

Robert V. Allegra
2150 McDonald Drive
Oak Brook IL. 60523
1630-999-1600
Bob@PearlMasterAir.com

September 6th, 2022

Ref: PI # 2369987

MID # 200010013973

APP ID # 1998001833

3. This is a detailed Statement from Robert V. Allegra attesting to the None use of drugs and the Circumstances surrounding the offense.

- A) I have never tried any form of a drug, either now in the past or will I in the Future.
- B) I will show Circumstances surrounding the offense which I was charged was Incorrect:
 - 1) created by the FBI to make me an informant
 - 2) No such crime exists in the Federal Statue
 - 3) No drugs were present
 - 4) No Aircraft was used in the act of any crime.

To Whom It May Concern:

I Robert Allegra has never tried, used or will try a drug that is not prescribed by a License Physician.

(See letter 08/5/2022 from Ms. Raven McMillan Probation Office, "Never Tested Positive")

Let me start out with saying this will be the most interesting story you have come across and not only will you find it most unbelievable but it is 100% true and is documented by facts. I have created a book (Thumb drive) that I will submit as reference having all documents that I will reference to for I am presently fighting to be exonerated. This book (Thumb drive) will show exact copies of Motions that have been filed with the Federal government and transcripts. It is number at the top of each page.

I will enclose several letters from attorneys that know me and my case and will provide documentation of what are the facts relating to my case. Let me start with one of my original attorneys Vadim Glozman in a letter that he wrote to the FAA on 08/08/2022 he wrote ***"the case against him was quite unique. The two aspects I believe are most significant for your consideration are: (1) the charges stemmed from a sting operation coordinate and organized by the government, not Mr. Allegra (2) Mr. Allegra's aircraft was never actually used to transport a controlled substance, or even anything the government wanted Mr. Allegra to believe was a controlled substance."***

In the Thumb Drive that is enclosed it is Bates numbered on the top of every page so you can reference each document as I discuss it and present it into evidence should you want.

Post Arrest page 351 top right of the page:

Robert Allegra: You are looking for me to be an informant?

Agent Ostrow: YES

Agent Ronsman: YES

Page 347: top right of the page

Agent Ronsman: If you choose to go that route and you cooperate and we are comfortable that you are going to work with us, you can walk out of here today and go back to your family.

Now this on the surface doesn't tell you the whole story, as my previous attorney stated and is a matter of fact of law in order to be charged a crime which I was charged with and as the original Indictment shows: ***Robert Allegra, 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: Found on Bates Page 156***

As you read and look at the original Indictment page # 156 this is not what I plead guilty to nor was the case on which the government asked me to plead guilty to. As I will show there was:

1) Never a Controlled Substance 2) Never Five Kilograms or mixture 3) No mixture and Substance 4) Never a Detectable amount of cocaine 5) No Scheduled II Controlled Substance 6) Never was I going to distribute a controlled substance.

All this is documented and I will present it to you in my case:

Page 167: Court Docket Report dated 07/01/2016 Government's oral motion to strike the quantity allegations from Count I of the indictment is granted.

Page 325 to 338: Transcript of Proceedings – Change of Plea Before the Honorable Elaine E. Bucklo

Page 327 & 328 The Government Prosecutor: 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 I 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."

Page 337: Ms. Jenkins: "On March 25th, 2015, undercover officers, posing as narcotics traffickers, brought weighted suitcases"

See Exhibit A: Under Federal Law:

- 1) The possession of the drugs; and (2) the Intent to distribute them. Both elements must be satisfied simultaneously to commit the offense of "Possession with Intent to Distribute."
- 2) "One Final point to highlight is that the crime can't occur unless possession of the drugs occur simultaneously with intent to distribute them."

I have clearly shown that the government under their testimony clearly stated there was **NO Drugs** ever there. No Crime under the Federal Statue exists for attempting to accept books and weights. Drugs must be present, why they were not because the FBI was so convinced I would become a government Informant that they never brought drugs. Not because they couldn't get them they are the FBI but because you cannot have the government create a crime, manufacture the crime and try you to conspire with the FBI. Agents are not allowed to do that so a Conspiracy charge would never be possible being that everyone was FBI agents performing this illegal act.

Now what becomes much more disturbing is that the Federal Prosecutor lied to the Grand Jury to get a False Indictment. Yes; that is what I said! The Prosecutor, the FBI and anyone involved in getting the Indictment knew that Count I and the only Count in the Indictment was a lie.

- 1) No Quantity of Drugs, as stated by the Government Prosecutor.
- 2) No Quantity, you can't have a mixture,
- 3) No Five Kilograms or more,
- 4) No detectable amount of cocaine,
- 5) No Schedule II Controlled Substance,
- 6) No Laboratory testing
- 7) As Federal Statue states Drugs are the key element in Intent to distribute.

(Three weeks after I sent a letter to the Federal Prosecutor (AUSA), the Prosecutor on my case was asked to leave the Federal governments office. He no longer prosecute's for the Gov't.)

Now I filed a Motion 60B with the Federal Government on November 12th 2020 claiming Fraud by the Federal Prosecutor.

See Pages 263-275

Page 266: My Claim of "Jurisdiction Procured Through Fraud" and all my Statement of Material Facts follows.

Page 272: "The Indictment was obtained through the knowing and willful fabrication of evidence, which violated Robert Allegra's Due Process and could not confer jurisdiction of the subject matter Jurisdiction and all orders and Judgments are Void as a matter of law."

The Judge 5 days later issued an order that my Motion was “Denied” Just “Denied” no other explanation!

See Page 276-283 No reason in Fact or Law:

It is required that a Judge use Law and Facts in making a legal decision in order that that decision can be Appealed to the next Court.

As you can see on November 28th of 2020 I filed a Motion 59(e) requiring the Judge to respond.

Rule 59(e) Motion To Amend And Clarification Of Order

As of today almost 2 years the Judge has failed to issue a response to my Motion. The reason and the only reason is that the Federal Prosecutor Lied to the Grand Jury to obtain a False and Fraudulent Indictment.

Several issues that the Judge has with granting this 59(e) motion is it sheds light on the fact the prosecutor lied but more important it opens up the Judge to scrutiny of when I did not plead guilty to Intent to Distribute and the Fact that I plead guilty to attempting to posses Books & Weights. NO DRUGS! she accepted a guilty plea to. She has a responsibility to stop knowing that I did not willingly and knowingly plead guilty. She is also aware that **236. Amendment Of Indictments in Substance** are not allowed by anyone other than the Grand Jury...

236. Amendment Of Indictments:

“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.”

971. Sufficiency of Indictment – Generally

Generally, 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.

50 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 false pretense, misrepresentations or promise forming a part of it, was fatally defective); *see also United States v. Crummer*, 151 F.2d 958 (10th Cir. 1945) (“While the particulars of the scheme are matters of substance and therefore must be described with a degree of certainty sufficient to show its existence of character, and fairly to acquaint the defendant with the particular fraudulent scheme charged against him,

223. Requirements of Specificity

The specificity requirement 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 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)

One last legal Document I would like to bring up and make you aware of and that is my filing of my Motion 2241. Please let me explain what is in my 2241 Motion and how the Judge ruled on that, Bates Pages 22 to 69:

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 Claim
- 5) No Crime was Committed
- 6) BOP is not Following the First Step Act of 2018 (FSA)

Page 5: (Bates Page 27)

- 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: (Bates Page 28)

Plea Agreement was Not Knowing and Voluntary

Page 7: (Bates Page 29)

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: (Bates Page 30)

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

Page 9: (Bates Page 31)

(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(e)

Page 10: (Bates page 32)

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: (Bates Page 33)

We requested an 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: (Bates Page 37)

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

Page 3: (Bates Page 38)

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: (Bates Page 40)

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

Page 7: (Bates Page 42)

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: (Bates Page 43)

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: (Bates Page 46)

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

Page 12: (Bates Page 47)

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

Page 14: (Bates Page 49)

Misconduct (Entrapment)

Page 15: (Bates Page 50)

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: (Bates Page 51)

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: (Bates Page 52)

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

Page 18: (Bates Page 53)

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

Page 19 - 20: (Bates Page 54-55)

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

Pages 22 - 23: (Bates Page 57-58)

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

Page 24: (Bates Page 59)

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

Page 24 - 33: (Bates Page 59-68)

5th Amendment Constitutional Right to Liberty

Page 30: (Bates Page 65)

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

The reason I left this for last it somewhat summarized my entire case from start to where I am at today going back to court to get a Judge to hear my Motions. The Judge's final ruling on my 2241 Motion was if I had claimed **Actual Innocence** that the 2241 Motion would have been the correct Motion to file.

As you will see on **(Bates page 40):**

- I. **Actual Innocence** on my 2241 Motion the first thing I claimed is:
"Actual Innocence"

Actual Innocence has no time requirement that it needs to be filed by.

In Summary; No Illegal Act was committed, I did not use an aircraft in any illegal activity, I did not possess any illegal drugs, I did not transport any illegal drugs. Based on the facts I have presented and the requirements under Part 67, Please allow me the opportunity to obtain my Medical Certificate back again and reinstate my Pilot's License.

With my Sincere Regrets that it had to come to this,

Robert V. Allegra

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
PROBATION OFFICE

MARCUS HOLMES
CHIEF PROBATION OFFICER



230 S. DEARBORN ST.
SUITE 3400
CHICAGO, IL 60604
Tel: 312-435-5700
Fax: 312-408-5045

August 5, 2022

U.S. Department of Transportation
Federal Aviation Administration

RE: Robert Allegra
2150 McDonald Drive, Suite 1304
Oak Brook, Illinois 60523

To Whom It May Concern:

I am the United States Probation Officer assigned to Mr. Allegra's case. Please be advised that Mr. Allegra is abiding by the terms of conditions for his supervised release. Moreover, he has tested negative for illegal substances since the start of his supervised release. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Raven McMillan
U. S. Probation Officer
Telephone: (312)435-5737

KISS & ASSOCIATES, LTD.
ATTORNEYS AT LAW

PHILIP M. KISS
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September 2, 2022

Federal Aviation Administration
Office of Aerospace Medicine
Aerospace Medical Certification Division, AAM-300
P.O. Box 25082
Oklahoma City, OK 73125-9867

Re: Mr. Robert Allegra
PI # 2369987
MID #200010013973
APP ID #1998001833
ORDER OF REVOCATION

To Whom It May Concern:

I currently representing Mr. Robert Allegra in his claim to overturn his conviction on July 19, 2017 for "possession with intent to distribute cocaine" under 21 U.S.C. § 846 by the United States District Court, Northern District of Illinois, Eastern Division.

On February 26, 2018, Naomi Tsuda, Assistant Chief Counsel for Enforcement issued an ORDER OF REVOCATION to my client. The basis of that REVOCATION was the conviction on July 19, 2017.

I believe our case will prove that the conviction for "possession with intent to distribute cocaine" under 21 U.S.C. § 846 by the United States District Court, Northern District of Illinois, Eastern Division was an error and will be overturned. Accordingly, the basis for your ORDER OF REVOCATION, should also be overturned.

Mr. Allegra had no criminal history, no history of drug dealing, and no history of alcohol or substance abuse. Mr. Allegra has never been accused of independently possessing or controlling any drugs whatsoever.

The cocaine that was the subject of the charge against Mr. Allegra stemmed from a sting operation coordinated and organized by the government, not Mr. Allegra. Mr. Allegra's aircraft was never used to transport any controlled substance, Federal agents brought a suitcase on his plane that they originally contended contained 45 kilograms of cocaine, but which they later admitted actually contained only "books and weights". There never were drugs in that suitcase nor on the plane. No crime was facilitated by the use of his aircraft.

On July 1, 2016 the government removed the charge of drugs prior to Mr. Allegra's plea. Therefore when Mr. Allegra pled guilty, he was pleading guilty to possessing "Books and Weights" (which were the contents of the suitcase). The possession of "Books and Weights" is NOT a Schedule II Controlled Substance, and is obviously not illegal at all.

Without any drugs in the suitcase. There was no possession of drugs by Mr. Allegra. In addition, without any drugs in the suitcase there could be no "intent to distribute cocaine". To be convicted of "possession with intent to distribute cocaine" Mr. Allegra would have been required to be in actual or constructive possession of cocaine, he was not.

At his sentencing hearing, Mr. Allegra clearly stated under oath that he had no intent to distribute any drugs alleged to be in the government suitcase.

I believe that this conviction was wrongfully obtained and will be reversed. Nevertheless, Mr. Allegra continues to suffer the effects of this conviction even though I believe the government abused their authority in setting him up. Mr. Allegra has voluntarily taken on the task of fighting this conviction, having nothing to gain except the restoration of his name and reputation.

Mr. Allegra has fully served his sentence and paid any and all fines and penalties imposed as a result of his conviction. I believe he is being wrongfully stigmatized and unduly penalized by not having his pilot license restored. Arguably the purpose of arresting and convicting someone for a crime is to punish the person for committing the crime and to make society whole by having a preset a penalty imposed for that crime. Once that punishment is served by incarceration and/or financial penalties and fines, the accused is considered to be rehabilitated and his infraction against society has been paid.

Mr. Allegra's whole life has revolved around being a pilot. As a pilot he has had an exemplary record. That record would continue today, unabated, had it not been for the federal government efforts to entrap Mr. Allegra into committing a crime. This entrapment has also taken away, Mr. Allegra's livelihood. Without regaining his pilot's license Mr. Allegra is functionally unemployable, at a time when jet pilots are in great demand.

Mr. Allegra has already been fully rehabilitated (assuming that he was even guilty) and any debt to society has been fully paid. I believe his pilot's license should be fully restored.

If you have any questions or wish any additional information or documents, please contact the undersigned, directly.

Sincerely

/s/ Philip M. Kiss

Philip M Kiss
Attorney at Law

LAW OFFICES OF VADIM A. GLOZMAN

Attorneys and Counselors at Law

Vadim A. Glozman
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August 8, 2022

Federal Aviation Administration
Office of Aerospace Medicine
Aerospace Medical Certification Division, AAM-300
P.O. Box 25082
Oklahoma City, OK 73125-9867

Re: Robert Allegra
PI # 2369987
MID # 200010013973
APP ID # 1998001833

To Whom It May Concern:

Please be advised that I was one of the original attorneys that represented Robert Allegra in his criminal matter entitled United States v. Allegra, Case No. 15 CR 243 in the Northern District of Illinois. Mr. Allegra has informed me that he has submitted an application for the renewal of his pilot's license that was revoked following his conviction.

As part of his application process, I am providing him with the following documents for your review:

1. The Judgement and Commitment Order;
2. Mr. Allegra's Sentencing Position Paper; and,
3. The Character Letters that were submitted on his behalf.

As you will see through your review of these documents, and whatever other documents Mr. Allegra submits in support of his application, the case against him was quite unique. The two aspects I believe are most significant for your consideration are: (1) the charges stemmed from a sting operation coordinate and organized by the government, not Mr. Allegra and (2) Mr. Allegra's aircraft was never

actually used to transport a controlled substance, or even anything the government wanted Mr. Allegra to believe was a controlled substance.

Prior to this case, Mr. Allegra had no criminal history, no history of drug dealing, and no history of alcohol or substance abuse. The circumstances surrounding this case were truly an anomaly and at complete odds with his character – both as a person and as a pilot.

The truth is that there are very few things in this world, if any, that are more important to him than being a pilot. It is much more than just a career or a hobby, it is central to who he is as a person. It is his identity. And he was good at it. He had a list of clients that others would only dream of having. He had no other infractions related to his license. He was as skilled and respected as one could only imagine.

Since the revocation of his license, he has been a shell of himself. What makes that revocation that much more difficult to comprehend is that at no point did Mr. Allegra ever put his passengers in danger. Not during the commission of the alleged offense, and not at any other point during his entire career.

I write this letter on behalf of Mr. Allegra because I whole-heartedly believe that if anyone deserves a second chance, it is him. I hope the documents I submitted help shed some light on an otherwise dark time in his life.

If you have any questions or concerns regarding my representation of him or any of the documents I provided to Mr. Allegra, please feel free to contact me at any time at (312) 726-9015 or vg@glozmanlaw.com.

Sincerely,

Vadim A. Glozman

Vadim A. Glozman

FRANK M VALENTI

ATTORNEY AT LAW

Frank M. Valenti

881 W. Lake Street
First Floor Telephone 630-833-4070
Addison, Illinois 60101 Facsimile 630-543-1292

August 26, 2022

To Whom It May Concern

I have known Robert Allegra for four years as his attorney in his divorce case and various civil matters. I have been an attorney for over forty years. The one benefit in practicing family law is that one truly gets to see the true character of a person. In Robert's case he really has only one driving force which controls his actions, the best interest of his son. He has put what in his best interest secondary to the best interest of his son. He has always been honest, truthful and compassionate in his actions and endeavors,

The person that was sent to jail is 180 degrees from the man that I know. I have read Bob's narrative that he is having submitted to your agency and I can state it is a factually correct statement. I have also reviewed the facts of the case that sent him to jail for five years and am mystified how someone can go to jail for a drug offence when there were no drugs on or transported by Bob. I know he has retained an attorney to work on his exoneration in that matter. Hopefully he will be exonerated soon.

As for the matter of his license Bob has all the physical, mental and character attributes necessary to being an excellent pilot. He maintains his poise and balanced demeanor in stressful situations. He looks at the situations he finds himself in with a calm and balanced intellect in dealing with all his surroundings. He is honest and forthright with all the people he comes in contact with in life.

I know that he has been offered employment once he regains his pilot's license. Bob has many friends who have stood by him throughout this whole ordeal which is testament to his character. We and I include myself in this group of friends and supporters hope that you will on his request for reinstatement of his license in a favorable manner because he truly deserves this chance to provide a service and to support himself and his son.

If you have any questions regarding Bob or this letter please feel free to contact me at your convenience.

Very truly yours,

Frank Valenti

Hon. Joseph N. Casciato (Ret).
11418 Woodglen Lane
Burr Ridge, Illinois 60527

9/1/2022

To Whom It May Concern,

I have taken the liberty to write this letter in support of Robert Allegra. Robert's main focus is to provide for his minor son and has consistently proved this position throughout contested divorce and custody court actions. In my 40 plus years of knowing Bob he has always been sincere, caring and overall truthful in his relationships.

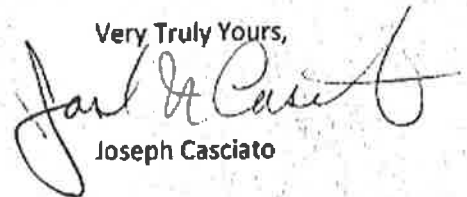
Regarding his past conviction, which has been contested through his attorneys in regards to due process and lack of intent to plea. The plea hearing never admitted the findings of actual illegal drugs being present or in the vicinity of any aircraft. Of course, it was a first and only time he was faced with a criminal charge.

Robert served his time of over 4 ½ years for a first offense. He is truly sincere, apologetic and totally rehabilitated. In order for him to provide for himself and his son, Bob needs to obtain his pilot's license. He is intelligent and maintains calm in all stressful situations. His long career as a jet-rated pilot was exemplary.

In conclusion, in his present state I have no reservation in recommending Robert Allegra's reinstatement of his pilot's license.

Please correspond if further information is needed. Cell: 630-235-7298

Very Truly Yours,

A handwritten signature in dark ink, appearing to read "Joe N. Casciato", written in a cursive style.

Joseph Casciato

ROBERT W. FIORETTI, ESQ.

311 S. Wacker Drive
Suite 2470
Chicago, IL 60606

August 30, 2022

To whom it may concern,

This letter is to attest to the character of Mr. Robert Allegra. I have know Mr. Robert Allegra for over ten years.

Further, I am aware of the personal, civil, and criminal matters he has been involved in. I understand that he would like to request that his pilot's license be reinstated. I have read Mr. Allegra's narrative that he is submitting to you on his behalf and agree with the facts as he has stated them.

I have been practicing law for over 40 years in both civil and criminal matters. I was also elected Alderman of the Second Ward of the City of Chicago and served two terms from 2007 through 2015.

I am aware that Mr. Allegra has hired an attorney to work on his vindication and his exoneration which is a slow process for him. Based upon his character and fitness, I do believe his pilot's license should be reinstated. He has the temperament, ability, and understanding of the rules to be an excellent pilot. In fact, it is love of flying that instills in him sense of purpose and meaning, not to mention his livelihood.

If I can be of assistance to you in this matter for his reinstatement, please do not hesitate to contact me at 312-315-4203, or at rwf@fioretticampbell.com

Sincerely yours,

Robert W. Fioretti

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TARIK M. DENDEN
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OF COUNSEL:

HON. THOMAS R. ALLEN, III, RET.

HON. PAUL C. LILLIOS, RET. ‡

WILLIAM F. MARUTZKY

Additional Jurisdictions: * FL, † IN, ‡ IA

Florida Location:

27911 Crown Lake Blvd. – Suite 201

Bonita Springs, Florida 34134

August 21, 2022

Office of Aerospace Medicine
Aerospace Medical Certification Division, AAM-300
Federal Aviation Administration
United States Department of Transportation
PO Box 25082
Oklahoma City, OK 73125-9867

Re: Robert Allegra
PI # 2369987
MID # 200010013973
APP ID # 1998001833

To Whom it May Concern:

By way of introduction, I am the attorney who previously represented Robert Allegra in seeking a Presidential pardon following his criminal conviction in United States v. Robert Allegra, Case No. 15 CR 243 (ND/IL). Mr. Allegra had earlier advised me that in connection with his conviction, his pilot's license had been revoked. Mr. Allegra now advises me that he is seeking reinstatement of that license.

Based upon my experience and more importantly, my knowledge of the skills and qualities possessed by Mr. Allegra, I respectfully submit that Mr. Allegra is very much worthy of favorable consideration for reinstatement of his pilot's license. Having myself flown with Mr. Allegra when he piloted a private jet, I know that he is an expert pilot, both with respect to airplanes and helicopters. Indeed, his entire career has centered around aviation and when Mr. Allegra is not flying, his greatest joy is simply being with, and taking care of, his family.

In considering reinstatement, I know (having represented the FAA during my decade-long past service as an Assistant United States Attorney) that public safety is central to any decision as to whether to grant a request for issuance and in Mr. Allegra's particular situation, whether his criminal conviction should continue to be a bar to issuance of his pilot's license.

Based upon my knowledge of the facts in Mr. Allegra's case, it is my opinion that Mr. Allegra's single, past conviction should no longer credibly serve as a bar to issuance. Prior to his offense, Mr. Allegra had no stain on his record. His first and only offense, occurring at the age of sixty (and acknowledged by the government as just a single instance of misconduct), happened at the time when Mr. Allegra had been enduring significant tremendous financial and mental distress caused by great recession of 2009. At his weakest moment, Mr. Allegra had been targeted and recruited by government agents through an informant to simply provide flying services for a single trip from Illinois to California and back. Although Mr. Allegra had been charged with a single count of intent to distribute cocaine in connection with that fateful trip, in fact, no drugs were ever shown have been transported by Mr. Allegra. Mr. Allegra ultimately pleaded guilty in part, I believe, because of the potential severity of sentence he could face if he proceeded to trial.

2

At this juncture, there truly is no valid reason to continue the grounding of Mr. Allegra. He has fully admitted his guilt and accepted responsibility. He is a law-abiding citizen with a nearly zero probability of recidivism. Mr. Allegra also has a substantial history of performing charitable works including donating flight time and hours in flying those in need, without charge.


During the process of preparing Mr. Allegra's Presidential pardon petition, I had the opportunity to speak to a number of individuals who submitted affidavits on his behalf. I was amazed to bear witness to the sincerity of those closest to Mr. Allegra, and how they attested to his character, his skill as a pilot, his lack of any use of drugs or alcohol throughout his entire life, his charitable works and most importantly, how his criminal conviction was such a tragic, isolated aberration in Mr. Allegra's life.

Based upon all the above, Mr. Allegra is a person who is worthy of the Administration's most favorable consideration, with respect to issuance of his pilot's license.

Thank you very much for your consideration and please do not hesitate to contact me if any further information is needed.

Sincerely,

CHAPEKIS, CHAPEKIS & SCHMIDT LAW GROUP, LLP

DocuSigned by:

E3C68CF8E0B3442
Paul C. Lillios

Page 29

1 You are telling me if I give you hundred percent
 2 of the truth, you are letting me walk out the
 3 door and I continue to go fly home, pick up my
 4 family, go down to Florida, pick up coach Ditka,
 5 go to Washington DC tonight or tomorrow night,
 6 go back to down to Naples, finish out my
 7 vacation and go back up to Chicago on Wednesday?
 8 AGENT RONSMAN: No. We are not telling you
 9 that. I'm telling you that's the starting
 10 point. You know, it's a great risk for us. I
 11 want to be able to let you do that, to be
 12 honest. But my concern is -- this is a serious
 13 charge, mandatory minimum ten years you are
 14 looking at to this charge.
 15 So in order for -- to feel comfortable
 16 for you to do that, I don't want you going over
 17 the Rockies and taking a nose dive and then the
 18 story is, you know.
 19 ROBERT ALLEGRA: Trust me I love my son and
 20 family too much.
 21 AGENT RONSMAN: Oh, yes. And I realize that.
 22 And I know you say being the father is the best
 23 -- best thing in the world, which is good. We
 24 like to hear that. We want you to, you know, be

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1 there for your kid.
 2 ROBERT ALLEGRA: So you tell me what allows
 3 me to walk out this door today?
 4 AGENT RONSMAN: Being truthful about your
 5 dealings with Jay and then discussing different
 6 things you know of or can get yourself into. I
 7 know you have your fingers in a lot of different
 8 pots.
 9 ROBERT ALLEGRA: Nothing illegal.
 10 AGENT RONSMAN: Nothing illegal?
 11 ROBERT ALLEGRA: Tell me what I'm doing
 12 that's illegal. Okay, forgetting Jay. What are
 13 you referring to? And I'm being serious.
 14 AGENT OSTROW: Get back to how you --
 15 ROBERT ALLEGRA: No, no, no, no.
 16 AGENT OSTROW: Your walking out of here, you
 17 have to -- if you are honest about this and we
 18 are comfortable that you are completely on board
 19 and we get to talk about everything that went on
 20 in your life, then, yeah, I see you walking out
 21 of here, okay.
 22 ROBERT ALLEGRA: With no charges today?
 23 AGENT OSTROW: Yes, but that --
 24 AGENT RONSMAN: That and the (inaudible) can

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1 be filed at any point.
 2 AGENT OSTROW: We are not saying they go --
 3 ROBERT ALLEGRA: You are looking for me to be
 4 an informant?
 5 AGENT OSTROW: Yes.
 6 AGENT RONSMAN: Yes.
 7 ROBERT ALLEGRA: All right. What, if any,
 8 protection do I get for that?
 9 AGENT RONSMAN: Protection as in what, like
 10 physical security or protection against charges
 11 or --
 12 ROBERT ALLEGRA: No. More physically.
 13 Physical. I mean, I'm assuming you are going to
 14 probably want me to try to get the cartel.
 15 AGENT RONSMAN: Probably not. You know a lot
 16 of interesting people in Chicago around in
 17 different social circles. I'm sure you hear --
 18 you hear different things. We are not alleged
 19 you are involved in anything illegal other
 20 than -- well, why you are sitting here today.
 21 But...
 22 ROBERT ALLEGRA: Jason is an equally bad guy
 23 that -- well, Jason is the only drug bad guy
 24 that I obviously must know. So...

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1 AGENT RONSMAN: Alfredo and Miguel and the
 2 different people that you flew.
 3 ROBERT ALLEGRA: I met through Jason. If I'm
 4 hundred percent honest, I'm asking both you guys
 5 this question right now -- I'm going to take off
 6 my jacket. If I'm hundred percent honest and
 7 you believe that I'm a hundred percent honest,
 8 you will let me walk out the door today?
 9 AGENT RONSMAN: After we consult with the
 10 U.S. attorney, we will give them our opinion
 11 that Bob is being hundred percent honest and I
 12 think we can trust him moving forward. And our
 13 word pulls a lot of weight with him. So I'm
 14 sure that will be a yes.
 15 ROBERT ALLEGRA: All right. What do you want
 16 to know?
 17 AGENT RONSMAN: You got to start with the
 18 truth.
 19 ROBERT ALLEGRA: I asked you what you want to
 20 know.
 21 AGENT RONSMAN: The truth.
 22 AGENT OSTROW: Tell the truth about this
 23 deal.
 24 ROBERT ALLEGRA: Jason asked me to fly

8 (Pages 29 to 32)

Page 13

1 AGENT RONSMAN: And we know your dealings
2 with Jay and Alfredo as well. You have met with
3 Alfredo and Jay's partner. The dude with the
4 glasses, older guy.
5 ROBERT ALLEGRA: Older man, gray hair and
6 stuff.
7 AGENT RONSMAN: Your last couple meetings you
8 had with him, it's all recorded.
9 ROBERT ALLEGRA: When I ran across him at --
10 I was having breakfast with the --
11 AGENT RONSMAN: At Johnny's Ice House. Yeah,
12 but you met up with him back in October as well.
13 ROBERT ALLEGRA: Yes, it was a coincidence.
14 AGENT RONSMAN: The October wasn't. You
15 talked about flying. You gave him a quote to
16 fly some kilos down there.
17 ROBERT ALLEGRA: No, absolutely not.
18 AGENT RONSMAN: You didn't do it but you gave
19 him a price.
20 ROBERT ALLEGRA: Never have I given anybody
21 quote to fly kilos.
22 AGENT RONSMAN: \$80,000.
23 ROBERT ALLEGRA: No, no. Positively not.
24 AGENT OSTROW: You know we have it on

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1 recording. Every meeting you have had.
2 ROBERT ALLEGRA: I'm more than happy to
3 listen to your recordings. I have never flown a
4 kilo.
5 AGENT OSTROW: I know, but --
6 AGENT RONSMAN: I know you gave Alfredo a
7 quote, though.
8 ROBERT ALLEGRA: No, not to fly, not to fly
9 drugs.
10 AGENT RONSMAN: What did you think you were
11 doing today then?
12 ROBERT ALLEGRA: I thought I was bringing
13 money.
14 AGENT RONSMAN: Back? So what was Jay paying
15 you \$180,000 for.
16 ROBERT ALLEGRA: That's what he was paying me
17 money for.
18 AGENT RONSMAN: Well, Bob, this is how it's
19 -- it's going to work. I have every intention.
20 I would like to work with you and cooperate and
21 I know you got your fingers in a lot of
22 different pots.
23 ROBERT ALLEGRA: I am a hard working guy.
24 You know, I mean...

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1 AGENT RONSMAN: If you choose to go that
2 route and you cooperate and we are comfortable
3 that you are going to work with us, you can walk
4 out of here today and go back to your family.
5 ROBERT ALLEGRA: What do you want me to do?
6 AGENT RONSMAN: Tell the truth. None of this
7 happens without the truth. There is a U.S.
8 attorney sitting in Chicago right now waiting
9 for my phone call saying "What's Bobby doing?"
10 We have an agent there ready to sign a criminal
11 complaint.
12 ROBERT ALLEGRA: What do you want me to do?
13 AGENT RONSMAN: What can you do?
14 ROBERT ALLEGRA: I got hired a long time ago
15 to fly south to Texas --
16 AGENT RONSMAN: Yeah, we know about all that.
17 ROBERT ALLEGRA: -- as you guys know. And to
18 my knowledge I was flying cash --
19 AGENT RONSMAN: You were?
20 ROBERT ALLEGRA: -- in the United States.
21 AGENT RONSMAN: You were?
22 ROBERT ALLEGRA: Which to my knowledge is not
23 a crime.
24 AGENT RONSMAN: Well, knowing that it's drug

Page 16

1 money crossing the borders, absolutely.
2 ROBERT ALLEGRA: Well, I don't know it's
3 where it's going.
4 AGENT RONSMAN: (Inaudible) picked up and
5 bring them back.
6 ROBERT ALLEGRA: Yeah, I would pick up a
7 bunch of guys and bring them back, you know.
8 But I didn't ask. I kept my mouth shut because
9 -- can I get some water?
10 AGENT OSTROW: Sure.
11 AGENT RONSMAN: I'll step outside.
12 AGENT OSTROW: Sure.
13 AGENT RONSMAN: We can't move forward without
14 the truth.
15 ROBERT ALLEGRA: I will I give you a hundred
16 percent truth.
17 AGENT RONSMAN: All right. What were you
18 doing today? You were not flying money.
19 ROBERT ALLEGRA: Jay said to give me 180
20 grand to come out and pick some -- some girls up
21 along with some suitcases. I didn't ask. I
22 don't want to know.
23 AGENT RONSMAN: Well, you did know. You did
24 talk about it.

4 (Pages 13 to 16)

FILED SG

4-29-15
APR 29 2015

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA

) Case No.

15CR 243

v.

)

)

)

)

)

)

ROBERT ALLEGRA

Violation: 21 U.S.C. § 846 **JUDGE BUCKLO**
INDICTMENT MAGISTRATE JUDGE BROWN

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, five 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.

ON 07-01-2016

Indictment Charged NO Drugs

		MINUTE entry before the Honorable Elaine E. Bucklo: as to Robert Allegra. Motion hearing held on 11/20/2015. Status hearing set for 12/8/2015 at 9:30 AM. Jury Trial set for 7/25/2016 at 9:3 AM. Excludable delay from 11/20/2015 to and including 7/25/2016 pursuant to 18:3161(h)(7)(A)(B) to continue. Mailed notice (jdh) (Entered: 12/01/2015)
12/08/2015	<u>45</u>	MINUTE entry before the Honorable Elaine E. Bucklo: Status hearing held on 12/8/2015 and continued to 12/17/2015 at 9:30 AM. Defendant to tender the vehicle valuation estimate to the government and the Court by 12/11/2015. Mailed notice (jdh) (Entered: 12/08/2015)
12/11/2015	<u>46</u>	RESPONSE by Robert Allegra regarding MOTION by USAInterlocutory Sale of Vehicle Subject to Forfeiture as to Robert Allegra <u>32 Supplemental</u> (Attachments: # <u>1</u> Exhibit A)(Meczyk, Ralph) (Entered: 12/11/2015)
12/16/2015	<u>47</u>	MINUTE entry before the Honorable Elaine E. Bucklo: as to Robert Allegra. Status hearing reset to 12/18/2015 at 10:00 AM. Mailed notice (jdh) (Entered: 12/16/2015)
12/18/2015	<u>48</u>	MINUTE entry before the Honorable Elaine E. Bucklo: as to Robert Allegra (1). Status hearing held on 12/18/2015 and continued to 5/13/2016 at 10:00 AM. Government's Motion for interlocutory sale of vehicle subject to forfeiture <u>32</u> is withdrawn in open court. Government's 404b motion and any substantive motions to be filed by 6/27/2016. Agreed statement of the case, proposed voir dire, agreed jury instructions, motions in limine, witness and exhibit lists to be filed by 7/5/2016. Mailed notice (jdh) (Entered: 12/21/2015)
05/13/2016	<u>49</u>	MINUTE entry before the Honorable Elaine E. Bucklo: as to Robert Allegra. Status hearing held on 5/13/2016. Pretrial Conference set for 7/18/2016 at 1:30 PM. Mailed notice (jdh) (Entered: 05/13/2016)
06/28/2016	<u>50</u>	MINUTE entry before the Honorable Elaine E. Bucklo: as to Robert Allegra. Change of Plea Hearing set for 7/1/2016 at 2:00 PM. Mailed notice (jdh) (Entered: 06/28/2016)
07/01/2016		ORAL MOTION by USA to strike the quantity allegations from Count I of the indictment as to Robert Allegra. (ym,) (Entered: 07/08/2016)
07/01/2016		ORAL MOTION by USA to seal the plea agreement as to Robert Allegra. (ym,) (Entered: 07/08/2016)
07/01/2016	<u>51</u>	ORDER as to Robert Allegra: Change of plea hearing held. Government's oral motion to strike the quantity allegations from Count I of the indictment is granted. Defendant withdraws plea of not guilty. Enter enters plea of guilty. Defendant informed of his rights. Court enters judgment of guilty. Order cause referred to the Probation Department for a presentence investigation report. Sentencing memorandum and objections to PSR to be filed by 10/24/2016. Responses due by 10/31/2016. Sentencing set for 11/4/2016 at 10:00 a.m. Government's oral motion to seal the plea agreement is granted as stated in open court. The plea agreement is to be unsealed on 8/1/2016 without any further order of Court. The trial date of 7/27/2016 is stricken. Signed by the Honorable Elaine E. Bucklo on 7/1/2016. Mailed notice. (ym,) (Entered: 07/08/2016)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ROBERT ALLEGRA,

Defendant.

Case No. 06 CR 850

Chicago, Illinois
July 1, 2016
2:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - CHANGE OF PLEA
BEFORE THE HONORABLE ELAINE E. BUCKLO

APPEARANCES:

For the Plaintiff:

HON. ZACHARY T. FARDON
United States Attorney
BY: MS. LINDSAY JENKINS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604

For the Defendant:

LAW OFFICES OF EDWARD M. GENSON
BY: MR. EDWARD M. GENSON
MR. VADIM GLOZMAN
53 West Jackson Boulevard 1420
Suite 1420
Chicago, Illinois 60604

RALPH E. MECZYK & ASSOCIATES
BY: MS. AMANDA BIELINSKI
111 West Washington Street
Suite 1025
Chicago, Illinois 60602

Mary M. Hacker CSR, FCRR
Official Court Reporter
United States District Court
219 South Dearborn Street, Suite 1212
Chicago, Illinois 60604
Telephone: (312) 435-5564

1 (Proceedings had in open court:)

2 THE CLERK: 15 CR 243, U.S.A. versus Allegra.
3 Change of plea hearing.

:04PM 4 MS JENKINS: Good afternoon, your Honor. Lindsay
5 Jenkins for the United States.

6 THE COURT: Good afternoon.

7 MS. BIELINSKI: Good afternoon, your Honor. Amanda
8 Bielinski, B-I-E-L-I-N-S-K-I, from Ralph Meczyk's office, on
9 behalf of Mr. Allegra.

:04PM 10 MR. GLOZMAN: Good afternoon, your Honor. Vadmin
11 Glozman and Ed Genson on behalf of Mr. Allegra, who is here
12 present on my right.

13 THE COURT: Good afternoon.

14 All right. We're here for a plea?

:04PM 15 MR. GLOZMAN: Yes, your Honor.

16 MS JENKINS: Yes, your Honor.

17 THE COURT: All right.

18 It's my understanding -- I think I brought the
19 wrong one in. Just a minute. Let me have a minute.

:04PM 20 (Brief pause.)

21 THE COURT: I just brought the wrong one in.

22 Okay. It's my understanding that you wish to offer
23 a plea of guilty. Before I can accept your plea of guilty, I
24 must determine that you are mentally competent to plead at
25 this time; that you've had the assistance of a lawyer; that

:05PM

1 you understand your trial rights; that you understand the
2 charges against you; that your plea is voluntary; and that
3 there is a basis in fact for your plea.

4 I must put you under oath and ask you questions. I
5 want you to know that you may talk to your lawyers at any
6 time.

7 If you lie to me or give false answers to any of my
8 questions, you could be charged with a new and separate
9 crime.

10 In giving truthful answers to some of my questions,
11 you will be giving up your right not to testify against
12 yourself. Some of your answers will be incriminating and you
13 will have to admit your guilt.

14 Do you understand what I've told you?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: All right.

17 Please swear in the defendant.

18 (Defendant sworn.)

19 MS JENKINS: Your Honor, I don't mean to interrupt
20 you, but I did want to put something on the record before we
21 get into the heart of the plea.

22 The government is moving orally to strike the
23 quantity allegations from Count 1 of the indictment. The
24 plea agreement that's before you and the plea agreement that
25 was tendered to the Court yesterday reflects that no

1 mandatory minimum will be -- the government will not seek the
2 mandatory minimum in this case. We're moving to strike those
3 allegations. And the plea agreement in front of you reflects
4 the accurate maximum possible penalties in the penalty
5 section.

:06PM

6 THE COURT: Okay.

7 Would you state your name, please?

8 THE DEFENDANT: Robert Vincent Allegra.

9 THE COURT: Mr. Allegra, how old are you?

:07PM

10 THE DEFENDANT: 61.

11 THE COURT: What city or town do you live in?

12 THE DEFENDANT: Hinsdale, Illinois.

13 THE COURT: Are you married?

14 THE DEFENDANT: Yes, I am, your Honor.

:07PM

15 THE COURT: How far did you go in school?

16 THE DEFENDANT: Graduated college.

17 THE COURT: What kind of work have you been doing
18 the last three years?

:07PM

19 THE DEFENDANT: I've been in the aviation business
20 my whole life, along with construction.

21 THE COURT: All right. Are you basically in good
22 physical health?

23 THE DEFENDANT: Yes, your Honor.

:07PM

24 THE COURT: Have you taken any medication or drugs
25 of any kind or alcoholic beverages in the last 24 hours?

1 THE DEFENDANT: No alcoholic beverages. I am on
2 cholesterol medication, high blood pressure medicine.

3 THE COURT: Okay. Have you ever been under the
4 care of a doctor or in a hospital for a mental condition?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Also -- I should say, do either of you
7 -- I don't know -- is somebody here speaking, or all of you?

8 MR. GLOZMAN: Mr. Genson will speak on behalf of
9 everyone.

10 THE COURT: Okay. And the government.

11 Do either of you have any doubt as to Mr. Allegra's
12 competence to plead at this time?

13 MR. GENSON: I have no doubts.

14 MS JENKINS: No.

15 THE COURT: All right.

16 I find that you are competent to offer a plea of
17 guilty.

18 Tell me the name of the attorney who is
19 representing you in this case.

20 THE DEFENDANT: Edward Genson.

21 THE COURT: Have you had enough time to talk to Mr.
22 Genson?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Have you told him everything you know
25 about your case?

1 THE DEFENDANT: Yes, I have, your Honor.

2 THE COURT: Are you satisfied with the advice and
3 efforts of your attorney?

4 THE DEFENDANT: Yes, I am, your Honor.

:08PM 5 THE COURT: Something is going wrong with my voice.

6 (Brief pause.)

7 THE COURT: All right.

8 You are charged in this indictment with attempted
9 possession with intent to distribute a controlled substance;
:09PM 10 namely, a mixture and substance containing a detectable
11 amount of cocaine.

12 Have you read the indictment?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: Have you discussed the indictment with
:09PM 15 your attorney?

16 THE DEFENDANT: I have.

17 THE COURT: Do you understand the charge against
18 you?

19 THE DEFENDANT: I do, your Honor.

:09PM 20 THE COURT: Under the Constitution and laws of the
21 United States, you are entitled to a trial by jury on the
22 charges against you.

23 Do you understand this?

24 THE DEFENDANT: I do, your Honor.

:09PM 25 THE COURT: You have retained counsel to assist you

1 today. At least I -- I think that's a given, right? You got
2 three lawyers here; they must be retained.

3 THE DEFENDANT: Yes.

4 THE COURT: All right.

:09PM 5 You have retained counsel to assist you today. If
6 you chose to plead not guilty, you would have the right to
7 the assistance of counsel at trial as well.

8 If you chose to plead not guilty and you no longer
9 had the funds to hire a lawyer, I would appoint a lawyer to
:09PM 10 serve as your counsel at trial at no cost to you.

11 Do you understand this?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: Do you understand that you have a right
14 to plead not guilty?

:09PM 15 THE DEFENDANT: I do, your Honor.

16 THE COURT: If you plead not guilty, you have the
17 right to a speedy trial, to see and hear all the witnesses
18 called to testify against you.

:10PM 19 Your lawyer would have a right to cross-examine
20 witnesses, and you could use the subpoena of the court to
21 obtain attendance of witnesses to testify on your behalf.

22 Do you understand this?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: At trial you would be presumed to be
:10PM 25 innocent, and the government would be required to prove you

1 guilty by competent evidence beyond a reasonable doubt before
2 you could be found guilty. You would not have to prove you
3 were innocent.

4 Do you understand that?

:10PM 5 THE DEFENDANT: I do, your Honor.

6 THE COURT: At trial you would have the right to
7 testify, if you wanted to.

8 You would also have the right not to testify. If
9 you chose not to testify, no inference or suggestion of guilt
:10PM 10 could be drawn from the fact that you did not testify.

11 Do you understand that?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: The trial could be either a jury trial
14 or a trial by a judge without a jury. The trial by judge
:10PM 15 would occur only if you, the government, and I all agree.

16 Do you understand this?

17 THE DEFENDANT: I do.

18 THE COURT: If the trial were a jury trial, the
19 jury would be composed of twelve persons selected from a
:10PM 20 large group, whose names have been drawn at random from
21 voters' lists.

22 You and your attorney would have an opportunity to
23 exclude jurors if they were biased against you or
24 disqualified. You would be able to exclude a certain number
:11PM 25 of jurors simply because you did not want them to serve on

1 your jury.

2 Do you understand this?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: If you had a jury trial, a jury would
5 have to agree unanimously and would have to consider each
6 count of the indictment separately.

7 Do you understand that?

8 THE DEFENDANT: I do.

9 THE COURT: Do you understand that if at a trial
10 you were found guilty, you would also have a right to appeal?

11 THE DEFENDANT: I do.

12 THE COURT: Do you understand that if you plead
13 guilty you waive, that is, you give up all of these trial
14 rights?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: If you plead guilty and I accept your
17 plea, there will be no trial and I will enter a finding of
18 guilty on the basis of your plea and sentence you after a
19 sentencing hearing.

20 Do you understand this?

21 THE DEFENDANT: I do.

22 THE COURT: All right. We do have a written plea
23 agreement. Are there any agreements or promises that have
24 been made that are not in the plea agreement?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: Is this your signature on this plea
2 agreement?

3 THE DEFENDANT: Yes, it is.

4 THE COURT: Have you read this document?

:11PM 5 THE DEFENDANT: I have.

6 THE COURT: Did you discuss the agreement with your
7 attorney?

8 THE DEFENDANT: I have.

9 THE COURT: Now, the charge to which you indicated
:12PM 10 you wish to plead guilty carries a maximum sentence of
11 20 years imprisonment and a maximum fine of \$2 million.

12 There's also a term of supervised release of at
13 least three years, and up to any number of years, including
14 life. There is no mandatory minimum term of imprisonment.

:12PM 15 There is a \$100 special assessment on the charge to
16 which you've indicated you want to plead guilty.

17 The indictment had how many counts? It was more
18 than one, wasn't it?

19 MS JENKINS: Only one.

:12PM 20 THE COURT: It was only one?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay.

23 Anyway, do you understand all of that?

24 THE DEFENDANT: I do, your Honor.

:12PM 25 THE COURT: Do you also understand that I have the

1 final decision as to what your sentence will be?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: This agreement also contains a
4 forfeiture agreement in which it says that you are -- that if
5 you plead guilty, that you will forfeit to the United States
6 all right, title and interest in any property constituting
7 the proceeds obtained as a result of the offense, as well as
8 any property used or intended to be used in any manner to
9 commit or facilitate commission of the offense?

10 Do you understand that?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: Has anyone forced you in any way to
13 plead guilty?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Has anyone threatened or coerced you in
16 any way to cause you to plead guilty?

17 THE DEFENDANT: No.

18 THE COURT: Have any promises been made to cause
19 you to plead guilty?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Is your decision to plead guilty
22 entirely voluntary?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: All right.

25 Will the government please summarize what its

1 evidence would be if this case were tried?

2 MS JENKINS: Yes, your Honor.

3 If this case were to go to trial, the government's
4 evidence would show that on or about February 9th, 2015, the
:14PM 5 defendant had an in-person meeting regarding trafficking
6 cocaine with an individual who, unbeknownst to the defendant,
7 was cooperating with law enforcement.

8 During that meeting the defendant agreed to
9 transport both quantities of cocaine from California to the
:14PM 10 Chicago area for that cooperating individual using a private
11 plane flown by the defendant.

12 Also during the meeting the defendant stated, in
13 substance, that he wanted to be paid a percentage of the
14 value of the cocaine to be transported.

:14PM 15 Around February 24th of 2015, the defendant had an
16 in-person meeting with the cooperating individual and an
17 undercover officer who posed as a narcotics trafficker.
18 Defendant brought the cooperating individual and the
19 undercover officer to the Aurora Municipal Airport, where
:14PM 20 defendant showed the undercover officer a private plane which
21 defendant explained he could use to transport the cocaine.

22 During the meeting the defendant agreed to
23 transport approximately 45 kilograms of cocaine hidden inside
24 suitcases from California to Chicago.

:15PM 25 On approximately March 10th of 2015, the defendant

1 had an in-person meeting with the cooperating individual at a
2 restaurant in Elmhurst, Illinois, where defendant agreed to
3 receive \$30,000 in cash as an up-front payment for the
4 transportation of the cocaine, with the remainder due after
5 the delivery of the cocaine was complete.

6 On March 20th of 2015 the defendant drove a black
7 Bentley Continental, which is described in the plea
8 agreement, and arrived at a parking lot in Oak Brook,
9 Illinois, for the meeting with the cooperating individual to
10 discuss the planned transportation of cocaine from California
11 to Illinois.

12 During that meeting and in the presence of the
13 defendant, the cooperating individual placed \$30,000 in cash
14 in the glove box of the Bentley as an advance payment for the
15 transportation of the cocaine.

16 At the conclusion of that meeting the defendant
17 took the money and departed the area in the Bentley.

18 On March 23rd, 2015, the defendant flew a private
19 airplane from Aurora Municipal Airport to Van Nuys Airport in
20 California with the intent to obtain suitcases which
21 defendant believed would contain approximately 45 kilograms
22 of cocaine.

23 On March 25th, 2015, undercover officers, posing as
24 narcotics traffickers, brought weighted suitcases to
25 defendant at the Van Nuys Airport which defendant believed

1 contained approximately 45 kilograms of cocaine that
2 defendant planned to load into a private airplane for the
3 purpose of transporting that to Chicago.

4 And the government's evidence would prove that the
:16PM 5 amount that the defendant intended to distribute was
6 approximately 45 kilograms of cocaine.

7 THE COURT: Have you heard the statement of the
8 Assistant United States Attorney?

9 THE DEFENDANT: I have, your Honor.

:17PM 10 THE COURT: Is it true?

11 THE DEFENDANT: It is true, your Honor.

12 THE COURT: Could you just summarize briefly what
13 it is that you were doing -- or intended to do?

14 THE DEFENDANT: I intended to fly suitcases from
:17PM 15 California with the intent that there may have been drugs in
16 there back to the United -- back to Chicago.

17 THE COURT: Did you believe that it was going to
18 have 45 kilograms of cocaine in it?

19 THE DEFENDANT: Yes, your Honor.

:17PM 20 THE COURT: And did you intend to distribute it?

21 THE DEFENDANT: No, I did not, your Honor.

22 THE COURT: What did you intend to do with it?

23 THE DEFENDANT: I was just flying it from Chicago
24 to Aurora.

:17PM 25 THE COURT: From California to --

Law: Possession

Exhibit A

Under federal law, the possession of a controlled substance with the intent to sell or distribute it is a serious offense. To fully understand this crime, it helps to break it into two parts: (1) the possession of the drugs; and (2) the intent to distribute them. Both elements must be satisfied simultaneously to commit the offense of "possession with the intent to distribute." Most states have adopted the federal definition as well. Read on to learn how each of the elements of the crime works.

Possession

The first element, possession, isn't limited to having the illegal drugs in a pocket or knapsack. It can also mean that the drugs are within one's control. For example, you may be deemed to be "in possession" of narcotics if the drugs are found in your home or automobile.

However, to have possession, generally you must know that the drugs are present. If you had absolutely no idea the heroin or methamphetamine was there, you will have a strong defense. Many jurisdictions also charge people with possession if they "should have known" that the drugs were in their possession, or if they should have known that the substance in their possession was a controlled substance. Under this broad standard, the prosecution typically has an easier time proving the possession element.

Intent to Distribute

Under this element, the government must prove what the person possessing the drugs was planning to do with them. Because a government prosecutor can't get inside the mind of an accused person, intent has to be proven by the surrounding circumstances. Typically, the intent to distribute, or sell, the controlled substance is assumed when the accused is holding an amount too large to be for only personal use. Some other indications that the possessor intended to sell the drugs include the presence of packaging materials, large amounts of money, and communications from customers.

The Timing

The final point to highlight is that the crime can't occur unless possession of the drugs occurs simultaneously with intent to distribute them. For example, if someone has plans to sell 10 kilograms of heroin but hasn't received the shipment yet, prosecutors can't charge him or her with the offense of possession with the intent to distribute -- because, after all, there was no possession. However, the related crimes of conspiracy to possess with intent to distribute and attempt to possess with intent to distribute may have been committed in that example.

Penalties for the Offense

Under federal law, the penalty for possession with the intent to distribute depends on the Federal Sentencing Guidelines. Judges must refer to the guidelines in imposing sentences. The length of imprisonment and the amount of monetary fines depends upon which controlled substance was involved and whether the defendant has a prior history of crime.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

NOV 12 2020

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES
OF AMERICA

v.

ROBERT ALLEGRA

No. 18 CV 05061

Judge Elaine E. Bucklo

VERIFIED MOTION PURSUANT TO RULE 60(b)(4)

COMES NOW defendant, Robert Allegra ("Allegra") Pro Se, and moves the Court to grant his VERIFIED MOTION PURSUANT TO RULE 60(b)(4) in support of this motion, Robert Allegra states the following:

STATEMENT OF THE CASE

Federal Rule of Civil Procedure 60(b)(4) allows the court to relieve the party from a final judgment that is void, the final judgements rendered in cases 18 CV 05061 and related case 15 CR 243 are VOID as a matter of law.

This Courts Subject Matter Jurisdiction was induced by fraud, therefore Subject Matter Jurisdiction was lacking before this court entered any and all orders related to cases 18 cv 05061 and related case 15 CR 243. A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance. *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382 (1884) (challenge to a federal court's subject-matter jurisdiction may be made at any stage of the proceedings, and the court should raise the question *sua sponte*).

[A] judgment is void for purposes of Rule 60(b)(4) *"if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law."* *In re Edwards*, 962 F.2d 641, 644 (7th Cir.1992).

Although ordinarily a district judge has broad discretion in the application of Rule 60(b), *Connecticut National Mortgage Co. v. Brandstatter*, 897 F.2d 883, 884 (7th Cir.1990), this is not true with respect to motions brought under Rule 60(b)(4). Because void judgments are legal nullities, district courts have little leeway. *Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d 398, 400 (7th Cir.1986). If the underlying judgment is void, it is a *per se* abuse of discretion for a district court to deny a movant's motion to vacate the judgment under Rule 60(b)(4). *Id.*

Rule 60(b) has an unquestionably valid role to play in habeas cases, a function as legitimate in habeas cases as in run-of-the-mine civil cases. The Rule also preserves parties' opportunity to obtain vacatur of a judgment that is void for lack of subject-matter jurisdiction—a consideration just as valid in habeas cases as in any other, since absence of jurisdiction altogether deprives a federal court of the power to adjudicate the rights of the parties. *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 94, 101 (1998) The majority explains that a proper Federal Rule of Civil Procedure 60(b) motion *"attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings."* See *Gonzalez v. Crosby*, 545 US 524 (Supreme Court 2005)

This is a proper Rule 60(b) Motion, this is NOT a successive § 2255 petition, although the merits are ripe for attack, this motion does NOT attack the merits of the case.

The Rule also preserves parties' opportunity to obtain vacatur of a judgment that is void for lack of subject-matter jurisdiction—a consideration just as valid in habeas cases as in any other, since absence of jurisdiction altogether deprives a federal court of the power to adjudicate the rights of the parties. *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 94, 101 (1998). *Gonzalez v. Crosby*, 545 US 524 (Supreme Court 2005).

An inspection of the underlying proceeding will show an absence of any claim in which the courts Subject matter jurisdiction was previously challenged, this motion is properly before the court.

SUBJECT MATTER JURISDICTION

Subject Matter Jurisdiction is the authority of a court to hear cases of a particular type or cases relating to a specific subject matter. ... Subject matter jurisdiction cannot be waived and may be challenged by a party or raised *sua sponte* by the court at any point in the proceedings. *Jackson v. Consolidated Rail Corp.*, 717 F.2d 1045, 1055 (7th Cir.1983), *cert. denied*, 465 U.S. 1007, 104 S. Ct. 1000, 79 L.Ed.2d 233 (1984).

"Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void." *Vallely v. Northern Fire & Marine Ins. Co.*, 254 US 348 - Supreme Court 1920. "if district court lacked jurisdiction it was a *per se* abuse of discretion to deny the Rule 60 (b)(4) motion" see *Bally Export Corp. v. Balicar, Ltd.*, 804 F. 2d 398 - Court of Appeals, (7th Cir. 1986)

JURISDICTION PROCURED THROUGH FRAUD

Jurisdiction that is procured through fraud, is not Jurisdiction, this court's jurisdiction was procured through 28 USC § 2255 which was delegated from case no. 15 CR 243 in which the Court's jurisdiction was procured by 28 USC § 846 with the statutory language of § 841 limiting the court's jurisdiction to the subject matter of 28 USC § 846 and § 841 "*Jurisdiction of the lower federal courts is... limited to those subjects encompassed within a statutory grant of jurisdiction*" see *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 US 694 (Supreme Court 1982)

Robert Allegra was indicted on one count of Attempt to Possess with Intent to Distribute a controlled substance in violation of 21 USC § 846 in which the government knowingly and willfully presented fabricated evidence to the Grand Jury to obtain a fraudulent and lawless indictment.

"It 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 Cir. 2014)

STATEMENT OF MATERIAL FACTS

1. On or about March 25, 2015 Robert Allegra was arrested at the Van Nuys Airport in Van Nuys California by agents of the FBI field office in Chicago Il. (see post arrest doc.)
2. On or about April 29, 2015 the government filed the indictment in case no. 18 CR 243 [dkt.no.1].

3. The indictment stated on its face “*ROBERT ALLEGRA, 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; In violation of Title 21, United States Code Section 846.*” (emphasis added).

3. There was never any mixture or substances that contained a detectable amount of cocaine in the possession of Robert Allegra or anywhere in the context of this case.

4. The government submitted to the court a plea agreement that stated in pertinent part:

“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” (emphasis added). (See pg.4 Plea Agreement, [dkt.no.187], 15 cr 243).

5. The Government presented to the Grand Jury the indictment that stated on its face:

*“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**”.* (emphasis added) (see indictment [dkt.no.1](case no.15 cr 243.)

ARGUMENT

The indictment on its face is a fabrication of evidence, and a fraud on this court, the face of the indictment states:

ROBERT ALLEGRA, 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; In violation of Title 21, United States Code Section 846. (see indictment)[dkt.no.1](case no.15 cr 243)

21 USC § 846 states:

§ 846 “Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy”.

Notably absent from the face of the indictment is any reference to the charged offense required by the subchapter. However, the plain language of the indictment would indicate that the government intended to include the charged offense prescribed in § 841 which states:

§ 841

(a)Unlawful acts Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

“ (I) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;”

“ (b)Penalties Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows: “

“ (II) cocaine, its salts, optical and geometric isomers, and salts of isomers;”

It is a requirement of the statute § 846 and § 841 that in order for a crime to have been committed and a penalty imposed, the offence must have met the requirements of (a)(1)(II) and

that is exactly what the government relied upon when they presented the indictment to the grand jury.

However, the facts, evidence and in the own words of the government, the indictment is a fabrication of evidence and facts.

"It is firmly established that a constitutional right exists not to be deprived of liberty on the basis of false evidence fabricated by a government officer" see Zahrey v. Coffey, 221 F. 3d 342 - Court of Appeals, (2nd Cir. 2000). "It 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 Cir. 2014).

The Supreme Court has held *"If officers use false evidence, including false testimony, to secure a conviction, the defendant's due process is violated."* See *Mooney v. Holohan*, 294 US 103 - Supreme Court 1935. *"Due process is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured"* *"If officers use false evidence, including false testimony, to secure a conviction, the defendant's due process is violated"* *"deliberate deception of court and jury by the presentation of testimony known to be perjured... is... inconsistent with the rudimentary demands of justice"*. See *Mooney v. Holohan*, 294 US 103 - Supreme Court 1935.

It is well settled law that “*Rule 60 (b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process*” see *United Student Aid Funds, Inc. v. Espinosa*, 559 US 260 – (Supreme Court 2010)

It is also well settled law 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 Cir. 2014).

This motion relies on two simple and indisputable facts, the government presented to the grand Jury and obtained the indictment against Robert Allegra based on the fabricated evidence that:

1. “*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*” (emphasis added).

This statement on the face of the indictment that was presented to the grand jury infers that:

- a. there was an actual substance
- b. There was five kilograms or more of the actual substance
- c. The substance was tested by a laboratory or field tested
- d. The results of that test revealed a detectable amount of cocaine

All of which are a requirement of 21 USC § 846 and § 841.

2. The government stated on the record at the change of plea hearing on July 1, 2016 AUSA, Jenkins stated on the record:

"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" (emphasis added)(see transcript of Plea Hearing)

This is also supported by the plea agreement that was filed with this court by the government.

(See pg.4 Plea Agreement, [dkt.no.187], 15 cr 243).

There was no Five kilograms or more of a mixture and substance containing a detectable amount of cocaine, there was nothing more than "weighted suitcases", the indictment was obtained through a fabrication of evidence.

There is no provision in the statute 28 USC § 846 or § 841 that does not require a substance or mixture and substance containing a detectable amount of cocaine.

The government, knowingly and willfully fabricated the material facts that were presented to the grand jury and appear on the face of the indictment, and this material fabrication was concealed from the court, certainly if the court had known, that the government, through their attorney's, fabricated the essential material fact of a "*substance containing a detectable amount of cocaine*" the court **would have dismissed the case immediately.**

The government, through their attorneys, knowingly and willfully took advantage of the court's impartiality, and concealed the use of fabricated evidence from the court.

The government admits in the affirmative, that they knew on or about March 25, 2015 that there was no 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine, and knowingly and willfully presented this fabricated evidence to the grand jury on April 29, 2015 in order to obtain the fraudulent and lawless indictment. [dkt.no.1, 15 cr 243].

The indictment was obtained through the knowing and willful fabrication of evidence, which violated Robert Allegra's Due Process and could not confer jurisdiction of the subject matter authorized by 28 USC § 846 and § 841, rendering the court lacking of Subject Matter Jurisdiction and all orders and judgments are VOID as a matter of law.

"[A] district court may, at any time, dismiss *sua sponte* a complaint for lack of subject-matter jurisdiction pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *See Hagans v. Lavine*, 415 US 528 (Supreme Court 1974). Here, in the instant case, the complaint or indictment is clearly and indisputably a complete fabrication and totally implausible, and devoid of any merit.

*"The validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties" "The restriction on jurisdiction "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause" "regarding subject matter jurisdiction, "the consent of the parties is irrelevant, principles of estoppel do not apply, and a party does not waive the requirement by failing to challenge jurisdiction" "the defendant is usually free to challenge the existence of subject matter jurisdiction in a later proceeding, and so the district court must review the jurisdictional question afresh as if it faced a motion to dismiss for **lack of subject matter jurisdiction** under Rule 12 (b)(1) during the underlying litigation" see Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 US 694 – (Supreme Court 1982).*

The only question that this court must decide is a question of fact, did the government fabricate evidence when it stated on the face of the indictment:

“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” (emphasis added)

If the evidence in the case does not include a “mixture and substance containing a detectable amount of cocaine” the statement on the face of the indictment must be accepted by this court as a fabrication of evidence, and this court must vacate all Orders and Judgments in all related cases for lack of Subject Matter Jurisdiction.

Not only does this evidence not exist anywhere in the record of the cases, but the government has confirmed its fabrication in the affirmative on the record of the case, when it not only stated verbally but included the admission of the fabrication of “*Five kilograms or more of a mixture and substance containing a detectable amount of cocaine*” in the plea agreement presented to this court that stated “*undercover officers posing as narcotics traffickers brought weighted suitcases*” not a substance containing a detectable amount of cocaine.(emphasis added)(see plea agreement).

Without this fabrication to the grand jury, no indictment would have issued, if the court had known about this fabrication of facts, the court would have dismissed the action immediately.

REQUEST FOR APPOINTMENT OF COUNSEL

Robert Allegra is not an attorney, and has never gone to law school, he is a graduate of Elmhurst College class of 1974. Robert Allegra is an educated man in the field of Business Administration and Aviation, but when it come to the law, he is just a lay person.


Robert Allegra was incarcerated from July 19, 2017 until he was released to Home Confinement Custody on or about May 13, 2020 in which he resides with a friend of his.

Robert Allegra has approached several attorneys with his case, all agreeing that it has merit, but none willing to take it on pro bono. Robert Allegra is 66 years old and his primary income is Social Security of approximately \$1499 monthly. Robert Allegra has no assets of any substantial value. Robert Allegra respectfully requests that this Honorable Court, appoint him an Attorney to represent him in this very serious legal matter.

CONCLUSION

Wherefore, Robert Allegra respectfully requests that this Honorable Court, Grant his motion pursuant to Rule 60(b)(4) and vacate the VOID Judgments and Orders in case no. 18 CV 05061 and related case no. 15 CR 243 for lack of Subject Matter Jurisdiction and dismiss the case and grant him all relief to which he may be entitled in this proceeding.

Respectfully submitted,


Robert Allegra, Pro Se

Dated: November 12, 2020

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES
OF AMERICA

v.

ROBERT ALLEGRA

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)
)

No. 18 CV 05061

Judge Elaine E. Bucklo

VERIFICATION

I declare under penalty of perjury that the statements made in this Verified Motion Pursuant to Rule 60(b)(4) are true and correct to the best of my knowledge.



Robert Allegra

Date: November 12, 2020

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
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UNITED STATES
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v.

Robert Allegra

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No. 18 CV 05061

Judge Elaine Bucklo

RULE 59(e) MOTION TO AMEND AND CLARIFICATION OF ORDER

NOW COMES, Robert Allegra ProSe, and moves this honorable court to reconsider its Order denying the Motion Pursuant to Rule 60(b)(4) [dkt.no.23] pursuant to Rule 59(e).

Rule 59(e) allows a court to alter or amend a judgment only if the petitioner can demonstrate a manifest error of law or present newly discovered evidence. *Sigsworth v. City of Aurora*, 487 F.3d 506, 511-12 (7th Cir.2007).

This court erred when it denied the Motion Pursuant to Rule 60(b)(4) .

STATEMENT

On or about October 18, 2020, this court issued an order [dkt.no.23] in which it denied Robert Allegra's Motion Pursuant to Rule 60(b)(4) in which the court clearly states no reason in fact or law that formed the basis on which the court denied the motion.

SUBJECT MATTER JURISDICTION

Federal courts are courts of limited jurisdiction. The character of the controversies over which federal judicial authority may extend are delineated in Art. III, § 2, cl. 1. Jurisdiction of the lower

federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. Again, this reflects the constitutional source of federal judicial power: Apart from this Court, that power only exists "in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, § 1.

Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign. Certain legal consequences directly follow from this. For example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant, *California v. LaRue*, 409 U. S. 109 (1972), principles of estoppel do not apply, *American Fire & Casualty Co. v. Finn*, 341 U. S. 6, 17-18 (1951), and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. "[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record." *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382 (1884). See *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 US 694 – (Supreme Court 1982).

"The objection that a federal court lacks subject-matter jurisdiction may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006) (citations omitted) (jurisdiction upheld); see also *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) ("Whenever it appears by

suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”)

ARGUMENT

A party can only collaterally attack a judgment for lack of jurisdiction in accordance with Federal Rule of Civil Procedure 60(b)(4). *Tittjung*, 235 F.3d. at 335 (“*The exception to the general rule barring collateral attacks on subject matter jurisdiction flows from Fed. R. Civ. P. 60(b)(4).*”). Under Rule 60(b)(4), a court will only allow a collateral attack when the jurisdictional error was “egregious”: “*the error must involve a clear usurpation of judicial power, where the court wrongfully extends its jurisdiction beyond the scope of its authority.*” *Id.* at 335 (citing *O'Rourke Bros., Inc. v. Nesbitt Burns, Inc.*, 201 F.3d 948, 951 (7th Cir.2000); *In re Edwards*, 962 F.2d 641, 644 (7th cir. 1992); *Kansas City S. Ry. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (8th Cir.1980)).

Robert Allegra filed his motion pursuant to Rule 60(b)(4) attacking a VOID Judgement, the motion does not specifically bring a claim pursuant to Rule 60(d)(3) however, the plain language of the motion clearly makes a claim of fraud on the Court.

A party who brings a motion grounded in Rule 60(d)(3) for fraud on the court will receive relief only if he establishes by clear and convincing evidence “*the most egregious misconduct, such as bribery of a judge or members of a jury, or **the fabrication of evidence by a party in which an attorney is implicated.***” (emphasis added) *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978); *Kinnear-Weed Corp. v. Humble Oil & Refining Co.*, 441 F.2d 631, 636 (5th Cir. 1971).

In the instant Rule 60(b)(4) motion, Allegra has presented this court with clear and convincing evidence that an Attorney for the government, filed with this court, an indictment that contained fabricated evidence, namely the knowingly fabricated statement “ namely Five 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.” (emphasis added) (see indictment doc).

This is a fabrication of evidence, by the government’s own admission, there was never “ *Five kilograms or more of a mixture and substance containing a detectable amount of cocaine*” associated with Robert Allegera or the alleged offence.

An inspection of this case proves too show an absence of any evidence to support the governments knowing and willful fabrication of evidence that appears on the face of the indictment. “when “over-zealous prosecutors” obtain indictments by knowingly presenting false evidence, courts have freely exercised their powers to dismiss indictments” See *United States v. Udziela*, 671 F. 2d 995 - Court of Appeals, (7th Cir. 1982).

In the instant case, the government, through their over-zealous attorney’s, presented the grand jury and this court with knowingly false facts on the face of the indictment.

Rule 60(d)(3) functions as a saving clause: it allows courts to “set aside a judgment for fraud on the court” without a strict time bar. The standard for “fraud on the court” is, as a consequence, demanding. “[O]nly the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute fraud on the court.” *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978) (citations omitted). *Fraud under Rule 60(d)(3) “embrace [s] ... the species of fraud which does or attempts*

to [] defile the court itself.” Wilson v. Johns–Manville Sales Corp., 873 F.2d 869, 872 (5th Cir.1989).(emphasis added)

[A] judgment is void for purposes of Rule 60(b)(4) "if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." In re Edwards, 962 F.2d 641, 644 (7th Cir.1992).

“It 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 Cir. 2014)

Without the governments knowing and willful fabrication of evidence, the court does not have jurisdiction over the subject matter provided by 21 USC § 846 or 21 USC § 841 as described in the plain language of the indictment.

21 USC § 841 requires:

***(a)Unlawful acts** Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—*

“ (I) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;”

“(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;”

The Court can not show in the record of this case, that there was *“Five kilograms or more of a mixture and substance containing a detectable amount of cocaine”* as required by statute, this

court did not have jurisdiction of the subject matter authorized by 21 USC § 846 and 21 USC § 841, simply because they do not exist.

“[T]here is a presumption that a federal court lacks subject matter jurisdiction, and the party seeking to invoke federal jurisdiction must affirmatively allege the facts supporting it. If these facts are challenged, the burden is on the party claiming jurisdiction to prove that the court has jurisdiction over the subject matter. . . . This showing must be made by a preponderance of the evidence.

Here, the government invoked federal subject matter jurisdiction under 21 USC § 846 and 21 USC § 841 and Robert Allegra’s Rule 60(b)(4) motion clearly and convincingly shows that the government fabricated evidence that was presented on the face of the indictment.

The evidence of the fabrication clearly and convincingly shows that the court lacked subject matter jurisdiction, “*No court has jurisdiction to sentence a defendant for that which is not a crime.*” *Commonwealth v. Burns*, 8 Mass. App. Ct. 194, 196 (1979) (quoting *Commonwealth v. Andler*, 247 Mass. 580, 581–82 (1924)).

The Supreme Court held “*A federal court has inherent equitable power to vacate a judgment that is obtained by fraud on the court*” See *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 – (Supreme Court 1944).

It has been proven without a doubt that the government, though it’s attorney’s fabricated facts on the face of the indictment, which violated due process of law and caused the deprivation of Robert Allegra’s constitutional rights.

CLARIFICATION OF ORDER

This Court issued an order on or about November 18, 2020, in which it denied Robert Allegra's Motion Pursuant to Rule 60(b)(4).

The court did not state a basis in fact or law for denying the motion.

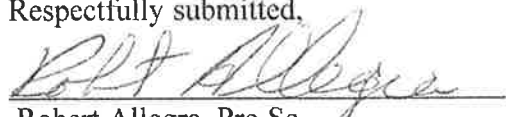
Robert Allegra respectfully requests that in the unlikely event that this court denies the instant motion, that the court issue an order detailing the basis in fact and law for denying the motion, so there is a basis for appeal to the 7th Circuit.

In the likely event that the court grants this motion to reconsider, Robert Allegra respectfully requests this honorable court to appoint counsel for Mr. Allegra, should more litigation be required.

CONCLUSION

Wherefore, Robert Allegra respectfully request that this honorable court reconsider its order denying the Motion Pursuant to Rule 60(b)(4) [dkt.no.23] and Grant the Motion Pursuant to Rule 60(b)(4) and grant any and all available relief pursuant to the order. Or in the alternative, request the government to provide clear and convincing evidence from the record of this case that would support the statements made on the face of the indictment.

Respectfully submitted,


Robert Allegra, Pro Se

Dated: November 28, 2020

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236. AMENDMENT OF INDICTMENTS

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).

The Supreme Court, reviewing the history of the grand jury, quotes Lord Mansfield on the subject: "[T]here is a great difference between amending indictments and amending informations. Indictments are found upon the oaths of a jury, and ought only to be amended by themselves; but informations are declarations in the king's suit. An officer of the Crown has the right of framing them originally; he may, with leave, amend in like manner, as any plaintiff may do.

Ex parte Bain, 121 U.S. 1, 6 (1887). *Cf. United States v. Miller*, 105 S.Ct. 1811 (1985)(it does not constitute an unconstitutional amendment to an indictment to drop those allegations which are unnecessary to an offense that is clearly contained within it).

In one case, *Stirone v. United States*, 361 U.S. 212 (1960), the defendant was convicted of unlawful interference with interstate commerce in violation of the Hobbs Act, 18 U.S.C. § 1951. The indictment charged that the victim's contract was to supply ready-mix concrete from his Pennsylvania plant to be used in the erection of a steel mill in Allenport, Pennsylvania. Performance of the contract involved, according to the indictment, shipment of sand from various points in the United States to the victim's ready-mix concrete plant. The trial court permitted the government to offer evidence of the effect upon interstate commerce not only of the sand thus brought into Pennsylvania but also the interstate shipment of steel from the steel mill to be constructed from the ready-mix concrete.

The Supreme Court reversed the defendant's conviction on the ground that he was convicted of a different crime from that charged, in violation of his Fifth Amendment right to be indicted by a grand jury:

The grand jury which found this indictment was satisfied to charge that Stirone's conduct interfered

with interstate importation of sand. But neither this nor any other court can know that the grand jury would have been willing to charge that Stirone's conduct would interfere with interstate exportation of steel from a mill later to be built with Rider's concrete. . . Although the trial court did not permit a formal amendment of the indictment, the effect of what it did was the same.

Stirone, at 217.

An amendment for the excising of surplusage that has the effect of narrowing a defendant's liability without changing the meaning of the charge as it was presented to the grand jury is permissible. In *United States v. Whitman*, 665 F.2d 313 (10th Cir. 1981), the court held it was proper for the government to strike the references to overvaluation of property in an 18 U.S.C. § 1014 count alleging false statements to a federally insured bank. A similar deletion was approved in *United States v. Ramirez*, 670 F.2d 27 (5th Cir. 1982), even though the defendant's theory of defense was thereby altered.

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371. SUFFICIENCY OF INDICTMENT—GENERALLY

Generally, 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 guidelines. 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).

Accordingly, a mail fraud or wire fraud indictment should contain a reasonably detailed description of the particular scheme the defendant is charged with devising to ensure that the defendant has sufficient notice of the nature of the offense. See *Yefsky*, 994 F.2d at 893 ("The indictment may incorporate the words of the statute to set forth the offense, but the statutory language '"must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged.'"") (quoting *Hamling*, 418 U.S. at 117-18 (quoting *United States v. Hess*, 124 U.S. 483, 487 (1888))); cf. *United States v. Vance*, 533 F.2d 699, 702 (D.C. Cir. 1976) (noting with approval mail fraud count that specifies misrepresentations); *United States v. Curtis*, 506 F.2d 985, 990 (10th Cir. 1974) (citations omitted) (dismissing mail fraud indictment that excludes false pretenses).

In *Yefsky*, the court held that the indictment was defective in that it did not provide the defendant with adequate notice of the charge (conspiracy to commit mail fraud) against him. 994 F.2d at 993 ("Where guilt depends so crucially upon . . . a specific identification of fact, . . . cases have uniformly held that an indictment must do more than simply repeat the language of the criminal statute.") (citing *Hamling*, 418 U.S. at 118).

In *Curtis*, the court stated the following in considering the sufficiency of the allegations contained in an indictment charging mail fraud:

Mere evidential matters or detail more appropriate in bills of particular need not be pleaded in an indictment based upon 1341. [citations omitted] But as these cases demonstrate, some substantial indication of the nature or character of any scheme or artifice to defraud, or to obtain money or property by means of false pretenses, representations or promises is requisite. And it is not sufficient in this regard to merely plead the statutory language. [citations omitted] A reference to the cases cited first above will disclose that in each instance the nature of the schemes or artifices is identified or described, including the particular pretenses, representations or promises claimed to have been false.

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); see also *United States v. Crummer*, 151 F.2d 958 (10th Cir. 1945) ("While the particulars of the scheme are matters of

substance and therefore must be described with a degree of certainty sufficient to show its existence of character, and fairly to acquaint the defendant with the particular fraudulent scheme charged against him, still the scheme itself need not be pleaded with all the certainty in respect of time, place, and circumstance requisite in charging the mailing of the letter or other matter.") (allegations of the scheme held to be sufficient), *cert. denied*, 327 U.S. 785 (1946); *cf. United States v. Azad*, 809 F.2d 291, 295 (6th Cir. 1986) ("What distinguishes this indictment from the indictment found defective in [*Curtis*], . . . is the clear and specific description of the fraudulent scheme found in the present indictment. The indictment before us does provide some 'substantial indication of the nature or character' of the scheme involved, and 'the scheme itself need not be pleaded with all the certainty in respect of time, place, and circumstance requisite in charging the mailing of the letter or other matter.'") (quoting *Curtis*, 506 F.2d at 990), *cert. denied*, 481 U.S. 1004 (1987); *United States v. Adamo*, 534 F.2d 31, 35 (3d Cir.) ("The *Curtis* indictment was so vague that trial might have proceeded upon an entirely different concept of the scheme than that contemplated by the grand jury when it returned the indictment. By contrast, the indictment in this case explicitly outlines the elements of the fraudulent plan."), *cert. denied*, 429 U.S. 841 (1976).

[cited in JM 9-43.100]

< 970. Drafting a Mail Fraud and/or Wire Fraud Indictment

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223. REQUIREMENT OF SPECIFICITY

The second part of the sufficiency test, apprising the defendant of what he or she must be prepared to meet incorporates the specificity requirement of the Sixth Amendment. The specificity requirement 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).

An example of an indictment which failed this test is provided by *United States v. Nance*, 533 F.2d 699 (D.C. Cir. 1976). The indictment in *Nance* charged a false pretense violation pursuant to the D.C. Code. It listed the name of each victim, the date of the false representation, the amount each victim lost, and the date the sum was paid to the defendants, but was fatally defective as a consequence of its failure to specify the false representation which induced the victims to pay the money to the defendants. See also *United States v. Brown*, 995 F.2d 1493, 1504-05 (10th Cir.) (indictment charging controlling premises and making them available for storing and distributing cocaine base insufficient because failed to state how control was exercised), *cert. denied*, 114 S.Ct. 353 (1993).

The indictment, though, need only satisfy a defendant's constitutional right to know what he or she is charged with and not the evidentiary details which will be used to establish his commission of the offense. See *United States v. Blinder*, 10 F.3d 1468, 1476 (9th Cir. 1993) (indictment charging RICO violation in omitting material facts sufficient despite lack of detailed explanations of missions); *United States v. Chappell*, 6 F.3d 1095, 1099-100 (5th Cir. 1993) (indictment met requirements of alerting defendants to charges and was sufficient despite possibility of being more carefully drafted), *cert. denied*, 114 S.Ct. 1235 (1994); *United States v. Diecidue*, 603 F.2d 535, 547 (5th Cir.), *cert. denied*, *Gispert v. United States*, 445 U.S. 946 (1980).

In determining whether an indictment sufficiently informs the defendant of the offense, courts give the indictment a common sense construction. *United States v. Drew*, 722 F.2d 551, 552-53 (9th Cir. 1983) (indictments charging defendants with acting knowingly and willfully sufficient although failing to track statutory language alleging "unlawful or fraudulent intent" because, under common sense reading, defendants informed of charge), *cert. denied*, 467 U.S. 1216 (1984); *United States v. Reed*, 721 F.2d 1059, 1061-62 (6th Cir. 1983) (indictment charging defendants with conspiring with others sufficient because, under common sense reading, it also charged defendants with conspiring with one another).

222. Elements of the Offense

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224. Plea of Former Jeopardy

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