable under § 2241 because they were raised, or could have been raised, in his § 2255 motion.

A federal defendant may collaterally attack the validity of his federal conviction or sentence through a motion under 28 U.S.C. § 2255. *Hill v. Masters*, 836 F.3d 591, 594 (6th Cir. 2016). That statute limits

the scope of collateral attack: a motion may only be filed in the jurisdiction where the defendant was convicted, may generally only be filed within a one-year time period, and may only give rise to relief if certain violations occurred. *See* 28 U.S.C. § 2255.

On the other side of that coin, a defendant may typically only use the habeas corpus provision in 28 U.S.C. § 2241 to challenge aspects of his confinement *other* than his conviction and sentence, such as the execution of his sentence. *Wright v. Spaulding*, 939 F.3d 695, 698 (6th Cir. 2019). There is one exception: in exceptional circumstances, a defendant may file a § 2241 petition via the “saving clause” outlined in § 2255(e) to present a claim of actual innocence that he could not reasonably have presented in his § 2255 petition. *Id.* at 699.

None of Allegra’s other arguments fall within that exception. He cursorily argues that the indictment was insufficient as a matter of law (Petition, ECF No. 1, PageID.5), that the government fabricated evidence (*Id.*), that he was entrapped (*Id.* at PageID.5–6), that his plea was not knowing and voluntary (*Id.* at PageID.6–7), and that his counsel was ineffective (*Id.* at PageID.7–10). But Allegra raised—and the court rejected—many of these same arguments in his § 2255 motion.

Allegra, 2018 WL 8898622, at *1–2 & n.1. And Allegra does not present any reason why he could not have presented any of his arguments within the time allotted for his petition under § 2255. (Petition, ECF No. 1, PageID.13–36). Thus, the court should reject his arguments. See, e.g., *Georgacarakos v. Ormond*, 697 F. App'x 443, 445 (6th Cir. 2017) (“It is the prisoner's burden to prove that his remedy under § 2255 is inadequate or ineffective.”).

III. Conclusion

The Court should deny Allegra's petition.

Respectfully submitted,

SAIMA S. MOHSIN
Acting United States Attorney

s/John B. Meixner Jr.
John B. Meixner Jr.
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john.meixner@usdoj.gov

Dated: August 18, 2021

Certificate of Service

I certify that on August 18, 2021, I electronically filed the Response to Petition for Writ of Habeas Corpus and Brief in Support, with the Clerk of the Court using the ECF system and that an employee of the U.S. Attorney's office mailed a copy via the United States Postal Service to the following non-ECF participant:

Robert Allegra, Reg. # 47926-424
FCI Milan
Federal Correctional Institution
P.O. Box 1000
Milan, MI 48160

s/John B. Meixner Jr.
John B. Meixner Jr.
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United States District Court
Eastern District of Michigan
Southern Division

Robert Allegra,

Petitioner,

Case No. 21-11143

v.

Hon. Terrence G. Berg
Mag. Anthony P. Patti

Jonathan Hemingway, Warden

Respondent.

_____ /

Exhibit List

Exhibit 1 Declaration of Ryan Lea

Exhibit 2 § 2255 Documents

Exhibit 3 Declaration of Cynthia Suydam

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

ROBERT ALLEGRA,

Petitioner,

V.

JOHN R. HEMINGWAY,

Respondent.

No. 21-11143

DECLARATION OF RYAN LEA

I, Ryan Lea do hereby declare and state as follows:

1. I am currently employed by the Federal Bureau of Prisons (BOP) of the United States Department of Justice, as a Case Manager at the Federal Correctional Institution in Milan, Michigan (hereafter FCI Milan).
2. As part of my official duties, I am familiar with the Risk and Needs Assessment System called PATTERN¹, which was created under the First Step Act (FSA). I received training on how to score inmates on the PATTERN risk and needs components as well as on how to assign inmates to evidence-based recidivism reduction (EBRR) programming and productive activities (PA). In my capacity as Case Manager, I have access to BOP records for inmates on my caseload. Attached to this declaration are true and accurate copies of records which are kept in the regular course of the business of the BOP.
3. I have been advised inmate Robert Allegra, Register No. 47926-424, has filed a petition for writ of habeas corpus claiming he is entitled to time credits under the FSA due to programming or productive activities he has completed.

¹ PATTERN is an acronym for Prisoner Assessment Tool Targeting Estimated Risk and Need.



4. Allegra was convicted of Attempt to Possess with Intent to Distribute Cocaine. See Attachment A (Public Information Inmate Data). Id. He is serving a sentence of 65 months. Id. Allegra currently has a projected release date of March 27, 2022. Id. He is currently designated to FCI Milan and is on my caseload. On December 15, 2020, Allegra committed the prohibited act of Escape-Return within 4 Hours which violated the conditions of his Cares Act Home Confinement. Upon his return to incarceration, a new Residential Reentry Center referral was submitted on Allegra's behalf requesting that he be granted 1-90 days of Residential Reentry Center placement. That referral is currently still pending approval.
5. Allegra is eligible to earn FSA Earned Time Credits (ETCs) under 18 U.S.C. § 3632(d). See Attachment B (SENTRY - Inmate History – First Step). Allegra is currently scored as a minimum on the PATTERN Risk Tool. See Attachments B & C (Male PATTERN Risk Scoring). His three prior PATTERN scores were all minimum as well. See Attachment B.

NEEDS ASSESSMENT

6. Allegra's needs have been assessed in 13 areas. With respect to those 13 areas, Allegra is currently assessed as follows.

Anger/Hostility	No
Antisocial Peers	No
Cognitions	Need
Dyslexia	No
Education	No
Family/Parenting	No
Work	No
Financial/Poverty	No
Medical	Need
Mental Health	No
Recreation/Leisure/Fitness	Need
Substance Abuse	No

Trauma	No
--------	----

See Attachment B and Attachment D (Program Statement 5400.01 – First Step Act Needs Assessment and June 2021 Needs Assessment document).

APPROVED PROGRAMS & ACTIVITIES

7. The BOP has identified Evidence Based Recidivism Reduction Programs (EBRRs) and productive activities (PAs) in each of the 13 needs areas identified in paragraph 6. Attachment E is the current FSA Approved Programs Guide. Included as Attachment F are various reports that show Allegra's program and class completion, participation, and interest lists.²

FIRST STEP ACT PROGRAM INCENTIVES

8. On July 14, 2021, the BOP issued Program Statement 5220.01 (First Step Act Program Incentives). *See* Attachment G. Allegra may become eligible for incentives if he participates and/or completes an assigned ERBB prior to any transfer to RRC or release.

EARNED TIME CREDITS (ETC's)

9. Eligible inmates can earn ETC's at the rate of 10 days per every 30 days of successful participation in EBRR programming or productive activities completed on or after January 15, 2020. Inmates who have a minimum or low PATTERN score over 2 consecutive assessments can earn an additional 5 days per 30 days of successful participation in ERBB programming or productive activities. The BOP interprets that eight hours of programming/participation equals one day. Thus, once an inmate completes 30 days (or 240 hours), the inmate can be considered to have earned 10 days of ETCs, or 15 days of

² These reports also include programs/activities, which are not approved ERBBs & PAs.

ETCs if earning at the higher rate. For each additional 30-day (240 hours) increment, 10 or 15 days of ETCs are added. Dec. 20/21

10. A review of Allegra's programming and activity history (on or after January 15, 2020), reveals that he has not completed any EBRRs or PAs in his areas of need. See Attachments E, F & G. Thus he has not earned any hours toward ETCs.
11. If Allegra earns any hours in the future, he will not be eligible to apply them until he has accumulated 240 hours of approved EBRRs or PAs (which would convert to 15 days of earned ETCs) and until his earned ETCs equal "the remainder of the prisoner's imposed term of imprisonment."³ See 18 U.S.C. §3624(g)(1)(A).

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 27 day of July, 2021.


Ryan Lea, Case Manager
FCI Milan

³ As of July 27, 2021, Allegra has a projected 243 days remaining until his projected release date of March 27, 2022.

Attachment A

MILDC
AGE 001

*
*

PUBLIC INFORMATION
INMATE DATA
AS OF 07-27-2021

* 07-27-2021
* 10:08:10

REGNO...: 47926-424 NAME: ALLEGRA, ROBERT

RESP OF: MIL
PHONE...: 734-439-1511

FAX: 734-439-5534
RACE/SEX...: WHITE / MALE
AGE: 66
PAR ELIG DT: N/A
PAR HEAR DT:

PROJ REL MT: GOOD CONDUCT TIME RELEASE
PROJ REL DT: 03-27-2022

G0002

MORE PAGES TO FOLLOW . . .

MILDC
PAGE 002

PUBLIC INFORMATION
INMATE DATA
AS OF 07-27-2021

* 07-27-2021
* 10:08:10

REGNO...: 47926-424 NAME: ALLEGRA, ROBERT

RESP OF: MIL
PHONE...: 734-439-1511 FAX: 734-439-5534
HOME DETENTION ELIGIBILITY DATE: 09-27-2021

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 03-27-2022 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: ILLINOIS, NORTHERN DISTRICT
DOCKET NUMBER.....: 15 CR 243-1
JUDGE.....: BUCKLO
DATE SENTENCED/PROBATION IMPOSED: 07-19-2017
DATE COMMITTED.....: 10-05-2017
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$100.00	\$00.00	\$500,000.00	\$00.00
RESTITUTION...:	PROPERTY: NO	SERVICES: NO	AMOUNT: \$00.00	

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 381 21:841 SCH II NARCOTIC
OFF/CHG: 21:846,21:841(B)(1)(C) ATTEMPT TO POSSESS WITH INTENT TO
DISTRIBUTE COCAINE, CT 1.

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE..: 65 MONTHS
TERM OF SUPERVISION.....: 3 YEARS
DATE OF OFFENSE.....: 03-25-2015

G0002

MORE PAGES TO FOLLOW . . .

MILDC *
PAGE 003 OF 003 *

PUBLIC INFORMATION
INMATE DATA
AS OF 07-27-2021

* 07-27-2021
* 10:08:10

REGNO...: 47926-424 NAME: ALLEGRA, ROBERT

RESP OF: MIL

PHONE...: 734-439-1511 FAX: 734-439-5534

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 05-19-2021 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 09-27-2017 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 07-19-2017
TOTAL TERM IN EFFECT.....: 65 MONTHS
TOTAL TERM IN EFFECT CONVERTED...: 5 YEARS 5 MONTHS
EARLIEST DATE OF OFFENSE.....: 03-25-2015

JAIL CREDIT.....: FROM DATE THRU DATE
05-07-2015 05-07-2015

TOTAL PRIOR CREDIT TIME.....: 1
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED...: 265
TOTAL GCT EARNED.....: 189
STATUTORY RELEASE DATE PROJECTED: 03-27-2022
ELDERLY OFFENDER TWO THIRDS DATE: 02-26-2021
EXPIRATION FULL TERM DATE.....: 12-17-2022
TIME SERVED.....: 4 YEARS 10 DAYS
PERCENTAGE OF FULL TERM SERVED...: 74.3
PERCENT OF STATUTORY TERM SERVED: 85.8

PROJECTED SATISFACTION DATE.....: 03-27-2022
PROJECTED SATISFACTION METHOD....: GCT REL

S0055 NO PRIOR SENTENCE DATA EXISTS FOR THIS INMATE

Attachment B

MILDC 531.01 *
PAGE 001 OF 001 *

INMATE HISTORY
FIRST STEP

* 07-27-2021
* 10:08:46

REG NO.: 47926-424 NAME: ALLEGRA, ROBERT
CATEGORY: FSA FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
MIL	FTC ELIG	FTC-ELIGIBLE - REVIEWED	12-02-2019 1106	CURRENT
MIL	N-ANGER N	NEED - ANGER/HOSTILITY NO	05-30-2021 1705	CURRENT
MIL	N-ANTISO N	NEED - ANTISOCIAL PEERS NO	05-30-2021 1705	CURRENT
MIL	N-COGN TV Y	NEED - COGNITIONS YES	05-30-2021 1705	CURRENT
MIL	N-DYSLEX N	NEED - DYSLEXIA NO	05-30-2021 1705	CURRENT
MIL	N-EDUC N	NEED - EDUCATION NO	05-30-2021 1705	CURRENT
MIL	N-FIN PV N	NEED - FINANCE/POVERTY NO	05-30-2021 1705	CURRENT
MIL	N-FM/PAR N	NEED - FAMILY/PARENTING NO	05-30-2021 1705	CURRENT
MIL	N-M HLTH N	NEED - MENTAL HEALTH NO	05-30-2021 1705	CURRENT
MIL	N-MEDICL Y	NEED - MEDICAL YES	05-30-2021 1705	CURRENT
MIL	N-RLF Y	NEED - REC/LEISURE/FITNESS YES	05-30-2021 1705	CURRENT
MIL	N-SUB AB N	NEED - SUBSTANCE ABUSE NO	05-30-2021 1705	CURRENT
MIL	N-TRAUMA N	NEED - TRAUMA NO	05-30-2021 1705	CURRENT
MIL	N-WORK N	NEED - WORK NO	05-30-2021 1705	CURRENT
MIL	R-MIN	MINIMUM RISK RECIDIVISM LEVEL	06-30-2021 0735	CURRENT
MIL	R-MIN	MINIMUM RISK RECIDIVISM LEVEL	04-28-2021 1133	06-30-2021 0735
MIL	N-WORK N	NEED - WORK NO	03-25-2021 1016	05-30-2021 1705
MIL	N-TRAUMA N	NEED - TRAUMA NO	12-04-2019 1005	05-30-2021 1705
MIL	N-RLF Y	NEED - REC/LEISURE/FITNESS YES	12-22-2020 1600	05-30-2021 1705
MIL	N-M HLTH N	NEED - MENTAL HEALTH NO	12-25-2020 2300	05-30-2021 1705
MIL	N-MEDICL Y	NEED - MEDICAL YES	12-22-2020 1600	05-30-2021 1705
MIL	N-DYSLEX N	NEED - DYSLEXIA NO	04-05-2021 0954	05-30-2021 1705
MIL	N-ANTISO N	NEED - ANTISOCIAL PEERS NO	12-04-2019 1005	05-30-2021 1705
MIL	N-ANGER N	NEED - ANGER/HOSTILITY NO	03-24-2021 1231	05-30-2021 1705
MIL	N-FIN PV Y	NEED - FINANCE/POVERTY YES	03-17-2021 0655	05-30-2021 1705
MIL	N-COGN TV N	NEED - COGNITIONS NO	12-04-2019 1005	05-30-2021 1705
MIL	R-MIN	MINIMUM RISK RECIDIVISM LEVEL	04-07-2021 0813	04-28-2021 1133
MIL	R-MIN	MINIMUM RISK RECIDIVISM LEVEL	03-17-2021 0654	04-07-2021 0813
MIL	R-MIN	MINIMUM RISK RECIDIVISM LEVEL	12-02-2019 1114	03-17-2021 0654
CCC	N-MEDICL Y	NEED - MEDICAL YES	12-22-2020 1600	12-22-2020 1600
CCC	N-MEDICL Y	NEED - MEDICAL YES	12-22-2020 1600	12-22-2020 1600
CCC	N-RLF Y	NEED - REC/LEISURE/FITNESS YES	12-22-2020 1600	12-22-2020 1600
THA	UNASSG RSK	UNASSIGNED RISK LEVEL	10-07-2019 0602	12-02-2019 1114
THA	UNREVIEW HIS	UNREVIEWED OFFENSES	10-07-2019 0602	12-02-2019 1106

G0000

TRANSACTION SUCCESSFULLY COMPLETED

Attachment C

Register Number: 47926-424, Last Name: ALLEGRA

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number: 47926-424
Inmate Name
Last.....: ALLEGRA
First.....: ROBERT
Middle.....:
Suffix.....:
Gender.....: MALE

Risk Level Inmate.....: R-MIN
General Level.....: R-MIN (-16)
Violent Level.....: R-MIN (-7)
Security Level Inmate: MINIMUM
Security Level Faci...: LOW
Responsible Facility.: MIL
Start Incarceration...: 07/19/2017

PATTERN Worksheet Summary

Item	- Value	- General Score	- Violent Score
Current Age	66	0	0
Walsh w/Conviction	FALSE	0	0
Violent Offense (PATTERN)	FALSE	0	0
Criminal History Points	0	0	0
History of Escapes	3	6	3
History of Violence	0	0	0
Education Score	HighSchoolDegreeOrGED	-4	-2
Drug Program Status	NoNeed	-9	-3
All Incident Reports (120 Months)	0	0	0
Serious Incident Reports (120 Months)	0	0	0
Time Since Last Incident Report	N/A	0	0
Time Since Last Serious Incident Report	N/A	0	0
FRP Refuse	FALSE	0	0
Programs Completed	13	-8	-4
Work Programs	1	-1	-1
		Total -16	-7

Attachment D

MILDC 531.01 * INMATE HISTORY * 07-27-2021
PAGE 001 OF 001 * DRUG PGMS * 10:09:43

REG NO.: 47926-424 NAME: ALLEGRA, ROBERT
CATEGORY: DRG FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
MIL	DAP UNQUAL	RESIDENT DRUG TRMT UNQUALIFIED	11-14-2017 0833	CURRENT
MIL	ED COMP	DRUG EDUCATION COMPLETE	02-19-2019 1506	CURRENT
MIL	MH CMTX NR	MENTAL HEALTH TX NOT REFERRED	05-11-2020 1650	CURRENT
MIL	NR COMP	NRES DRUG TMT/COMPLETE	06-24-2019 1217	CURRENT
THA	NR PART	NRES DRUG COUNSEL PARTICIPANT	01-17-2019 1038	06-24-2019 1217
THA	NR COMP	NRES DRUG TMT/COMPLETE	06-20-2019 1211	06-24-2019 1216
THA	NR COMP	NRES DRUG TMT/COMPLETE	02-26-2018 0819	06-20-2019 1211
THA	ED PART V	DRUG EDUCATION PARTICIPANT-VOL	12-19-2018 0900	02-19-2019 1506
THA	ED COMP	DRUG EDUCATION COMPLETE	04-13-2018 0938	12-19-2018 0900
THA	ED PART V	DRUG EDUCATION PARTICIPANT-VOL	02-28-2018 0935	04-13-2018 0938
THA	ED PART V	DRUG EDUCATION PARTICIPANT-VOL	04-13-2018 0934	04-13-2018 0935
THA	ED NONE	DRUG EDUCATION NONE	11-09-2017 0919	04-13-2018 0934
THA	NR PART	NRES DRUG COUNSEL PARTICIPANT	11-21-2017 1248	02-26-2018 0819
THA	NR WAIT	NRES DRUG TMT WAITING	10-24-2017 1204	11-21-2017 1248
THA	DAP SCREEN	DRUG ABUSE PROGRAM SCREENING	10-25-2017 1026	11-14-2017 0833
THA	DAP REFER	DRUG ABUSE PROGRAM REFER	10-24-2017 1204	10-25-2017 1026

G0000 TRANSACTION SUCCESSFULLY COMPLETED

Attachment F

100

MILDC 531.01 *
PAGE 001 OF 001 *INMATE HISTORY
WRK DETAIL* 07-27-2021
* 10:10:05REG NO.: 47926-424 NAME....: ALLEGRA, ROBERT
CATEGORY: WRK FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
MIL	F2ORD POOL	UNIT ORDERLY POOL	05-14-2021 0921	CURRENT
MIL	AM D/R	DINING RM 5:30A-12:30P TUE-SAT	05-01-2021 0801	05-14-2021 0921
MIL	F2ORD POOL	UNIT ORDERLY POOL	04-11-2021 1137	05-01-2021 0801
MIL	UNASSG	UNASSIGNED WORK DETAIL	04-11-2021 1104	04-11-2021 1137
MIL	A&O PEND	ADMISSION ORIENTATION	03-16-2021 1456	04-11-2021 1104
CCC	UNASSG	UNASSIGNED WORK DETAIL	12-17-2020 1059	03-16-2021 0814
CCC	UNASSG	UNASSIGNED WORK DETAIL	12-17-2020 1056	12-17-2020 1100
THA	CMP FS	CAMP FOOD SERVICE	03-13-2020 1639	05-14-2020 0908
THA	CMP FS	CAMP FOOD SERVICE	03-11-2020 1033	03-13-2020 1259
THA	CMP FS	CAMP FOOD SERVICE	08-08-2019 0001	03-11-2020 0845
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	05-02-2019 1701	08-08-2019 0001
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	03-11-2019 1134	05-02-2019 1435
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	11-02-2018 1358	03-11-2019 0858
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	09-19-2018 1327	11-02-2018 1026
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	09-14-2018 1346	09-19-2018 1054
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	09-13-2018 1409	09-14-2018 0851
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	09-10-2018 1139	09-13-2018 1058
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	08-29-2018 1657	09-10-2018 0912
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	07-27-2018 1354	08-29-2018 1420
THA	CMP LANDS	CAMP LANDSCAPE DETAIL	07-17-2018 0001	07-27-2018 1147
THA	CMP FS	CAMP FOOD SERVICE	06-07-2018 1352	07-17-2018 0001
THA	CMP FS	CAMP FOOD SERVICE	05-25-2018 1155	06-07-2018 1233
THA	CMP FS	CAMP FOOD SERVICE	03-30-2018 0941	05-25-2018 1020
THA	CMP FS	CAMP FOOD SERVICE	03-22-2018 0001	03-30-2018 0847
THA	CMP ORD	CAMP ORDERLY	03-16-2018 0820	03-22-2018 0001
THA	CMP UNASSG	CAMP UNASSIGNED	02-18-2018 1022	03-16-2018 0820
THA	SHU UNASSG	SHU UNASSIGNED	01-24-2018 0553	02-18-2018 1022
THA	CMP BUS M6	CAMP BUS MAINTENANCE 6	12-12-2017 0730	01-24-2018 0553
THA	CMP ORD	CAMP ORDERLY	11-15-2017 0730	12-12-2017 0730
THA	CMP BUS M6	CAMP BUS MAINTENANCE 6	10-12-2017 1314	11-15-2017 0730
THA	A/O COMPLT	A/O COMPLT	11-02-2017 0635	11-02-2017 0636
THA	INST A/O	INST A/O	10-05-2017 1440	11-02-2017 0635
OXF	UNASSG	UNASSIGNED WORK DETAIL	10-02-2017 1255	10-05-2017 0425
CCC	UNASSG	UNASSIGNED WORK DETAIL	07-19-2017 1528	10-02-2017 0937

G0000 TRANSACTION SUCCESSFULLY COMPLETED