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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Randeep Singh Mann
Plaintiff

v

Civil Action No. 1:20-cv-01337-RC

“VERIFIED MOTION”

United States et al
Defendants

PLAINTIFF’S RESPONSE TO DEFENDANTS MOTION TO DISMISS

Plaintiff, Randeep Singh Mann, MD presents this response to the Defendants “Motion To Dismiss” his APA action suit.

Plaintiff begs the Court to pay deference to the fact that he is proceeding pro se. Where a Plaintiff proceeds pro se, “the Court must take particular care to construe the Plaintiff’s filings liberally, for such complaints are held to less stringent standards than formal pleadings drafted by lawyers”. Haines v Kerner, 404 US 519, 520-21 (1972); Cheeks v Fort Meyer Constr. Co, 722 F.Supp 2d 93,107 (D DC 2010).

(1) The lack of precedence pertaining to this case stems from the fact that this is a “case of first impression” as no prior 704 case has addressed the failure of the Executive/ Department Of Justice to investigate recklessly blatant criminal conduct of Federal LE Officials, consistent with “Fraud On The Courts” and “Abuse Of Process”, proven with “clear and convincing” “scientific evidence” rendered by multiple post-doctoral scholars, that was brought by an inmate paradoxically incarcerated as a consequence of that very criminal conduct.

Plaintiff can factually and categorically state that there is no case in United States jurisprudence as researched on Lexis-Nexis that he could find where the criminal conduct of Federal LE Officials has been so overtly obvious: even surpassing the “clear and convincing” standard that the Courts pay deference to, that successfully led to the conviction and incarceration of a citizen.

As a “case of first impression” this case presents an excellent vehicle for this Court to establish much needed guidance and instruction in this uncharted area of jurisprudence. There is no case on record where the criminal conduct of Federal LE Officials that led to the successful conviction of an individual, was never investigated and addressed.

In Olmstead v United States, 277 US 438 (1928) Justice Brandies stated- “Decency, security and liberty alike demand that the government officials shall be subject to the same rules

of conduct that commands to the citizen. In a government of laws, existence of the government will be periled if it fails to observe the laws scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker, it breeds contempt of the law; it invites every man to become a law unto himself; It invites anarchy. To declare in the administration of criminal law the end justifies the means- to declare that the government may commit crimes in order to secure the conviction of a private criminal. Against that pernicious doctrine this court should resolutely set its face”.

Ironically, this action was filed a mere fortnight before the murder of George Floyd. Unlike George Floyd, Plaintiff is fortunate in that he is still standing and breathing. He may not have a videotape of the Federal LE Officials and or their confederates planting the evidence, but he certainly has photographic evidence taken by Arkansas State Police of the crime scene.

The unlawful acts that the Plaintiff has accused the Federal LE Officials of committed are related to violations of criminal statutes. Plaintiff has no avenue to address that conduct, which is in the purview of the very agencies the LE Officials belong to. The violation of the United States Constitution, 18 USC 4 (misprision of a felony), 18 USC 242 (conspiracy to violate civil rights), 18 USC 1510 (obstruction of criminal investigation), 18 USC 1512 (witness tampering), 18 USC 1513 (retaliation against witness), 18 USC 1001 (subornation of perjury) are all criminal statutes under Title 18. In addition 98 USC 535 (a)&(b) are statutes related to individual agencies which relate to the functioning of the agencies in question, their rules and regulations.

Under APA, which the Plaintiff is compelled to seek redress, parties who are adversely affected by Agency Action are entitled to seek judicial review of that action, 5 USC 702. The Supreme Court has made it clear that that there is a strong presumption that Agency Action is judicially reviewable, Abbott Labs v Gardner, 387 US 136, 140 (1967); Mach Mining, LLC v EBOC, 135 S. Ct. 1645, 1651 (2015) “Congress rarely intends to prevent Courts from enforcing its directives to Federal Agencies”“ and then there is a “strong presumption favoring judicial review of agency action”.

The Department of Justice is an “Agency” within the meaning of APA, 5 USC 701(b)(1), and an Agency is “each authority of the Government of the United States” Therefore actions of the Department of Justice, and the Prosecutors within that Agency are presumptively amenable to review under the APA.

To deny Plaintiff judicial review of Agency Action that he alludes to, would yet again be the ultimate “miscarriage of justice”. It would, with finality, immunize the criminal conduct of the Federal LE Officials in addition to paradoxically rewarding them for that very criminal act against a United States citizen to whom they owe a duty to protect and serve. Even more ironic and scandalous is the fact that as those very Federal LE Officials gloat over their felonious acts an innocent citizen languishes in prison for life. The Defendants have done an artful job in avoiding any review of their criminal conduct by their own and the Courts, as none of the Courts was duty bound and compelled to do so, despite the fact that they could have done so “if” they so choose to do so. The reviews in the Courts thus far were related to the conduct of the Plaintiff and not that of the offending LE OFFICIALS.

The Defendants in their Motion to Dismiss have used the term “conclusory” in a rather liberal manner. They however fail to cite as to what particular narrative or averment made by Plaintiff is conclusory. Plaintiff will however, take additional steps to clarify and provide the basis for his averments. A great number of facts alluded to by Plaintiff were presented to the PCR/ 2255 Court. None of his statements and averments presented in the documents, affidavits or declarations were ever questioned, let alone be challenged by the Government. For the Defendants now to do a turn around and call any of them “conclusory” is nothing by a self-serving shenanigan. |

(2) DEFENDANTS MOTION TO DISMISS IS DEFECTIVE ON ACCOUNT OF LOCAL CIVIL RULE 7(n) VIOLATIONS

Defendants have neglected to include a certified list of contents of the administrative record as required by L Cv Rule 7(n), which is required in cases involving the judicial review of administrative Agency Actions. This was required to have been done within 30 days following service of the answer to the complaint.

(3) THE APA PROVIDES PLAINTIFF THE APPROPRIATE JURISDICTION TO LITIGATE, HIS CLAIMS PERTAINING TO THE CONDUCT OF FEDERAL LE OFFICIALS ADDRESSED, ACTED UPON AND LITIGATED

The APA's comprehensive provisions for review of "agency actions" are contained in 5 USC 701- 706. Any person "adversely affected or aggrieved" by agency action, 5 USC 702, including a "failure to act", is entitled to judicial review and relief thereof", as long as the action is a "final agency action" ... or "unreasonably delayed" for which there is no adequate remedy in a court" 5 USC 704. The standards to be applied on review are governed by provisions of 5 USC 706.

(4) AGENCY DISCRETION IS NOT ABSOLUTE AND IS INAPPLICABLE IN PLAINTIFF'S REQUEST FOR THEREVIEW OF AGENCY ACTION

Before any review may be had, "a party must clear the hurdle of 5 USC /01 (a). Judicial review "applies, according to the provisions thereof, except to the extent that (1) statutes preclude judicial review or (2) agency action is committed to agency discretion by law".

Agency decisions whether to take enforcement action are "generally" committed to agency discretion. Hammon Cove Condominium Asso v Marsh, 815 F.2d 949, 951-52 (3rd Cir 1987), citing Heckler v Chaney, 470 US 821, 831-32 (1985). An agency decision not to enforce often involves a complicated balancing of a number of factors which are particularly within its expertise. Thus the agency must; 1) not only assess whether a violation occurred but 2) whether agency: resources are best spent on this violation or another 3) whether the agency is likely to succeed if it acts 4) whether the enforcement action requested best fits the agency's overall policies and 5) whether the agency has enough resources to undertake the action at all.

An agency generally cannot act against each technical violation of the statute it is charged with enforcing. The agency is far better equipped than courts to deal with the many variables in the proper ordering of its priorities. In Heckler, the US Supreme Court concluded that "such decisions are "presumably" immune from judicial review under the APA. However, the Court indicated "that presumption can be rebutted where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers". In addition to these administrative concerns, the Court noted that when an agency refused to act it generally did not exercise its coercive power over an individual's liberty or property rights, and thus did not infringe upon areas that courts often are

called upon to protect. Finally the Court recognized that an agency's refusal to institute proceedings share to some extent the characteristics of the decision of a prosecutor in the Executive branch not to indict- a decision which has long been regarded as the special province of the Executive branch, in as much it is the Executive who is charged by the Constitution to take care that the laws be faithfully executed. Id.

In analyzing the discretionary exception Circuits have directed Courts to consider whether; 1) the action involves broad discretion, not just limited discretion inherent in every agency action 2) the action is the product of political, military, economic or managerial choices that are not readily subject to judicial review and 3) the action does not involve charges that the agency lacked jurisdiction, that the decision was motivated by impermissible influences such as bribery, or fraud, or that the decision violates a constitutional, statutory or regulatory command. Raymond Proffitt Found. v U.S. Army Corps of Engr's, 343 F.3d 199, 205 (3rd Cir 2003)

5 USC 701(a)(2) requires careful examination of the statute which the claim of agency illegality is based. Webster V Doe 486 US 592, 600 (1988) "in deciding whether Congress intended to commit a particular action to an agency's discretion is a matter of law, we must consider the statutory language, the structure of the statute, and the relevant legislative history if the statute is ambiguous, and the nature of the agency action being challenged", adding "the Agency's failure to follow its own regulations can be challenged under the APA". Doe v Casey, 796 F.2d 1508 (DC Cir 1986); Service v Dulles, 354 US 363 (1957) recognizing the right of federal courts to review an agency's actions to ensure that its own regulations have been followed; Sampson v Murray", 415 US 61 (1974) stating that "federal courts have the authority to review the claim of a discharged government employee that the agency effectuating the discharge has not followed administrative regulations".

In Soobeokov v Holder, 2011 US Dist Lexis 65007 (D DE 2001) the Plaintiff's father was a murdered in 1985. Dissatisfied that after 25 years no arrest having "been made or indictments issues, plaintiff filed suit under APA. The Court ruled barring Plaintiff's claim under APA because the decision whether to arrest and prosecute an individual is committed to agency discretion. The investigation was still open and ongoing. Nothing indicated it to be tainted. Prosecutorial discretion, however, is not absolute. For eg; selective prosecution based on an unjustifiable standard such as race or other arbitrary classification is a violation of the Equal Protection Clause of XIV Amend.

28 USC 535(a) states that the Attorney General and the FBI “may” investigate any violation of Federal Criminal Laws involving Government Officers and Employees. Even with the agency discretion guiding officials whether to investigate or not there is no absolute. The Agency must still make some determinations that justify its decision;

1) Assess whether a violation occurred- The violation in question that Petitioner was subjected to is so obvious that one does not need three PhDs highly trained, educated, published and decorated: in the fields of Soil Science/ Geology, Botany and Photogrammetry to figure out as even a fifth grader of average intelligence could figure out in a span of less than 5 mins that the evidence presented by the Government was amiss.

2) Whether the agency resources are best spent on this violation or another- Plaintiff is alleging far more than procedural violations or statutory violations. He is alleging Constitutional violations. The violations are so obvious that they seem incredulous. In looking the other way after even glancing the evidence one could be liable for the misprison of a felony. Besides if the AG and FBI are lacking resources, Plaintiff is ready to defray costs of any investigation.

3) Whether the Agency is likely to succeed if it acts- Only an investigatory body that just refuses to see or is in a state of denial can it not succeed in figuring out the obvious. It is the “success” of their investigation that keeps the AG, OIG, OPR, FBI, Internal “Affairs-ATF, and EOUSA from looking at or investigating the Plaintiff’s allegations. The “success” would expose criminal conduct of their cohorts and comrades, creating a scandal that till then never existed. It would defy the laws of self-preservation.

4) Whether the enforcement action requested best fits the agency’s overall policies- it is the job of the Executive Branch to investigate criminal conduct specially where the act relates to Constitutional violations of private citizens, particularly those that are committed by their own. It is not the Executive’s policy to cover up crimes committed by their brethren. .

5) Whether the agency has enough resources- The Government spent hundreds of thousands of dollars investigating “phantom” bombers and “phantom” grenade planters when it was one of their own that played a role in the conduct. The strongest super Dower in the history of the globe I am certain has the resources to interview a handful of individuals that will provide all the necessary information to unearth the reality of what transpired as it pertained to the criminal conduct that the Plaintiff is alluding to.

As opposed to Soobzokov, Plaintiff was a target of the Federal LE Officials who resorted to selective prosecution based on an unjustified standard, that to whet a personal vendetta on account of a personal animus, humiliation related to multiple failed sting

operations that came at a hefty expenditure of both finances and manpower, with no dividends to account for them. The intention to violate the US Constitution, statutes and agency rules and regulations was done maliciously with aforethought planning and criminal intent.

Conduct cannot be “discretionary” when it violates the US Constitution, federal laws or established agency policies and regulations. There can be no doubt that the criminal conduct of Federal LE Officials in the fabrication of evidence, suborning perjury, obstructing justice, threatening and coercing witnesses, bribing witness... etc violate all of these.

(5) THE DEFENDANTS ACTIONS IN NOT ADDRESSING THE PLAINTIFF'S COMPLAINTS OF EGREGIOUS AGENCY ACTIONS WERE ARBITRARY AND CAPRICIOUS, GIVING PLAINTIFF CAUSE TO PURSUE HIS CLAIMS UNDER THE APA

Under 5 USC 706(2)(A), the APA permits courts to compel agency action when an agency's failure to act is found to be arbitrary, capricious, and an abuse of discretion or otherwise not in accordance with law. Hondros v US Civil Service Comm'n, /20 F.2d 278, 298 (3rd Cir 1983); stating that section 706(2)(A) authorizes this court to compel agency action arbitrarily or capriciously withheld. A court must consider whether the decision was based on the consideration of the relevant factors and whether there has been a clear error of judgment. Although the inquiry into the facts is to be searching and careful, the ultimate standard is a narrow one. The court is not empowered to substitute its judgment for that of the agency. Citizens to Preserve Overton Park v Volpe, 410 US 402 (1971). The agency's decision does not have to be ideal, so long as the agency gave at least minimal consideration to the relevant facts contained in the record. As long as there is a rational basis for the decision, there is no abuse of discretion. A rational basis exists for an agency decision if there is a rational relationship between the facts found and the choice made.

However, an agency's failure to provide an explanation for its denial to investigate egregious agency action would render its decision arbitrary and capricious under the APA. El Rio Santa Cruz Neighborhood Health Ctr v US HHS, 396 F.3d 1265 (DC Cir 2005); the agency's failure to provide an explanation for its denial of medical liability coverage under the Federal Supported Health Assistance Act rendered its decision arbitrary and capricious under the APA.

Similarly, agency's inadequate explanation for dismissing empirical studies rendered its decision arbitrary and capricious under the APA; Am Radio Relay League, Inc v FCC, 594 F.3d 227, 241 (DC Cir 2008).

The Energy Regulation Commission failed to offer adequate rationale and explanation, which rendered its decision arbitrary and capricious, when it denied complaints alleging that tariff provisions resulted in rates that were unduly discriminatory under 16 USC 824d(a); New England Power Generators Assn v FERC, 881 F.3d 202 (DC Cir 2018).

Holding the Board's cursory departure from precedent without a reasoned analysis rendered its decision arbitrary and capricious; Honeywell Int'l, Inc v NLRB, 253 F.3d 119, 123 (DC Cir 2016)

The court held that an agency's failure to cogently explain why it exercised its discretion in a given manner, or to provide an adequate statement of basis and purpose, rendered its decision arbitrary and capricious; Intl Ladies Garment Workers' Union v Donovan, 722 F.2d 795 (DC Cir 1983).

In addition, agency action is arbitrary and capricious when the agency "relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference of view or the product of agency expertise. Notably, the court "may not supply a reasoned basis for the agency's action that the agency itself has not given". Plaintiff over the past seven years has requested an investigation into "agency action" having written numerous times to various Offices of the Department of Justice and in the case of the BATFE, the Department of Treasury. At no time has he been afforded any reasonable and logical response by any Office. The only response that Plaintiff was provided was by the Office of Professional Responsibility, which too was in stark contradiction to what the policies of that office were. Exhibit 7. They stated that they would address and address allegations only when a "court has made a specific finding of misconduct by a DOJ attorney or law enforcement agent". That is not the standard that the Executive Office for US Attorneys gave Plaintiff to understand. Exhibit 2a. Even the Editorial by Helen W. Gunnarsson, 91 Crim. L. Rep (BNA) 677 described the functions of the OPR being in stark contrast to the evasive stance taken by the response that was provided to the Plaintiff. Lyn Hardy, the assistant counsel in the DOJ's OPR too opined differently. The OPR would never investigate the allegations that the Plaintiff had presented to their Office. The actions of the OPR were in stark contrast to the agencies own rules and regulations. This provides Plaintiff a right to have a review of Agency Actions under the APA. Exhibit 44.

The Attorney General, Inspector General, FBI, Internal Affairs- ATF, Executive Office for U.S. Attorneys in not even attempting to or providing an explanation for their lack of response to Plaintiff's requests to investigate Agency Action rendered their decision for "failure to act" arbitrary and capricious, now reviewable under the APA.

(6) AGENCY ACTION BEING COMMITTED TO AGENCY DISCRETION BY LAW IS NOT INVESTIGATING PLAINTIFF'S ALLEGATIONS IS INAPPLICABLE, WHEN PLAINTIFF'S CLAIM REGARDS CRIMINAL CONDUCT OF FEDERAL LE. CONDUCT IS CONCLUSIVELY UNCONSTITUTIONAL IN ADDITION TO RAISING SERIOUS CONSTITUTIONAL QUESTIONS

While a finding of commitment to agency discretion narrows the scope of judicial review by eliminating review under 5 USC 706(2)(A) which states that a court is to set aside agency actions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, it does not affect review under 5 USC 706(2)(B) which states that a court is to set aside agency actions found to be contrary to constitutional right or 5 USC 706(2)(C) which states that the court is to set aside actions found to be in excess of statutory jurisdiction or short of statutory right, or even 5 USC 706(2)(D) when it is without observance of a procedure of law.

When an agency has acted beyond its delegated authority, a reviewing court holds such action ultra vires, or a violation of APA. Univ of DC Faculty Ass'n/ NEA v DC Financial Responsibility & Mgmt Assistance Auth, 163 F.3d 616, 620 (DC Cir 1998) "explaining ultra vires claim requires the court to review statutory language to determine whether "Congress intended the agency to have the power that it exercised when it acted".

When Constitutional questions are in issue, the judicial review is presumed. The Supreme Court will not read a statutory scheme to take the extraordinary step of foreclosing jurisdiction unless Congress' intent to do so is manifested by clear and convincing evidence. Califano v Sanders, 430 US 99, 109 (1977); Weinberger v Saffli, 422 US 749, 762 (1975); Johnson v Robison, 415 US 361, 366-67, 373-74 (1974); Abbott Labs v Gardner, 387 US 136, 141 (1967); Bowen v Michigan Acad of Family Physicians, 476 US 667, 681 (1986).

When a decision is committed to agency discretion by law and thus not reviewable as an unlawful or unreasonable agency action under the APA, a plaintiff may still invoke the APA as a basis for a Constitutional challenge to the action unless Constitutional review is expressly precluded by statute. Webster v Doe, 486 US 592, 603 (1988).

Even in cases in which courts have held actions "committed to agency discretion by law, some review is still available to ensure that the agency has not violated other constitutional or statutory commands". Doe v Casey, 796 F.2d 1508 (DC Cir 1986); see Hondros v Civil Service Commission, 720 F.2d 278, 293 (3rd Cir 1983) "even those actions committed to agency discretion by law are reviewable on grounds that the agency's decision was occasioned by impermissible influences, or that the decision violates any Constitutional, statutory or regulatory command". WWHT v Fed Communications Comm, 656 F.2d 807, 815 (DC

Cir 1981) “in no event would a finding of non-reviewability on the ground that an action is committed to agency discretion preclude judicial review when Constitutional violations have been alleged”. Citizens to Preserve Overton Park v Volpe, 401 US 402, at 413-14 (1971); Krueger v Morton, 539 F.2d 235, 238 (DC Cir 1976); Grace Towers Tenants Ass’n v Grace Housing Development Fund Co, 538 F.2d 491, 496 (2nd Cir 1976); Ness Inv Corp v USDA, 512 F.2d 706, 714-15 (9th Cir 1975); Scanwell Labs, Inc v Shaffer, 424 F.2d 859, 874-75 (DC Cir 1970).

The Constitutional violations in question are duo fold, in that a) it was the Plaintiff’s Constitutionally protected rights that were violated by b) the actions of the Federal LE Officials in i) their act of commission of the felonious acts of fabricating evidence and ii) their acts of omission, in failing to act on and investigate that criminal conduct.

The actions of the Federal LE Officials incontrovertibly deprived Plaintiff of his Constitutionally protected interest in liberty and property in addition to due process. violations under the 5th Amendment. Plaintiff by way of the ruling in his 28 USC 2255/ PCR motion may be procedurally barred in having the habeas court look at, consider, address and litigate the violation of his Constitutionally protected rights, foreclosing review in that forum.

The APA however, does not foreclose looking at, considering, addressing, investigating and litigating the acts of commission of the illegal Agency Action with the same applying to the acts of omission related to the investigation of those very acts. It is the job and duty of the Federal LE Officials to protect the Constitution, comply with statutory laws and the respective agency’s procedures and policies. The damage to the Plaintiff was secondary to and a result of that illegal conduct. That conduct cannot be immunized.

Congress has explicitly stated that Constitutional violations will be subject to judicial review implying both a) the rights of the Plaintiff who is a victim and b) the criminal actions of the Federal LE Officials who were the violators of those rights. In this APA action Plaintiff seeks to have the latter reviewed, addressed and acted upon, despite the fact that this Court has the power and jurisdiction to do a lot more if it so chooses.

(7) THE CRIMINAL CONDUCT OF THE FEDERAL LE OFFICIALS IN VIOLATION OF FEDERAL STATUTES AND EVEN THEIR OWN POLICIES AND PROCEDURES, RULES AND REGULATIONS CAN BE CHALLENGED AND REVIEWED UNDER THE APA

According to 5 USC 706(2)(C) a reviewing Court shall hold unlawful and set aside Agency Action, findings and conclusions found to be in excess of the agency's statutory authority and jurisdiction.

In addition, according to 5 USC 706(2)(D) a reviewing Court shall hold unlawful and set aside Agency Action, findings and conclusions found to be without observance of procedure required by law.

Thus an agency's failure to follow statutes, its own rules and regulations in addition to the Constitution can be challenged under the APA. Constitutional Amendment V Due Process Protections "require that Federal Administrative Agencies "follow their own regulations and substantive regulatory guidance "in conducting their adjudications and that they conduct adjudication in a fair and orderly manner".

The actions of the Federal LE Officials, as Plaintiff has alleged and conclusively shown are not only contrary to the Constitution but in violation of 18 USC 1001, 18 USC 1510, 18 USC 1512, 18 USC 1513, 18 USC 242, 18 USC 4 all of which are actionable under the APA and for this Court to review and address.

In addition 28 USC 535(b) states that any information, allegation, matter or complaint witnessed, discovered or received relating to violations of Federal Criminal Law involving Governmental Officials shall be expeditiously reported to the Attorney General.

Plaintiff has reported his allegations of violations of Federal Criminal Law involving Federal LE Officials to numerous Offices of the Department of Justice, viz. the OPR, FBI, OIG, EOUSA and IA-ATF. Yet there is no record in existence that Plaintiff is aware of where any agency ever notified, reported or forwarded those allegations to the Attorney General.

The criminal conduct of Federal LE Officials in violation of their local agency rules and regulations is also actionable under the APA when, as in Plaintiff's case, rights of individuals are affected. Caldwell v Miller, 790 F.2d 589, 609-10 (7th Cir 1986) an agency must conform its actions to the procedures it has adopted; Pearce v Director, Office of Workers Comp. 647 F.2d 716 (7th Cir 1981); Vandermolen v Stetson, 571 F.2d 617, 624 (DC Cir 1977); Morton v Ruiz, 415 US 199, 235 (1974) where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures; Vittorelli v Seaton 357 US 535 (1959); Service v Dulles, 354 US 363 (1957) even an inmate has the right to

expect prison officials to follow its policies and regulation.

Having no other remedy in a Court that would review the criminal conduct of the Federal LE Officials, Plaintiff is left with no option whatsoever, but to bring his allegations for review to this Court through the APA.

When it came to the issue of review Plaintiff sought from the Agencies themselves, it was only the OPR that rendered a response. Even in that response the OPR blatantly confabulated stating that an investigation could only be undertaken only if and when ordered by a Court. That statement is false as Plaintiff has not been able to find any information to that effect, with its restrictive standards for review of corrupt conduct of Federal LE Officials in either the CFR, Lexis-Nexis or elsewhere. To the contrary what the Plaintiff has been able to find is that that standard touted repeatedly by the OPR is rather liberal, in that non-frivolous allegations will be addressed. Exhibit 42, 43, 44, 2, 7.

In issuing false statements in their response to Plaintiff plea for an investigation into the alleged criminal conduct of the Assistant US Attorneys, the OPR made a futile attempt to cover up and immunize the criminal conduct alluded to. This attempted cover up is a consciousness and admission of guilt by the Agency.

The OIG too has a duty to conduct investigations into misconduct of Federal LE Officials and Employees that result in Constitutional violations. Exhibit 2, 46. Yet when the Plaintiff presented his allegations to the OIG in an exhaustive narrative and its accompanying 17 Exhibits in Jan 2014, the OIG could not with dignity render ever a mere acknowledgment, let alone a response, a far cry from an actual investigation no matter how cursory, into the Plaintiff's allegations.

The ATF as an Agency boasts of "taking allegations of misconduct seriously", putting forth a memo to that effect on the internet. Yet when the Plaintiff referred a complaint, a copy of which was sent to their Central and Local Offices they too did not have the dignity render a response. Exhibit 47, 48, 49, 50, 51, 52.

Plaintiff has repeatedly followed every instruction given to him by the respective Agencies themselves, in an effort to have his allegations addressed. As per the guidelines provided to him by the EOUSA, Exhibit 2, Plaintiff addressed his concerns to the Attorney General, Inspector General, FBI, and OPR to no avail. Plaintiff no matter how hard he tried "could not spur any Agency into Action. None of the Agencies would follow their own regulations and directives. It should then come as no surprise to this Court that the Federal LE Officials under those very Agencies would not follow any themselves, a Perfect Storm for the generation of Rogue Agents, immunized with a guarantee of their criminal conduct.

Plaintiff also presented the issue of the criminal conduct of the Federal LE Officials to the District Court- FD Ark in his PCR/ 2255 motion in an effort to have it addressed as it related to the Plaintiff's conviction. In addressing only the latter and not the former, that Court chose not to even consider the issue, let alone rule on the merits of it, deeming it "Procedurally Defaulted", barring the Plaintiff from raising it in that forum. That ruling of a "Procedural Bar" thus obviated the Plaintiff from using that criminal conduct from being considered in regards to altering his conviction. It however, did not immunize the criminal conduct of Federal LE Officials to operate as Rogue Agents as the Defendants endeavor for it to be.

The prerequisite for an investigation even per the erroneous statement issued by the OPR in their response to the Plaintiff, Exhibit 7, was for a Court to issue the Order to have misconduct investigated. The Habeas Court, made it clear by ruling the way it did, that a) it was not the venue to rule on the criminal conduct of the Federal LE Officials b) it did not have the jurisdiction to do so c) in considering the relevance of it to the conviction of the Plaintiff, it was deemed not to be significant on account of the Plaintiff being Procedurally Barred and hence not worth being considered or d) that it was the intent of the Court to immunize the criminal conduct of the Federal LE Officials and that of Assistant US Attorneys Whatley and Gordon.

No Court to date has reviewed, addressed or ruled on the allegations brought forth by the Plaintiff. There has never been any forum whereby the Plaintiff's allegations were even considered, let alone ruled on. Plaintiff has hence never had an "adequate" remedy to have the criminal conduct of the Federal LE Officials reviewed. The APA is that very last remedy option available to the Plaintiff.

It is that set of circumstances that makes it imperative for this Court to have the criminal conduct of the Federal LE Officials addressed. Nothing that will be gleaned as a result of that investigation will alter the Plaintiff's convictions on account of his being "Procedurally Barred".

There has been no forum to date that has reviewed the Agency Action; the violation of the US Constitution, federal statutes and the respective agencies rules, regulations, procedures and policies.

(8) DEFENDANTS LN NOT INVESTIGATING THEIR OWN VIOLATED EXISLING STATULES AND RULES AND REGULATLONS/ PROCDFURES AND POLICIFS OF THF RESPECTIVE AGENCIES. BESIDES SUCCESSFUL DECEPTION OF THE COURTS IS NOT A JUSTIFICATION FOR THE POLICE NOT TO POLICE THETR OWN

It is the duty of the police to police their own irrespective of how successful their former criminal acts were in deceiving the Courts. A successful deception does not translate into immunization of that act. The act of deception merely buys time delaying the inevitable revelation of the truth. Fraud and allegations of it ought to heighten the urgency and need for prompt review of that action. The motto of the Executive ought not to be, "Let sleeping dogs lie".

Plaintiff over the past decade has put both the Judiciary and Executive on notice both directly and by proxy, of the criminal conduct of the Federal LE Officials;

1) At trial Plaintiff's counsel, Attorney Hendrix hinted tangentially to the jury wanting a "percipient" juror to pick up on the evidence being presented by the Government as to being fabricated. A lay construction worker as opposed to a Geologist or a Photogrammetrist was brought to testify and render his opinion regarding the evidence being presented by the Government, but was impeached on account of his not being able to meet the standards set forth by Daubert. While no overt allegation of evidence being fabricated was put forth, the Government was put on notice of possible and likely misconduct of the Federal LE Officials. The Government chose not to investigate any further.

2) In his innumerable FOIA requests that were initially placed in May 2013, Plaintiff made the Government aware of the fact that their LE Officials had fabricated and planted evidence to secure his conviction. Instead of investigating Plaintiff's allegations the Government paradoxically countered by withholding the data and documents that Plaintiff sought. To date Plaintiff has not received the data and documents that he was compelled by the Government to pay \$6y400 in Nov 2015, before even a search was initiated. Plaintiff even submitted a letter to expedite his request based on his "Compelling Need" for the sought documents. Exhibit 8. The Defendants could have initiated an investigation then, but refused to do so.

3) In Jan 2014, Plaintiff embarked on a widespread campaign in an attempt to get any relevant or even remotely connected office under the Department of Justice and the ATF to investigate his allegations of the criminal conduct of the Federal LE Officials investigated and addressed. Instead of conducting any form of investigation the respective Offices and Agencies chose to give the Plaintiff a run around in an effort to impede, thwart or delay his endeavors to prompt an investigation or alternatively ignored him completely.

4) In his PCR/ 2255 that Plaintiff submitted in Oct 2014, Plaintiff obtained expert opinions

from three PhDs in the fields of Soil Science/ Geology, Botany and Photogrammetry. Drs. Spiegel, West and Hung were able to apply scientific principles in rendering their opinions, all unanimously stating that the evidence that the Government had presented pertaining to the “finding” of the box of 40mm HE grenades was a scientific impossibility and hence a fabrication. The Government was once again notified of the criminal conduct of the Federal LE Officials. Nonetheless, they chose once again to not investigate the criminal conduct that was incontrovertible.

5) When Plaintiff in May 2020 filed the APA suit, the Government was yet again put on notice regarding the criminal conduct of the Federal LE Officials as it pertained to the fabrication and more. The Government despite that opted not to act on Plaintiff’s allegations, choosing instead to defend those acts by demanding that Plaintiff’s APA remedy be dismissed, thereby immunizing the criminal conduct of the Federal LE Officials.

The fact that despite all of these efforts Plaintiff has not been able to spur either the Department of Justice or its subsidiary Agencies into action does not speak well for all the parties in question. If either thought or perceived that by ignoring the issue long enough it would simply cease to exist, they stand in error. The issue of the criminal conduct of Federal LE Officials paramount in convicting an innocent citizen will continue to loom for eons to come. It needs resolution. Plaintiff prays that this Court will take the initiative that no one else to date has borne the courage of conviction to address. Closure is warranted.

To treat the criminal conduct of the Federal LE Officials differently from one who commits a crime and then go through evasive steps SO as to permit them to escape the consequences that follow is to introduce useless and questionable steps to justify the acts and grant illegal immunity. These need slicing with Occam’s Razor leaving a more practical legal and logical outcome.

(9) DEFENDANTS PROPOSITLTON THAT ONLY THE PCR/ 28 USC 2255 COURT COULD COMPFL THE RFEVIFW OF AGFNCY ACTION PERTAINING TO THE CRIMINAL, CONDUCT OF FEDERAL LE OFFICIALS, AS OPPOSED TO THE APA IS A FALLACY AS THE STANDARD FOR A REMEDY BEING “INADFQUATE” AS IT PERTAINS TO THE APA IS DLEFERENT FROM THAT AS IT PERTAINS TO 28 USC 2259

There is a section in 28 USC 2255 that provides recourse for a remedy when it is deemed to be “inadequate and ineffective”“. See 28 USC 2255(e). In that section the 2255 remedy is deemed to be “inadequate and ineffective” when the petitioner 1) makes a claim of actual innocence and 2) has never had an “unobstructed procedural shot” at presenting his claim.

A claim of actual innocence for purposes of section 2255 savings clause 1s tested by the standard articulated by the United States Supreme Court in Bousley v United States, 523 US 614 (1998). In Bousley the Supreme Court explained that “to establish actual innocence petitioner must demonstrate in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him”“. Bousley 523 US at 623. Actual innocence means factual innocence, not mere legal insufficiency.

To determine whether a petitioner never had an unobstructed procedural shot to pursue his claim the Court considers 1) whether the legal basis for petitioner’s claim “did not arise until after he had exhausted his direct appeal and first 2255 motion and 2) whether the law changed in any way relevant to petitioner’s claim after that first 2255 motion. An intervening Court decision must effect a material change in the applicable law to establish unavailability”, ie, an intervening Court decision must constitute a change in the law creating a previously unavailable legal basis for petitioner’s claim.

With the application of the forementioned standard the Courts guarantee the immunization, of the criminal acts of the Federal LE Officials. The legal basis for the Plaintiff’s claim arose when the fabrication of evidence by Federal LE Officials was done over a decade ago, ruling out the “unobstructed procedural shot” element. In addition there are laws currently in existence criminalizing the conduct of the Federal LE Officials and it is inconceivable that any new law would be enacted pertaining to that. To wait for some law to be enacted in the future so as to address the criminal conduct of Federal LE Officials is simply preposterous, defying logic.

The APA on the other hand does not have any such convoluted requirement. As stated in 5 USC 703 and 5 USC 704, the Plaintiff is to be afforded a remedy that is “adequate” to have issues related to Agency Action addressed and acted upon, when there are none other procedures available to him to have that Agency Action addressed.

5 USC 703 specifically states that APA can be resorted to even if statutorily specified review for Agency Action is “inadequate”. If as the Defendants claim, the PGR/ 2255 was the statutorily specified review procedure for him to have had the criminal conduct of the Federal LE Officials addressed, that procedure in not addressing that conduct would be deemed “inadequate”. And that is why Plaintiff is now having to resort to the APA to have the criminal conduct of the Federal LE Officials reviewed, via no statutory review.

In Bowen v Massachusetts, 487 US 879, 903 (1988) the Supreme Court stated that Congress did not intend the general grant of review in APA to duplicate existing procedures for reviewing agency action. Plaintiff, as the record will indicate, has never had any primary procedure for looking into the conduct of the Federal LE Officials/ Agency Action. It is for that very reason that the criminal conduct of the Federal LE Officials has never been addressed or reviewed.

Defendants have erroneously claimed that the Plaintiff’s PCR/ 2255 motion as having addressed the criminal conduct of the Federal LE Officials, attempting to bar Plaintiff’s current APA motion under the guise of “Res judicata”. If the Defendants had bothered to read Plaintiff’s PCR/ 2255 motion that they allude to, they would have known that the Agency Action/ criminal conduct of Federal LE Officials was never reviewed in that forum. That being the case, Defendants cannot term the current APA procedure a duplication of anything. It will be this Court that will review or have reviewed the Agency Action for the very first time that the Plaintiff is alluding to. APA will not be the “alternate remedy” but the “primary” forum for the review of the criminal conduct of the Federal LE Officials on account of no other “adequate” remedy being afforded the Plaintiff for having Agency Action reviewed.

Even in his PCR/ 2255 motion, a remedy that the Defendants claim erroneously to be the “statutorily specified remedy for review of Agency Action”, Plaintiff put the habeas Court on notice of the “inadequacy” of that procedure as it related to the collateral challenge on his conviction. That remedy did not address or review the conduct of the Federal LE Officials in any way. That remedy was not only “inadequate and ineffective” as it pertained to Plaintiff’s PCR/ 2255 motion, it was “inadequate” as it related to reviewing Agency Action, the conduct of the Department of Justice and its Officials as well. PCR- Document 496.

Plaintiff concedes that had any Court, at any stage, adjudicated the allegations of the criminal conduct of the Federal LE Officials, even absolving the Officials in the process the Defendants assertions of this APA review of being a duplication of a prior procedure would have been dead on. However this is not the case. It is hence, all the more imperative that this procedure, the APA forges on.

(10) PLAINTIFF'S SUIT UNDER THE APA HAS NOTHING TO DO WITH HIS POST-CONVICTION REMEDY/ 28 USC 2255

28 USC 2255: Federal Custody; remedies on motion attacking sentence- A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the Court which imposed the sentence to vacate, set aside or correct the sentence.

On the contrary 5 USC 702: A person suffering legal wrong because of agency action, Under 5 USC 551(13) Agency Action includes an agency's "failure to act" or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to relief thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency Or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.

Plaintiff in the current suit seeks to have the criminal conduct of Federal LE Officials that was targeted against him, making him the aggrieved party, investigated and addressed in a manner that is indicated by jurisprudence. The criminal conduct that the Plaintiff alludes to is:

a) the incessant targeting of the Plaintiff by the Defendants for close to a decade, that with failing all attempts to inveigle the Plaintiff to violate the law, failing to successfully suborn perjury and a host of other illegal shenanigans concluded with the fabrication and the planting of 98 40mm HE grenades in the vicinity, of his residence all with the intent to imprison him, destroy his clinical practice and family and to cause him financial ruin. It was the successful act of fabrication of evidence with an aforethought scheme that resulted in Fraud On The Courts.

b) the failure to investigate the egregious and criminal conduct of the Federal LE officials and their confederates, itself a criminal act, by various offices of "the Department of Justice.

c) subornation of perjured testimony by the Assistant U.S. Attorneys by way of bribes and threats

It is not the primary objective of the PCR/ 2255 court to investigate criminal. conduct of the Federal LE Officials. It is to rule on whether the Plaintiff's sentence was imposed in violation of the Constitution or laws of the United States. This motion is related not to the conduct of the Plaintiff, but that of the Defendants.

While Plaintiff's PCR/ 2255 was being litigated the trial/ PCR Court had the option to investigate the egregious and criminal conduct of the Federal LE Officials. Interest of justice would have mandated it. Nonetheless, the Court chose to artfully side step the issue which is why Plaintiff is in this forum

Similarly, the Plaintiff has been seeking surreptitiously withheld data and documents from the ATF since prior to the filing of his PCR/2255 motion, with his first requests being forwarded to the ATF and Government as far back as May 12, 2013. Those documents have to date not been provided to the Plaintiff despite his incessant requests to the Government. Once again, had the PCR/ 2255 Court had so desired, it could have had the Government produce the data and documents within the matter of days. Nonetheless, once again it chose not to.

Fortunately, as far as the documents and data sought from the ATF/ Government the Plaintiff has an ironclad remedy under the FOIA. He can obtain those documents under 5 USC 552(a) (4)(B). As far as having the criminal conduct of the Federal LE Officials is concerned poses an unforeseen hurdle. There is no remedy that the Plaintiff can resort to in order for that criminal conduct investigated" and addressed other than the possibility of resorting to redress under the APA. This is where the non-statutory provision of the APA comes in to play. Criminal statutes do not provide a private right of action.

There are a couple of similarities between the Plaintiff's requests for an investigation into the criminal conduct of the Federal LE Officials that he has sought since Jan 2014 and the requests for documents that he has sought from the ATF since May 2013, in that;

a) both involved a failure of the "Agency" to act and b) Plaintiff does not know conclusively if the information obtained would be inculpatory, neutral or exculpatory. To obtain that FOIA information he has an irrefutable remedy in 5 USC 552(a)(4)(B). To obtain information into the criminal conduct of Federal LE Officials he has APA. It is not the purview of the Defendants to thwart, impede or prevent any citizen from being afforded judicial remedies as they try so desperately to do in their Motion to Dismiss.

The main benefit of the APA is that it clearly allows enforcement of federal statutes and regulations as well as the Constitution. Having no other means to have the criminal conduct of the Federal LE Officials investigated and addressed, the Plaintiff is left with no option

but to resort to the APA for review of “Agency Action”. To deny yet again Plaintiff’s last ditch request would be tantamount to a miscarriage of justice.

The PCR/ 2255 is not primarily intended to review Agency Action.

(11) PLAINTIFF HAS NEVER AT ANY STAGE HAD AN “ADEQUATE REMEDY IN A COURT” WHEREBY HE WOULD HAVE BEEN OR WAS ABLE TO EXPOSE, THE CRIMINAL CONDUCT OF FEDERAL LE OFFICIALS. DEFENDANTS AVERMENT TO PLAINTIFF’S PCR/ 2255 REMEDY AS BEING “ADEQUATE” IS BLATANTLY FALSE. NOTHING IN THE PCR/ 2255 REMEDY RELATE TO THE INVESTIGATION OF FEDERAL LE OFFICIALS

Interestingly, 5 USC 703 states: “The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute “provided” that the statutorily specified review proceeding is not “inadequate”.

Relatedly, 5 USC 704 states: “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review

Both provisions make the same point: A party cannot bring a freestanding APA suit when Congress has specified a different judicial review procedure “relevant to the subject matter”, so long as that Congressionally specified review procedure is adequate. See: Attorney General’s manual on the APA 101 (1947); describing adequate remedy under 704 by cross reference to 703. Those 704 and 703 requirements are related to a bedrock principle of the American Legal System. Equitable relief is not available when there is an adequate remedy at law. See: Judiciary Act of 1789 §16, 1 Stat 73, 82.

In Bob Jones Univ v Simon, 416 US 725, 742 (1974) the Supreme Court referred to the back ground of general equitable principles disfavoring the issuance of federal injunctions against taxes, absent clear proof that available remedies were “inadequate”.

Richards v Delta Airlines, Inc, 453 US 525, 531 (DC Cir 2006)- the general rule is that injunctive relief will not issue when an adequate remedy at law exists. As the Supreme Court has explained, the APA “does not provide additional remedies in situations where Congress has provided special and “adequate” review procedures”. Bowen v Massachusetts, 487 US 879, 903 (1988)- an alternate remedy, the Supreme Court stated, will not be adequate under 5 USC 704 if the remedy offers only “doubtful and limited” relief. Id at 901.

In his PCR/2255 motion Plaintiff made great efforts to have the criminal conduct of the Federal LE Officials and their confederates addressed, litigated, exposed and ruled on to no avail. Disregarding Fed R App P 10(a), concrete scientific opinions of three extremely decorated PhDs and even basic logic the Court decided not to litigate the Constitutional issues presented to it, by citing that the Plaintiff was procedurally barred in bringing up the issues pertaining to the criminal conduct of the Federal LE Officials. That ruling in and of itself would immunize the criminal conduct if no other review is available. And now the Defendants want to avoid review under the APA as well.

Plaintiff has exhibited due diligence, doing all he could at every step of the legal process to have the criminal conduct of the Federal LE Officials addressed, to no avail;

- Plaintiff requested his trial counsel, Attorney Blake Hendrix to bring experts at trial to have the fabrication of evidence by Federal LE Officials litigated and addressed.
- Plaintiff gave Attorney Hendrix the name of a Geologist who was ready to testify and render an expert opinion regards the fabrication of evidence that was presented by the Government. Plaintiff's requests were ignored.
- Plaintiff requested Attorney Hendrix to contact his wife's counsel, Attorney Danny Crabtree to obtain experts from the Univ of Agriculture, where Attorney Crabtree had acquaintances who were qualified to render expert opinions. Attorney Hendrix refused to do so, ignoring Plaintiff.
- Following trial Plaintiff requested Attorney Hendrix, now his Direct Appeal counsel to raise the issue of fabrication of evidence in his Direct Appeal. Attorney Hendrix declined to do so, telling Plaintiff that he could not do so. That Plaintiff can surmise would be related to the restraints of the Fed R App P 10(a).
- Plaintiff then asked Attorney Hendrix to file a Fed R Civ P 33(b) motion to bring up the fabrication of evidence issue as now the record could be expanded by bringing in expert testimony not formerly available to trial. Attorney Hendrix declined to do so, telling Plaintiff to bring the issue up in the PCR/ 2255 motion.
- Plaintiff's PCR/ 2255 counsel, Attorney Dr. Simon presented the issue of fabrication of evidence to the habeas court, bringing in testimony from three eminent PhDs in the fields of Geology, Botany and Photogrammetry; Dr Spiegel, Dr West and Dr Hung respectively in addition to having a crime scene reenactment done. The evidence presented was beyond clear and convincing that the evidence that the Government presented at trial and which the Eighth Circuit of Appeals had termed as being "overwhelming evidence" of Plaintiff's guilt, was indeed a scientific impossibility and hence a fabrication done solely for the purpose to secure a conviction of the Plaintiff who they had been targeting for a decade without success.
- The Government never once categorically stated either at trial, during the PCR/ 2255 motion or even now that the evidence was "not a fabrication". Instead they artfully and evasively state time and time again that it was the jury who saw the evidence and found the Plaintiff guilty and that the Eighth Circuit Court of Appeals saw the evidence and termed it to be "overwhelming evidence" of his guilt. Never once in any motion has the Government addressed the issue of the fabrication that was consistent with a "Fraud On The Courts", that Plaintiff has repeatedly alleged.
- The Trial Court, subsequently the PCR/ 2255 Court never provided an Evidentiary Hearing,

or Discovery to litigate or expose the issues Plaintiff raised. The Courts then denied the Plaintiff a COA whereby he would still have had an option to have the issue of the fabrication of evidence, resulting in FraudOn The Courts never being exposed or litigated.

- In its final decision in turning down every issue raised by Plaintiff in the PCR/ 2255 motion the District Court declined to rule on the merits or factual basis of the fabricated evidence where the Government never produced any evidence whatsoever from any field of science to contradict, undermine or refute what Plaintiff's experts had opined.

- The District Court ruled that Plaintiff was "procedurally barred" in bringing up the issue of the fabrication of evidence by Federal LE Officials.

- Plaintiff has hence never had any opportunity to have the criminal conduct of Federal LE Officials addressed.

- Subsequently in two forfeiture trials filed by the Government the Plaintiff had the opportunity to bring forth the issue of the fabrication of evidence by Federal LE Officials as the forfeiture was based upon the incarceration of the Plaintiff in the pretrial stage when the Class III weapons that he possessed were not in his but in his spouse's possession. United States v One Assortment of NFA Regulated Weapons 4:14-cv-00423-BSM and United States v One Interord Corp USAS-12 Shotgun 4:14-cv-00134-BSM. However, in both those forfeiture trials Plaintiff was not permitted any form of Discovery. It was the attempt of the Court to either chill the application of Heck which would not have been applicable in a proceeding initiated by the Government or that any information gleaned would not be relevant to Plaintiff on account of his having been "procedurally barred".

- Plaintiff once again had the opportunity to expose the criminal conduct of the Federal LE Officials when he was sued by Dr. Pierce in an Arkansas County Court. Pierce v Mann, Case No. cv-2010-61. The Court shielded the Government by not even conducting the trial, obviating the need of Discovery. A verdict was rendered in the State Court based off the verdict in the Federal Court for only the second time in the history of Arkansas. The prior case was a capital offense and the exception was deemed to apply only to that. In Plaintiff's case a second "Exception" was created, in all likelihood to keep the criminal conduct of the Federal LE Officials under wraps.

Plaintiff cannot take any affirmative legal action against the Federal LE Officials for their criminal conduct on account of their actions being under Title 1&, a criminal one. No statute exists that Plaintiff can use to have his grievances addressed. It is only the APA he can resort to using the “doctrine of non-statutory review”. see Chamber of Commerce of US v Reich, 74 F.3d 1322, 1327 (DC Cir 1996). [No private cause of action]

In Nader v Volpe, 446 F.2d 261, 266 (DC Cir 1972) the court stated that the principle that no statutory remedies to correct allegedly unlawful agency action are generally unavailable without a showing of patent violation of agency authority or manifest infringement of substantial rights (ultra vires) or beyond the capabilities of the statutorily prescribed methods of review to repair.

The Supreme Court created this limited doctrine in Leedom v Kyne, 358 US 184 (1958); Griffith v Fed Labor Relations Auth, 842 F.2d 487, 493 (DC Cir 1988) “The Leedom v Kyne exception is intended to be of extremely limited scope”. Judicial review of agency action is permitted when; the agency acts “in excess of its delegated powers” or “contrary to a specific prohibition of a statute” that was “clear and mandatory”. Kyne 358 US at 188; see Harmon v Brucker, 355 US 579, 581-82 (1958) “Generally judicial relief is available to one who has been injured by an act of a Government official which is in excess of his express or implied powers”.

Even where the Congress is understood generally to have precluded review, the Supreme Court, under the Leedom v Kyne Exception, has found an implicit but narrow exception, closely paralleling the historic origins of judicial review for agency actions in excess of jurisdiction. See: generally L. Jaffe, Judicial Control of Administrative Action, 327-36 (1965).

In Leedom v Kyne, 358 US 184 (1958), the leading case where the Supreme Court held that, in rare circumstances when “absence of jurisdiction of the federal courts would mean a sacrifice or obliteration of a right which Congress has given arid there is no other means within the Plaintiff’s control, to protect and enforce that right “a District Court may set aside a decision of the NLRB. Leedom 358 US at 190, quoting Switchman’s Union of N. Am v Natl Mediation Bd, 320 US 297, 300 (1943).

There the NLRB refused “to take a vote among the professional employees in a potential bargaining unit to determine whether a majority of them would vote for inclusion in such unit and included both professional and nonprofessional employees in the bargaining unit that it (NLRB) found appropriate. Leedom 358 US at 185. That action, the Supreme Court found, was in direct contravention of the NLRA, which stated that “in determining the unit appropriate for collective bargaining purposes, the Board shall not 1) decide that any unit is appropriate for such purposes if such unit includes both professional and

nonprofessional employees, unless a majority of such professional employees vote for inclusion in such unit”. Id at 184-85 (29 USC 159(b)(1)). The NLRB did not contest the trial court’s decision that the Board, in comingling professional and nonprofessional employees in the unit had acted in excess of its powers and had thereby worked injury to the statutory rights of the professional employees. Instead, it contended that District Court lacked jurisdiction to entertain the suit. Id at 187.

The Supreme Court held that, in such a case, which the Supreme Court characterized as “an attempted exercise of power by the NLRB that had been specifically withheld” by Congress, “a Federal District Court has jurisdiction of an original suit to prevent deprivation of a right” of the professional employees that was “assured to them”

The DC Circuit has held that “invocation of a Leedom jurisdiction is extraordinary; to justify such jurisdiction, there must be a specific provision of the Act which, although it is clear and mandatory, was violated by the agency. The decision in Leedom, the Court ruled was not “not one to review”, in the sense of that as used in the Act, a decision of the Board made within its jurisdiction. Rather, it was one to strike down an order the Board made in excess of its delegated powers. Id at 188.

In the case at bar, the Federal LE Officials violated the Constitution, aforementioned j statutes and even rules and regulations of the Department of Justice/ Department of Treasury/ ATF/ FBI/ EOUSA/ AG/ OIG and OPR in a) the Federal LE Officials fabricating evidence, b) the subornation of perjured testimony by AUSAs and ATF Agents and c) in the Department of Justice and respective agencies not investigating that conduct in an attempt to cover up the crimes committed by their own.

Similarly in Oestereich v Selective Service System Local Board No. 11, 393 US 233 (1968), the Supreme Court followed Leedom v Kyne to permib:.review of a final decision of a Selective Service Board. Plaintiff was a divinity student who was entitled, pursuant to Section 6(g) of the Act to an exemption from training in Service under the Act. Plaintiff returned his registration certificate to the government in protest, “for the sole purpose of expressing dissent from the participation of the United States in the war in Viet Nam”“ Shortly thereafter, his board declared him delinquent for failure to have the registration certificate in his possession and for failure to provide the Board with notice of his local status. The Board thereupon changed his classification to 1-A. Plaintiff took an Administrative Appeal and lost and was ordered to report for induction. The suit was brought to restrain that induction.

The Supreme Court, in the opinion by J. Douglas held that Section 10(b)(2) of the Act cannot bar judicial review of such “basically lawless” conduct. Without judicial

intervention, the Court said, the Boards “could” deteriorate into “free wheeling” agencies meting, out their brand of justice in a vindictive manner. Id at 237.

The conduct of the Federal LE Officials is the very basis of Plaintiff’s action under the APA. The agencies have, just as J. Douglas had predicted, deteriorated into becoming the free wheeling entities meting out their brand of justice, bastardizing the legal process along the way. Judicial intervention is warranted to curb this ominous conduct. The APA under the doctrine of Kyne and Oestereich is available to review clearly lawless conduct of Federal LE Officials that is not amenable to review under any available statute. And 28 USC 2255, as the rulings of the habeas Court Eastern District of Arkansas have shown, is clearly not it, much to the chagrin of the Defendants who by their actions have shown not only to condone but desire to have that conduct immunized.

The “ultra vires review” doctrine often attributed to Leedom v Kyne is likened to a Hail Mary pass, permits, in certain limited circumstances judicial review of agency action for alleged statutory violations even where a statute precludes review. At most, such a “Kyne Exception” applies only when three requirements are met; 1) the statutory preclusion of review is implied rather than expressed 2) there is no alternative for review of the statutory claim and 3) the agency acts in excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory.

In reference to the case at bar; 1) There is no expressed statutory preclusion, let alone an implied one, of criminal conduct of Federal LE Officials. 2) The 28 USC 2255, as the Defendants have claimed it to be, is not the alternate procedure to have criminal conduct of Federal LE Officials addressed. Were it to be the case Plaintiff would not be here in this forum, begging for a review of the conduct in question. Plaintiff has no other forum to have Agency Action reviewed other than the APA. 3) The Federal LE Officials and their respective Agencies clearly acted in excess of their delegated powers and contrary to specific prohibitions in the statutes that is clear and mandatory when they went about their criminal conduct in fabricating evidence and having it planted, suborning perjury, obstructing justice, bribing, threatening and coercing witnesses and more with their respective Agencies and the Department of Justice going great lengths to cover-up that criminal conduct. This is not the “garden variety of errors of law or fact” that avoid review, but “extreme agency error that the “Leedom v Kyne Exception applies to.

The Exception is available to address clearly lawless agency conduct which Plaintiff has no other means to have addressed. Griffith v Labor Relations Auth, 842 F.2d 487, 493 (DC Cir 1988); Harmon v Bruckner, 355 US 579, 580-81 (1958). Some Circuits have suggested a greater willingness to accept arguments characterizing Agency Action as ultra vires where

the potentially applicable bar is ambiguous or narrow. For eg: the DC Circuit has noted that review under the theory of ultra vires Agency Action “is favored if the wording of a preclusion clause is less than absolute”. *Amgen v Smith*, 357 F.3d 103, 115 (DC Cir 2004); *Bart v United States*, 848 F.2d 217, 227 (DC Cir 1988).

Plaintiff, bar APA has no other means to have Agency Action, the criminal conduct of Federal LE Officials addressed, giving the offending Officials carte blanche to continue to operate criminally with impunity. To deny Plaintiff even this review would essentially immunize that criminal conduct for good, in violation of the US Constitution, federal statutes and agency procedures, polices, regulations and guidelines.

(12) PLAINTIFF IS NOT HECK BARRED FROM BRINGING UP HIS CLAIM WHEN THE STANDARD IS DICTATED BY THAT OF “ABUSE OF PROCESS”

In Heck v Humphrey, 512 US 477, 486-87 (1994) the Supreme Court held that when a successful civil rights action would necessarily imply the invalidity of a Plaintiff’s conviction or sentence, the complaint must be dismissed unless the plaintiff demonstrates that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by habeas corpus.

However, favorable termination of prior proceedings is not an element of a cause of action for abuse of process, and an impugning of prior proceedings: is not one of the consequences of an action for abuse of process. The gravamen of the tort of abuse of process is not the wrongfulness of a prosecution, but is some extortionate perversion of lawfully indicated process to illegitimate ends. Cognizable injury for abuse of process is limited to the harm caused by misuse of process and does not include harm, such as conviction, resulting from that process” being carried through to its lawful conclusion. Heck, 512at 487.

A claim for abuse of process lies where a police officer brings criminal charges against a defendant for an ulterior or illegitimate purpose. An ulterior motive is not simply the intent to harm the other party directly by bringing suit, but rather the intent to gain some other end indirectly. There must be an ulterior purpose “to gain some collateral advantage” which “has been compared to extortion, in that the defendant has allegedly tried to extract advantage by wrongful means”.

An abuse of process is by definition a denial procedural due process and is therefore actionable even under 42 USC 1983. A claim of abuse of process is cognizable even when process was wrongly initiated. Jennings v Shuman, 567 F.2d 1213, 1218 (3rd Cir 1977). An abuse of process claim does not turn on whether the process was legitimately or illegitimately initiated, but rather on whether after the initiation, it was used for some improper purpose. Hence, to plead any plausible claim for malicious abuse of process the plaintiff must allege that there was a perversion of the criminal prosecution process to accomplish a purpose other than that for which the criminal process was initiated. Jacobson v Thrifty Paper Boxes, Inc, 230 A.2d 710, 711 (DC 1967).

Local Courts have emphasized that “the critical concern in abuse of process cases is whether process was used to accomplish an end unintended by law”. Morowitz v Marvel, 424 A.2d 196, 198 (DC 1980); accord Brown v Hamilton, 601 A.2d 1074, 1079 (DC 1992);

Scott v District of Columbia, 101 F.3d 748, 755 (DC Cir 1997)

In Neumann v Vidal, 710 F.2d 856 (DC Cir 1983), Neuman a mechanical engineer, filed a patent application, and began preparations to market his product to the public. A former employer sued him, alleging inter alia, misappropriation of trade secrets and breach of fiduciary duty and as a result potential investors withdrew from Neumann venture and his patent application suffered procedural delays. Neumann ultimately prevailed in the lawsuit, and then sued the employer for antitrust violations and abuse of process. The Court of Appeals held that Neumann was not precluded from raising abuse of process claim. In Neumann, the plaintiff did allege a collateral purpose to the litigation. The alleged goal of the employer's lawsuit was to stifle competition by dissuading third parties from investing in the Plaintiff's business venture, and to delay his patent application. Thus the claim in Neumann involved the type of extortionate activity that the restatement and case law describe.

Thus it is 1) ulterior motive and 2) the perversion of the judicial process for achievement of some end not contemplated in the regular prosecution of the charge or an act in the use of process other than such as would be proper in the regular prosecution of the charge. Hall v Hollywood Credit Clothing Co, 147 A.2d 866, 868 (DC 1959); see also Houlahan v World Wide Ass'n of Specialty Programs and Schools, 677 F.Supp 2d 195, 199(Dist DC 2010); Board of Educ v Farmingdale Classroom Teachers Ass'n 38 NY 2d 397 (NY1975)

Plaintiff has placed on the record, both in his complaint, the attached Exhibits and in his PCR/ 28 USC 2255 motion which has also been alluded to both by the Plaintiff and the Defendants. It is not conclusory, as what the Defendants in their state of desperation would like to term everything brought into the record, all in an effort to cover up and keep the criminal conduct of the Federal LE Officials from being exposed, but factual being supported by scientific evidence. The allegations made by the Plaintiff are incontrovertible. They were never at any stage of any proceeding ever refuted or challenged directly.

The sequence of events, tragic as they may be are as follows

- Plaintiff was a Family Physician having his clinic set up in Russellville, AR.
- Plaintiff was board certified in Internal Medicine, emergency Medicine and in Pain Management.
- One of Plaintiff's patients was Ellie Harris.
- SA Warren Newman was the uncle of Ellie Harris.
- Ellie Harris overdosed on medications that she obtained from unknown or illegitimate sources.

- SA Newnan and the patient's family took Plaintiff to the Ark State Medical Board in order to have him sanctioned for his treatment of Ellie Harris that they conceived was Plaintiff's misdoing.
- The ASMB did not find any flaw in the manner in which Ellie Harris was treated by the Plaintiff.
- Not convinced, SA Newman sought the assistance of the local LE Officials and others to destroy Plaintiff's medical practice and worse, to inveigle him into violating the law in any manner so as to incarcerate him. PCR Exhibit 10.
- SA Newnan embarked on numerous Sting Operations sponsored by the Federal LE Agencies and the Local LE Agencies. Exhibit 1.
- Attempts to get Plaintiff, a licensed Fed Firearms Dealer to sell machine guns and other weapons to felons or to sell them without proper documentation failed.
- Attempts to get the Plaintiff to write prescriptions to patients in someone else's name failed.
- Attempts to get Plaintiff to enter into an illegal sexual tryst similarly failed. That even despite SA Newnan having his wife Terry Jacobs becoming Plaintiff's patient who tried to get the Plaintiff into her house for the purpose of a sexual liaison.
- That act of trying Plaintiff to enter his house was obviously for a very sinister purpose, that to kill the Plaintiff.
- Terry Jacobs failing her attempts to entice Plaintiff into a sexual tryst, then attempted to get the Plaintiff to write prescriptions for anabolic steroids for SA Newnan. Plaintiff declined.
- SA Newman then tried to have patients of the Plaintiff to submit perjured statements/ suborn perjury from Plaintiff's patients in order to present the statements to the ASMB where the standard for the revocation of a physician's license is relatively low, in order to have his license revoked.
- SA Newnan made statements to patient, Barry Downs as to how he was going to confiscate Plaintiff's property.
- Shelly Green submitted an affidavit of as to how LE Officials had threatened her wanting in exchange for not harassing her, to submit the perjured statement. PCR Exhibit 14.
- Asia Montgomery similarly submitted an affidavit to the same effect. PCR Exhibit 15.
- Amanda Virden too was offered \$500 by Officer Newman just to state before the ASMB that Plaintiff had offered her medications in exchange for sex. PCR Exhibit 13.
- It was when SA Newman got nowhere after having spent a significant amount of time and resources, that he or his confederates hatched the plan to plant a box full of 98 40m HE grenades within 1000 yards of his residence.
- SA Newman knew that Plaintiff had in his legal possession two 40mm grenade launchers.

- On or around Mar 3, 2009 two individuals Mark Rinke and Ryan Kimbell claimed to have “found” and “excavated” a box containing the 98 40mm HF grenades that was completely buried in the woods after having dug for 20 mins.
- Plaintiff provided incontrovertible evidence in the form of Expert opinions from three highly trained, educated, experienced and published PhDs in the fields of Soil Science, Botany and Photogrammetry; Drs Spiegel, West and Hung respectively that stated without any ambiguity that the hole that the box had been excavated from was too shallow/ small to have contained the box depicted within it in its entirety and that there was no evidence of any recent excavation whatsoever. PCR Exhibit 1, 2, 3, 102, 103, 104.
- The Government produced no Expert of their own despite their infinite resources to refute any of the opinions rendered by the Plaintiff’s Experts.

It is incontrovertible that the contraband in question was not “found” as was the trial testimony of the two individuals. Plaintiff has never had any prior interactions with the two individuals and no dealings that could have provided them any motive for the fabrication. Rewards were given to them on information and belief. An evidentiary hearing would have provided information that would have shed light on the circumstances of the “find”. It was not provided, rendering that remedy inadequate. Exhibit 12.

The PCR/ 2255 motion was not the venue to have compelled the Court to delve into the criminal conduct of the Federal LE Officials, who had the motive and means of committing the criminal act of fabrication. The Federal LE Officials had a) the motive for the fabrication of evidence and failing their “sting operations” which in and off themselves “ were not all illegal, though a significant number of them were highly illegal, but with their not bearing fruit Plaintiff had no grounds to complain. It was b) perversion of the judicial process by fabricating and then having the evidence surreptitiously planted that the Federal LE Officials crossed the line, calling into play the “Abuse of Process” which Heck does not bar.

- Plaintiff has made efforts to obtain Documents that were filed “Under Seal” by the Government in his 28 USC 2255 motion. The Court has declined to release the documents to the Plaintiff for their presentation with this motion. In those Documents is the presence of even more visceral information that was a motive in Agent Newman and his confederates for the “fabrication and the planting of evidence”“. Agent Newman had stated that it was on account of the Plaintiff that his daughter did not have a mother. A reference to the fact that Agent Newman blamed his divorce on Plaintiff in some way.

The devious objective of the Federal LF Officials was; 1) to avenge the untimely and unfortunate demise of a close relative 2) to destroy the Plaintiff’s Medical Practice

and his ability to render care to his numerous patients, 3) preventing him from making a living 4) to usurp all of his property including the inventory of his company- Exotic Weaponry 5) to have him incarcerated in a Federal facility.

While the motive related to the death of his niece, Ellie Harris, may not have been enough to fulfill the elements of “abuse of process” it was subsequent acts of the fabrication of evidence, suborning perjury, bribing and threatening of witnesses that perverted the judicial process to achieve what the Federal LE Officials had striven so hard and long for. The acts were unintended by law and the criminal case against Plaintiff was instituted to achieve a result not regularly or legally obtainable.

The DC Circuit Court of Appeals has yet to provide precise guidance on the question of how “collateral” the “thing that could not legally and regularly be required”. But perhaps for them this could very well be a starting point. The Officials corrupted by their position of authority, as recent media events have depicted, are not immune from using their position of power in a surreptitious manner. While the Plaintiff does not have a video of the Federal LE Officials and or their confederates planting the evidence, he surely has photographs taken by the Government that reveal conclusively the criminal conduct alluded to, all consistent with not only “abuse of process” but “fraud on the courts”.

Under the Defendants erroneous proposed construction of the APA “only” the 28 USC 2255 Court could compel the Agency to investigate and procure evidence of the criminal conduct of the Federal LE Officials, and no one else.

In Scott v District of Columbia, 101 F.3d 748, 755 (DC Cir 1996) a car driven by Scott crashed into four parked cars. Scott was then an off duty member of the DC MPD. Scott was under suspicion of DUI and acted belligerently and erratically at the scene. He tried to exit a police car while it was at an intersection en route to the station, and an officer grabbed him in an effort to prevent his escape. Upon seeing other officers arrive, Scott offered to get back into the car. Id at 752. Officers refused to let him back in the car, one officer struck him and knocked him off balance, and multiple officers then slammed him to the ground before handcuffing him and dragging him to a police transport vehicle. Scott was charged with DUL. The DUI charge was ultimately dismissed after a police officer failed to appear in court for a hearing. Scott then sued. A jury found for Scott on the false arrest, excessive force, abuse of process and negligence claims. Damages were awarded. The Court of Appeals reversed. The Court contended that Scott had failed either to plead or prove a cause of action for abuse of process. Scott’s theory

at trial, which he pursued on appeal was that the officers committed an abuse of process by initiating criminal proceedings against him for DUI with the ulterior aim of covering up their excessive force. That was ruled by the Court as being insufficient to establish abuse of process. The fact that MPD officers expected to realize some benefit by covering up their own alleged wrongdoing simply points to an ulterior motive, not the kind of perversion of the judicial process that gives rise to a cause of action for abuse of process. Scott did not contend that the filing of criminal charges to pressure him into taking any action or prevent him from taking action, or to achieve other collateral purpose. Scott could not establish the elements of abuse of process.

Similarly, in Brown v Hamilton, 601 A.2d 1074, 1079 (DC 1992) the DC Court of Appeals considered an abuse of process claim in which a tenant alleged that her landlord sought to evict her so as to deprive her of her right to exercise an option to rent a separate apartment in the basement. The Court held that this allegation on its own, did not state a claim for abuse of process because “in addition to ulterior motive, there must have been a perversion of the judicial process and achievement of some end not contemplated in the regular prosecution of the charge”.

In the case at bar, the Federal LE Officials fabricated and planted the evidence after having failed innumerable attempts to inveigle the Plaintiff into resorting to criminal conduct, with the sole purpose to exact vengeance on him on the misguided belief that he was complicit in the death of a family relative of one of the Officials. The Federal LE Officials used the Court system surreptitiously to do what they had been unsuccessful in doing for almost a decade. This is not what the Justice system is designed or intended to do. The Executive cannot use the Judiciary to do their bidding for them in an illegal and surreptitious manner.

In Houlahan v World Wide Ass'n of Specialty Programs & Schools, 677 F.Supp 2d 195 (DC 2010), Houlahan's investigation focused on alleged improprieties in the organization's facilities, which led to a series of articles focusing on the organization and its member facilities. As a result of the investigation, the organization and its member facilities filed a lawsuit against him in Utah, which alleged intentional interference with prospective economic advantage, injurious falsehood and defamation. The lawsuit was dismissed for lack of personal jurisdiction. The journalist contended that the Utah lawsuit was an abuse of process in that it was baseless and instituted to deter him from further investigation and to deter his publisher from publishing his work. In granting defendant's summary judgment motion, the Court found that even assuming that the journalist could establish an ulterior motive for the Utah lawsuit, he failed to establish the essential elements of this claim. The process was used for the purpose for which it was intended; defamation claims were meant to silence persons from making harmful statements. Further

there was no showing that defendants took any actions in connection with filing the lawsuit, which were unlawful or not proper in the regular prosecution of the proceedings. Whelen v Abett, 953 F.2d 663 (DC Cir 1992).

Unlike Houlahan in Plaintiff's case the Federal LE Officials' conduct was highly unlawful and improper in the prosecution of the proceedings against him. Not only did the Federal LE Officials not follow applicable rules and procedures, their very actions were in violation of the Constitution they are beholden to protect.

In Doe v District of Columbia, 796 F.3d 96, 108 (DC Cir 2015) District of Columbia's Child and Family Svcs Agency removed two adopted children from the house. These two and another child living there had endured sexual abuse for years. After the Government acted, the Does sought damages from the DC Family Svcs Agency and DC employees based on abuse of process. The Court ruled that for abuse of process to occur there must be use of the process for an immediate purpose other than that for which it was designed and intended. But something quite nearly opposite is what occurred here. The legal system was employed to safeguard children who had been victims of awful crimes. Aside from conclusory allegations that they were targeted in an otherwise reasonable investigation, the Does offered no proof that the legal system was used to accomplish anything but that worthy end.

In Plaintiff's case there was nothing worthy about the Federal LE Officials targeting him, exacting their wrath by conducting numerous sting operations that entailed suborning perjured testimony and fabricating and planting evidence, using the court system to avenge a personal vendetta. Plaintiff as opposed to Doe has produced incontrovertible evidence of the bastardization of the legal process by Federal LE Officials. The system was used surreptitiously, weaponized to destroy Plaintiff's life.

The Defendants and their Officials should not be permitted to enjoy the fruits of their malfeasance by hiding behind Heck.

(13) INVESTIGATION INTO THE CRIMINAL CONDUCT OF THE ASSISTANT UNITED STATES ATTORNEY/S IN THEIR SUBORNATION OF PERJURED GRAND JURY TESTIMONY AND OFFER OF BRIBES CAN NOT BE HICK BARRED

The role of the Prosecutors and Assistant US Attorneys was made clear by the United States Supreme Court in Berger v United States, 295 US 78, 88 (1935)... “The US Attorney is the representative not of an ordinary party to a controversy, but of a sovereign whose obligation whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but: that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one”.

It is the responsibility of the Department of Justice to enforce the law vigorously and it cannot abdicate this duty because of possible embarrassment to other agencies of the government. Bad faith requires more than bad judgment or negligence; it demands the conscious doing of a wrong because of dishonest purpose or moral obliquity. United States v Reyes-Romero, 959 F.3d 80 (3rd Cir 2020). It is often said that justice must not only be done, it must be seen to be above board. If the people cannot see it at all, then they cannot see it to be appropriate, or more to the pity, to be inappropriate. National Ass’n of Criminal Defense Lawyers V United States Department of Justice, Executive Office for United States Attorneys, 844 F.3d 246 (DC Cir 2016).

Hamis Alsharki in his detailed 20 page affidavit stated with clarity as to how Assistant US Attorney, Karen Whatley and the ATF Officials suborned his Grand Jury testimony in exchange for rewards, his grant of immigration versus inevitable deportation to Yemen. The ATF Agents then arranged for his to have an altercation with another “unflinching” government witness, Steven Briscoe. Alsharki was then threatened with a 20 year sentence for assaulting a Federal Witness if he were to take the stand and expose the criminal conduct of the Federal LE Officials in question. As a result Alsharki never took the stand, having been coerced and threatened of the consequence of doing so.

Plaintiff was convicted without the Petit Jury ever having seen any of that evidence, making his testimony as being inconsequential as was ruled by the PCR/ 2255 Court. Any investigation into the criminal conduct of the Assistant US Attorneys and the ATF Agents would have no impact whatsoever in impugning the Plaintiff’s conviction.

(14) DEFENDANTS INVOCALLON OF HECK TO KEEP CRIMINAL CONDUCT OF FEDERAL LE OFFICIALS FROM BEING EXPOSED IS A FUTILE ACT AS HECK CAN NOT BAR PLAINTILF FROM OBTAINING INFORMATION THAT COULD CAST DOUBT ON HIS CONVICTION

The Government/ ATF has been withholding data and documents that the Plaintiff has been seeking since May 12, 2013. The Plaintiff has already paid the Government the \$6,400 it sought before it would even attempt to compile the sought documents and data.

Plaintiff is aware of the contents of the documents that the Government still to date continues to withhold. Plaintiff has written to the Executive Office of United States Attorneys and even forwarded a copy of that correspondence to the ATF under his “Compelling Need” for the documents he has sought, providing his reasons. The documents are all essentially being withheld in violation of Brady and Giglio, and ought to have legally been provided to him before the commencement of his trial. Exhibit 8.

The 28 USC 2255 Court, had it so chosen, could have ordered the Government to produce them. Nonetheless, it inexplicably chose not to. That only implies that Plaintiff would have to file a suit under 5 USC 552(a)(4)(B) to obtain the documents. Those documents could provide information that could then be used in a 28 USC 2255” (f)(4) motion which could and is likely to cast doubt on Plaintiff’s conviction.

A new investigation under the APA, however, would not benefit the Plaintiff regardless of what it reveals on account of the fact that the Plaintiff is already procedurally defaulted from bringing it up. Now interestingly, if the investigation has already been done and the results are among the documents that Plaintiff has sought, a process that is not Heck barred, it will impugn his conviction. That is precisely the reason that the Government continues to withhold the documents or perhaps tell the Plaintiff one day that the Documents do not exist, a consequence of the inevitable spoilage of evidence.

To deny Plaintiff his request to have the criminal conduct of Federal LE Officials investigated and addressed would in essence be an act of immunizing that very criminal conduct. No one other than the police can investigate the police and it is the APA that can compel that investigation to occur. It is the responsibility of the Department of Justice to enforce the law to the hilt and it cannot abdicate that duty just because it may bring embarrassment to the Agency in question.

APA review is not predicated by what the review may reveal, nor is it designed to keep criminal conduct of Federal LE Officials under wraps.

(15) HECK IS INAPPLICABLE TO PLAINTIFF'S APA ACTION AS AN INVESTIGATIONAL OUTCOME INTO THE CRIMINAL CONDUCT OF FEDERAL LE OFFICIALS, REGARDLESS OF WHAT TT REVEALS CAN NOT IMPLY THE INVALIDITY OF PLAINTIFF'S CONVICTION

Plaintiff has already been denied his PCR/ 28 USC 2255 motion by the Sentencing/ Habeas Court with the Court ruling on Plaintiff's Due Process rights being violated by Federal LE Officials as it pertained to the fabrication and planting of evidence by LE Officials. The Court stated, "... a claim brought for the first time in a section 2255 motion is procedurally defaulted if the issue was not presented on Direct Appeal, unless the petitioner can demonstrate cause and prejudice, or actual innocence... Mann's Fourth and Fifth Amendment claims were not raised on Direct Appeal and Mann has not shown that he meets the cause and prejudice standards, or that he can satisfy the Actual Innocence standard..."

Hence, if the investigation is ordered into "Agency Action"; that of criminal conduct of Federal LE Officials and a Failure to Act in not investigating that conduct, it can result in the following outcomes;

- a) that the Federal LE Officials did no wrong and that an investigation was not warranted,
- b) that the Federal LE Officials conduct was of a criminal nature warranting an investigation, or the rather implausible outcome,
- c) that the Federal LE Officials conduct was criminal in nature but no investigation was warranted.

Regardless of either of these outcomes, none of them can imply the invalidity of the Plaintiff's conviction at this stage. He is and will continue to be procedurally defaulted. That does not change, irrespective of how corrupt, egregious or scandalous the Federal LE Officials conduct was.

Common sense dictates and even a fifth grader of average intelligence can conclude with absolute certainty that the evidence presented by the Government at Plaintiff's trial to obtain his conviction with the presentation of the canister that held 98 40mm HE grenades being excavated from the woods near the Plaintiff's residence was a physical, scientific and logical impossibility. There was no excavation, as opposed to the Government's claim of there having been 20 minutes of it and in addition the hole was too small to have accommodated the box depicted, within it in its entirety.

" Nothing in the investigation will change the Plaintiff's Procedural Bar.

(16) PLAINTIFF IN EXPOSING THE CRIMINAL CONDUCT OF FEDERAL LE OFFICIALS IS ACTING AT BEST AS A WHISTLE BLOWER, SOMETHING THAT THE EXECUTIVE BRANCH/ LE ENCOURAGES

The investigation into the corrupt actions of Federal LE Officials would have been apt and indicated and executed regardless of whether the request came from any particular individual, be it a regular citizen or a convicted inmate. The location of residence of the complaining individual is inconsequential. The only critical factor would be the reliability or non-frivolous nature of the complaint and its egregiousness. The other factors laid down in Heckler v Chaney too to a lesser extent would need consideration. This reasoning and rationale is expressed in the document that was provided to the Plaintiff by the Executive Office of United States Attorneys, Exhibit 2 a & b. In that document that laid down the "Common Requests for Assistance" the EOUSA's Office does a great job of delineating as to what an individual ought to do when encountering certain issues with Federal LE and other Officials.

Nowhere in the document is a stipulation that the requests of incarcerated individuals would not be considered. If Plaintiff had any other "adequate" recourse he would not have embarked down the course he was finally compelled to. The numerous letters to the various Offices of the Department of Justice is an attestation of the Plaintiff's desperation when he was left with no other viable option. Even then he could not get a response rather than the investigation he sought.

Plaintiff's actions beg the question; would the Executive Branch/ Department of Justice have ignored the request to investigate if the complainant was a regular un-incarcerated citizen? Has the Plaintiff been ignored only on account of his being an inmate?

The Defendants should welcome and invite an investigation into conduct of Federal LE Officials that so overtly shocks the conscious, rather than doing all in their power to conceal, cover up and immunize that very conduct. Their dogged perseverance in going great lengths to silence the investigation is an attestation to the wrongs they know that were committed by the Federal LE Officials. The truth cannot be stifled forever.

The APA is the only vehicle whereby the Plaintiff can seek redress to have judicial review of Governmental Agency Action having no other avenue to proceed under. Congress never implied or presumed the criminal conduct of Federal LE Officials to be immunized.

**(17) THIS COURT HAS SUBJECT MATTER JURISDICTION OVER THE SUIT
PLAINTIFF HAS FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT**

Under Fed R Civ P 12(b)(1) the party asserting subject matter jurisdiction has the burden of proving its existence. Lincoln Ben Life Co v AEI Life, LLC, 800 F.3d 99 (3rd Cir 2015).

Challenges to subject matter jurisdiction under Rule 12(b)(1) may be facial or factual. A facial attack contests the sufficiency of the pleadings, whereas a factual attack contests the sufficiency of jurisdictional facts.

Plaintiff concedes that 12(b)(1) requires courts to dismiss any case over which they lack subject matter jurisdiction. Federal Courts are courts of limited jurisdiction and only have the power expressly granted to them. Kokkonen v Guardian Life Ins Co of Am, 511 US 375, 377 (1994).

When evaluating a motion to dismiss under Rule 12(b)(1) the court “assumes the truth of all material factual allegations in the complaint” and “construes the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged” and upon such facts determines jurisdictional questions. Am Nat'l Ins Co v FDIC, 642 F.3d 1137, 1139 (DC Cir 2011). Without subject matter jurisdiction over a claim the Court must dismiss it. Arbough v Y&H Corp, 546 US 500, 506-07 (2006).

While the APA does not confer subject matter by itself, the APA in conjunction with 28 USC 1331, which gives federal district courts federal question jurisdiction, gives the Court jurisdiction to compel agency action.

Defendants are correct in that Bivens and FTCA have nothing to do even remotely with the APA. Bivens and FTCA both relate to monetary damage claims which the APA does not cater to or entertain. The addition of the connotations “Bivens” and “FTCA” to the complaint are in error and a mere surplusage. Nothing in the complaint or the Exhibits presented, ° the record presented or alluded to has anything remotely connected to the two

Plaintiff in his complaint has nonetheless, sought jurisdiction under APA, 5 USC 702 and 28 USC 1331. The errors of surplusage are not fatal to the Plaintiff's case. In addition when considering a motion to dismiss a motion for lack of jurisdiction a court may consider such materials outside the pleadings as it deems appropriate.

(18) DEFENDANTS ASSERTION “THAT PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED IS A FALLACY

A summary judgment motion requires a movant to show that: there is “no genuine dispute as to any material fact” “and that it is entitled to judgment as a matter of law”.

Rule 12(b)(6) allows a defendant to move to dismiss the complaint for a failure to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion, the claim must contain factual matter sufficient to “state a claim to relief that is plausible on its face”. Bell Atlantic Corp v Twombly, 550 US 544, 570 (2007).

A facially plausible claim is one that “allows the court to draw reasonable inferences that the is liable for the alleged misconduct”. Ashcroft v Iqbal, 556 US 662, 678 (2009). This standard does not amount to a specific probability requirement, but it requires “more than a sheer possibility that a defendant has acted unlawfully”. *Id.* A complaint need not contain “detailed factual allegations”, but alleging facts that are “merely consistent” with a defendant’s liability stops short of the line between possibility and plausibility”. Well pled factual allegations are “entitled to an assumption of truth”. *Id.* at 679, and the court construes the complaint “in favor of the plaintiff who must be granted the benefit of all inferences that can be derived from the facts alleged”. Hettinga v United States, 677 F.3d 471, 476 (DC Cir 2012). But the assumption of truth does not apply to “legal conclusion couched as a factual allegation”. Iqbal, 556 US at 678. An “unadorned the defendant-unlawfully-harmed-me accusation” is not credited; likewise “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice”. *Id.*

Ultimately, “determining whether a complaint states a plausible claim for relief... is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679. When deciding a Rule 12(b)(6) motion, the court may consider only; 1) the complaint itself 2) documents attached to the complaint 3) documents incorporated by reference in the complaint and 4) judicially noticeable materials. EECC v St Francis Xavier Parochial Sch, 117 F.3d 621, 624 (DC Cir 1967).

In his complaint Plaintiff has attached as Exhibits, most but not all, of the letters that he wrote to numerous offices of the Department of Justice and ATF. Some of the Plaintiff’s correspondence has been trashed, destroyed or otherwise by the Officers of the BOP and are hence not available.

Plaintiff has provided not only “non-frivolous” but incontrovertible evidence in the form of affidavits from three highly educated, trained and decorated PhDs in the fields

of Soil Science/ Geology, Botany and “Photogrammetry that the evidence that the Government presented as being a recently excavated hole that the box containing the 98 40mm HE grenades was recovered from was a scientific impossibility. Actually it was so obvious that even a fifth grader of average intelligence would have come to the conclusion that it was too small to have contained the box, the size depicted within it in its entirety arid was too old and not just minutes old that the Government witnesses alleged. Ironically it was that very evidence that the Eighth Circuit Court of Appeals termed as being “overwhelming evidence of Plaintiff’s guilt”. For any Court to reveal this oversight or ignorance would be terribly embarrassing. A Cover-up was far easier.

In his complaint and Exhibits, Plaintiff has referenced his PCR/ 2255 motion where he provided information related to the background of the motive that the ATF Agents/ Federal LE Officials had against him. None of the facts presented therein have been refuted by the Government.

The Exhibits predate the PCR/ 2255 motion. Plaintiff had wanted to obtain evidence that till then was not on the record and have the criminal conduct of the Federal LE Officials investigated and :addressed. The Executive however was not about to investigate its own which would have exposed a sensational scandal.

The trial/ PCR Court showed by its rulings and actions that it was not the forum for Plaintiff to have the criminal conduct of the Federal LE Officials investigated and addressed.

The Defendants in their “Motion To Dismiss” use the term “conclusory” in a rather liberal manner. Had they taken the time or made the effort to read the relevant material that was presented in the complaint or material present on the record they would have realized that everything that the Plaintiff had alluded to is supported by factual data and evidence. None can be blinder than one who just refuses to see. Plaintiff would greatly appreciate it if the Defendants would specify as to what averment in this motion or any related or unrelated one, submitted by the Plaintiff, .is conclusory.

Defendants have complained of the complaint as being “rambling”. Plaintiff has tried to make it as concise as possible, leaving the Exhibits to speak for themselves in a factual manner. It was on account of the Defendants respective Agencies refusal to read or respond to the Plaintiff’s requests that made him appear repetitious as he continued to put forth the same substance in letter after letter in the hope of eliciting a response from the Defendants. It is heartening to learn that the Defendants have finally read Plaintiff’s attached Exhibits,

(19) RES JUDICATA IS INAPPLICABLE TO PLAINTIFF'S SUIT UNDER APA AS THE DEFENDANIS HAVE CLAIMED IT TO BE

Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action. Allen v McCurry, 449 US 90, 94 (1980). A subsequent lawsuit is barred by claim preclusion if there has been prior litigation: 1) involving the same claim or cause of action 2) between the same parties or their privies 3) there has been a final, valid judgment on the merits and 4) by a court of competent jurisdiction.

At no stage of any litigation was the criminal conduct of the Federal LE Officials ever considered by the Courts that had jurisdiction if they chose or ruled on in a meritorious manner; as it related to the 1) fabricating and planting of evidence 2) suborning of perjured testimony by the Assistant US Attorneys and 3) cover up by the Executive branch by their not policing their own in an attempt to keep the egregious conduct from being exposed to the public. Res judicata can hence not apply to issues that yet to date have not been discussed, addressed, acknowledged or affirmatively ruled on.

When Plaintiff raised the issue of the Government having “fabricated and planted” the evidence in his PCR/2255 motion, proving not only with “clear and convincing” evidence but “conclusively” after having Expert opinions rendered into the record by three doctorates in the fields of Soil Science/ Geology, Botany and Photogrammetry that the evidence that the Eighth Circuit Court of Appeals had termed “overwhelming evidence of Plaintiff’s guilt” was indeed scientifically impossible, the PCR/ 2255 Court resorted to ruling that the Plaintiff was “procedurally barred” from bringing the issue in that forum on account of the fact that he had not raised it in his Direct Appeal.

There are numerous issues with that particular ruling which immunized the criminal conduct of the Federal LE Officials;

a) plaintiff repeatedly asked his Direct Appeal counsel, Attorney Hendrix to raise the issue of the fabrication of evidence in his Direct Appeal. Atty. Hendrix declined to do so, citing that he could not, without giving Plaintiff any explanation for his action. Instead Atty. Hendrix told Plaintiff to raise it in his PCR/ 2255 motion. The Supreme Court has ruled in Garza v Idaho, 139 S. Ct. 738 (2019) that where an attorney performed deficiently in failing to file a notice of appeal despite the defendant’s express instructions, prejudice was presumed with no further showing from the defendant of the merits of his underlying claims. The corollary to that being the attorney not raising basic meritorious issues that the defendant requested him numerous times to

do. Plaintiff went even to the length to have Atty. Hendrix file a Fed R Civ P Rule 33 (b) motion to raise the issue of fabrication of evidence under “newly discovered evidence” after he had conferred personally with Experts related to the issue. Atty. Hendrix neither responded or acted upon the Plaintiff’s request.

b) Plaintiff’s trial counsel never raised the issue of the Government having fabricated the evidence by way of planting the box containing the 98 40m HE grenades at trial despite repeated pleas from the Plaintiff to do so. The trial record was devoid of any mention of “fabrication”. Under Fed R App P Rule 10(a) the Composition of Record on Appeal is to comprise of; 1) the original papers and exhibits filed in the District Court 2) the transcript of proceedings, if any and 3) a certified copy of the docket entries prepared by the District Clerk. Theoretically the Plaintiff’s Direct Appeal counsel could have filed a motion to expand the record to include any Expert opinions that they could have obtained after the trial. Nonetheless, there is no case that the Plaintiff has found in any Circuit where the record on appeal was expanded to allow the defendant to include Expert testimony that had not been presented at: trial.

c) Plaintiff is not alone in that particular experience with direct appeal counsel not entering anything on the record that was not presented at trial. Other individuals convicted at trial have been told the same by their respective attorneys. Exhibit 56

d) Arguendo, even if the Plaintiff’s direct appeal counsel had presented the issue of fabrication and the planting of evidence by the Government in his direct appeal, it would have been denied, absent any Expert evidence to substantiate it. The Defendants would then once again argue with glee that res judicata applied with the issue being ruled on against the Plaintiff in an earlier proceeding.

For the Plaintiff it is a Catch-22, damned if you do and damned if you don’t issue. The Defendants exploit it to cover up the criminal conduct of Federal LE Officials for which the Plaintiff is doing time. This is inconceivable in a Nation that boasts having the best legal system in the entire world.

e) For the Plaintiff’s trial and direct appeal attorneys who had not a clue as to what a Geologist’s area of expertise was, and who by their own admission were looking for a “hole expert”, a nonexistent entity, the situation they faced as it pertained to the evidence presented with in regards the fabricated evidence was a novel one that they had never encountered before. This according to the Supreme Court, as they stated in Reed v Ross, 468 US 1, 16 (1984) and in Bousley v United States, 323 US 614, 622-23 (1988) was grounds for cause for the Plaintiff not bringing up the fabrication of evidence at trial and direct appeal. The “claim was so novel that its legal basis was not

Had the PCR/ 2255 Court wanted to, or if it was the appropriate vehicle to expose, evaluate and act on the criminal conduct of the Federal LE Officials it had numerous reasons that were justifiable and the opportunity to do so. Yet the Court chose not to. It however stayed focused on the actions of the Plaintiff indicating once again that the PCR/ 2255 was not the appropriate venue to address the criminal conduct of the Federal LE Officials. It is by the process of elimination that the Plaintiff is now left with no option but to have the conduct not yet looked at or litigated, and addressed by way of the APA.

When the Defendants state that the Plaintiff is now barred per “res judicata” they fail to state as to how and when there was ever a judgment on the merits regarding the fabrication and planting of evidence by the Federal LE Officials and or their confederates. On account of the “novelty” of the claim as it appeared to the trial and direct appeal counsel, the issues could not have been raised prior to the PCR/2255 motion where they remained unaddressed.

Back in the days prior to AEDPA the Supreme Court in Sanders v United States, 343 US 1(1963) stated that res judicata was inapplicable in habeas proceedings. That the conventional notions of finality had no place where Life and liberty were at stake. Surely with the passage of AEDPA jurisprudence in the United States has not changed to the point of justifying and immunizing criminal conduct of Federal LE Officials. And not just that, but to have a citizen do the time for their nefarious acts that definitely shock the conscience.

Besides, an exception to the doctrine of res judicata exists where there has been fraud, concealment or misrepresentation by a party. Sarhan v Department of Justice, 610 F.Appx 985 (Fed Cir 2015). Fraud On The Court has been proven by the Plaintiff; an unconscionable plan or scheme which was designed to improperly influence the Court in its decision, in his PCR/ 2255 motion. The Government has never defended or refuted that allegation at any stage. That is the epitome of fraud and misrepresentation by the Government, the very act that the Plaintiff is seeking to have addressed. Hiding under title - “Res Judicata” cannot immunize the Defendants actions.

(20) DEFENDANTS STRATEGY TO HIDE BEHIND HECK IN ORDER TO IMMUNIZE THE CRIMINAL CONDUCT OF FEDERAL LE OFFICIALS IS SHORTSIGHTED AND AN ACT OF DESPERATION

Defendants have sighted Heck v Humphrey in order to bolster their Motion to Dismiss Plaintiff's APA motion, stating and implying that the information gleaned would imply the invalidity of the Plaintiff's conviction. Plaintiff has shown this not to be the case. Defendants fail to recognize the fact that besides the Plaintiff there are other parties in existence that were aggrieved by the criminal conduct of the Federal LE Officials that the Defendants seek to immunize. The "Agency Action" in question a) the fabrication of evidence b) failure to investigate the alleged misconduct not only aggrieved the Plaintiff but his brother, Sandip S Mann and other members of the family.

The criminal conduct of the Federal LE Officials in the fabrication and planting of evidence was the keystone of the Government's case against Plaintiff and his spouse, Sangeeta Mann. It was by no means the first or the last act. It only meant that that the Officials had reached a point of no returns. They would henceforth do whatever it took to justify a conviction so as to cover their nefarious acts, be it chilling the US Constitution, federal statutes and their own regulations and policies. They could not care less of whose rights they desecrated, just as long as they, as Officer Ridenour, a confederate of ATF Agent Newman stated to Plaintiff's son, Kundan Mann, "Pull it off". Exhibit 1.

The fabrication and planting of evidence that led to the surreptitiously obtained search warrants, denial of bond, conviction, denial of appeal by the Eighth Circuit Court of Appeals, cert by the Supreme Court and subsequent PCR/ 2255 motion was ultimately responsible for the usurpation of the Plaintiff's property that his brother Sandip S Mann had a significant interest in. The property of Plaintiff's weapon business, Exotic Weaponry, was to be provided to Sandip S Mann per the Court Order of Pope County Circuit Court. After the Plaintiff's conviction the Government sought to confiscate the inventory United States v One Assortment of 93 NFA Regulated Weapons, 4:14-cv-00423-BSM and United States v One Interord Corp USAS-12 Shotgun, 4:14-cv-00134-BSM after Plaintiff filed a Rule 41(g) motion for return of his property. Under the Supreme Court ruling in United States v Henderson, 575 US 622 (2015) the gun inventory, now derived contraband was to be returned to Plaintiff to be disposed off and the proceeds delivered to him. Sandip S Mann had a lien on those weapons and was the sole beneficiary which were Court Ordered by the Pope Co Circuit Court to be given to him. When the Government filed suit to confiscate the weapons all interested parties were told to file motions to the Court to that respect. Sandip S Mann's attorney was told by the AUSAs to hold off on doing so

and that the AUSAs would notify him of when he needed to file the motion. The AUSAS never did and as a result Sandip S Mann's counsel never Filed that motion. As a result Sandip S Mann was deprived of his interest in the inventory of Exotic Weaponry, valued in excess of a million dollars. The criminal conduct of the Federal LE Officials in essence was responsible for him losing his property interest in the inventory that was subsequently provided to another party. This suit under the APA pertaining to "Agency Action" can be brought by Sandip S Mann to have the criminal conduct of Federal LE Officials investigated and addressed. Neither can Heck not res judicata bar his quest. The conduct of the Defendants cannot remain immunized.

Kundan S. Mann, Plaintiff's son is yet another aggrieved party "related to "Agency Action" that Plaintiff has alluded to. After Plaintiff's conviction, his son, Kundan S. Mann was made privy to information not yet known to the Court or the Plaintiff. He was able to find out that it was a personal family animus that was the basis of the Plaintiff being targeted by ATF Agent Newman. He was also able to ascertain contradictions in the story that Ryan Kimbell gave to the Court after having spoken to his estranged wife. Kundan S Mann was also approached by Will Elkins while he was working at Dollar General Store in London, AR. It was Wilkins who told Kundan S. Mann of his having seen Ryan Kimbell and Mark Rinke with another unidentified individual carrying a box like object into the woods, leaving it there for a brief duration and then retrieving it, a few days prior to the actual "finding". Wilkins was taken to the Grand Jury and asked to lie in the proceedings by the ATF Agents, something that he did. After the hearings both Wilkins and his guardian, Jackie Torres submitted affidavits to the suborning of perjured testimony by the ATF Agents. Kundan S Mann was threatened by Federal Agents of the ATF and was told to back off on trying to dig into and obtain information regards the surreptitious fabrication of evidence that led to Plaintiff's conviction. After threats of adverse consequences if he declined to do so, Kundan S Mann did back off. He sent numerous letters to various Agencies of the Department of Justice and even Senators and Representatives in order to have the criminal conduct of Federal LE Officials investigated. Kundan S Mann was urged to leave the country for a duration by family members as they feared for his safety. It was just a matter of time before the Rogue Agents found yet another "Briscoe" to implicate him in criminal conduct. If they could do it with such ease to the Plaintiff, they could very well do it to him. As a result of the stress Kundan S Mann was subject to he has suffered irreversible psychological trauma. He is currently suffering from PTSD and a Schizo-affective disorder on account of the stress that he was subject to by the Federal LE Officials. He has opted not to be a Plaintiff in this case, but he could compel review of Agency Action at any time. Heck and Res Judicata would be inapplicable to him. The

Federal LE Officials violated his first Amendment rights that he made the Inspector General, Office of Professional Responsibility, Attorney General, Bureau of Alcohol, Tobacco, firearms and Explosives and numerous Senators and Representatives aware of. Exhibit 57. As was the case with the Plaintiff no Agency other than the OPR responded to him. Exhibit 3.

Plaintiff, in his Complaint, has made it clear that what he seeks is the Court to Order the Defendants- US Department of Justice and ATF to investigate his allegations of criminal conduct of "ATF Agents and AUSAs" which aggrieved him. Doc-1, Page 19 of 19. That same sentiment is resounded in Plaintiff's letters to the Department of Justice Agencies and the AIF which have been presented to the Court in form of Exhibits.

Any mischaracterization of the Complaint other than just that is yet another attempt by the Defendants to conflate the issues, all in order to keep the criminal conduct of Federal LE Officials under wraps, immunizing it in the process.

Wherefore, Plaintiff prays that the Court Order the Department of Justice and or the Department of Treasury as it relates to the ATF, to conduct an investigation into the criminal conduct of the Federal LE Officials and take whatever steps that it deems necessary to serve the interests of justice.

Plaintiff declares under penalty of perjury, as authorized under 28 USC 1746, that the foregoing is true and correct to the best of his knowledge and belief.

Respectfully submitted.


Dated; June22, 2021

Signed: 
Randeep Singh Mann, MD
BOP #24775-009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed via USPS, First Class Mail to Thomas W. Duffy, Assistant US Attorney, Civil Division, 555 4th Street, NW, Washington, DC, 20530 on June 22, 2021.

Dated; June 22, 2021

Signed: 
Randeep Singh Mann, MD
BOP #24775-009

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Exhibit 56



KEVIN B. ROSS
Board Certified in Criminal Law by the
Texas Board of Legal Specialization

January 7, 2020

Jon Anthony Terry
Register No. 56493-177
USP Tucson
U.S. penitentiary
P.O. BOX 24550
Tucson, AZ 85734

Re: *United States v. Jon Anthony Terry*;
Appeal No. 19-11039

I was appointed by the Court to represent you on your Federal Appeal to the Fifth Circuit Court of Appeals. I have enclosed a copy of the court's order. The court clerk has issued a briefing schedule. Your brief is due on 2/18/2020. Once the initial brief is filed, the Government will file a response brief. Once they file their brief, we will have the opportunity to file a reply brief. The case will then be submitted for review by the Fifth Circuit.

It is important to understand that for appeal purposes, the court will only review what is in the transcripts and the court record. Anything that was not presented to the court and not contained in the official record will not be reviewed. As such, if there are issues and facts that were not presented at the district level, then on appeal, the court of appeals will not review them because they are not in the record.

In the meantime, if you would write me a letter explaining your thoughts on the case and possible errors, I would appreciate your input. I, of course, will be methodically going through the record looking for issues to be argued.

I look forward to working with you on your case. If you have any questions or concerns, feel free to write me at the above address. Anything case related, please send by letter via mail.

Very best regards,

Kevin B. Ross

KBR/er
Enclosures
Briefing Notice -5th Cir

Dan Carlton / Mann
313 Milky Way Lane
London, AR 72847
April 2014

Exhibit 57

RE: Violations of Randeep S. Mann s (my Dad s) Civil Rights (Amendments I, IV, and V) by the Department of Justice Employees (AUSA s and ATF Agents)

- Fabrication and the planting of evidence by the ATF Agents (March 2009)
- Sponsoring and suborning perjured Grand Jury testimony by ATF Agents at the ASMB (June 2003)
- Malicious harassment from ATF Agents, State and Local Law Enforcement Agencies (Post September 2001)
- Disregarding and denial of FOIA requests by the ATF (June 2013 to date)
- Violation of Dan Carlton/Mann s (my) Civil Rights (Amendment I) by Department of Justice Employees (ATF Agents)
- Intimidation by threats of incarceration, as retribution for Investigating Law Enforcement Misconduct by ATF Agents (November 2013)

Dear

I Dan Carlton/ Mann am petitioning your assistance pertaining to my Dad, Randeep S. Mann M.D., who is currently serving a life sentence, convicted in August 2010 for (1) Conspiring and aiding & abetting unknown persons in the bombing that critically injured Trent Pierce MD, (2) Constructive possession of 98 40mm HE grenades, (3) Possession of one illegal machine gun, and (4) Obstruction of justice. I am vehemently and categorically stating that he is innocent of all these charges.

I am aware of the fact that I am bringing forth some extremely serious allegations. These are not mere conclusory statements created out of speculation and conjecture. You are renowned for being objective and just, holding the letter of law above everything else. Being in a revered position of authority, wielding tremendous power and influence through both your office and your very person, you hold the key to having my allegations and insinuations investigated, exposed and addressed in a manner that you deem appropriate.

I know that a substantial number of facts that I allude to, in of themselves, do not represent any wrong doing on the part of the Law Enforcement Agencies in question. The acts being run of mill modalities that officers resort to in order to acquire evidence and investigate allegations of infractions of the law. That was precisely how it was when Law Enforcement initially began investigating him. Unfortunately with the passage of time, their investment in the form of their exhaustive commitment both in man power and putting into play their vast array of resources did not yield the anticipated dividends. It was then that their misguided zest to obtain a conviction at all cost got the better of their judgment. They then crossed the line violating the very law they had sworn to protect in the most despicable manner.

My dad is originally from India, a Hindu by religion, having a rather heavy Indian accent and appearing by looks to be middle-eastern, as would be expected. He immigrated to the United States in 1983, acquiring US citizenship in 1986. He is physician Board Certified in Internal Medicine, Emergency Medicine and Pain Management who lived in London, AR practicing in adjoining Russellville, AR since 1999. He was a gun enthusiast and collector since the gun ban in 1990. Having acquired a Class 3 License he was permitted to deal, both buy and sell machine guns. As a result he had a vast inventory of NFA weapons.

The hate environment that followed the events of 9/11/2001 were the building blocks exploited by the ATF Agents, and in particular Agent Warren Newman who set about targeting my Dad. Two Sting Operations were initiated and pursued aggressively, overzealously and ruthlessly with just one purpose, which was to get him at all costs, no holds barred.

The First Sting Operation entailed getting felons to buy weapons from him. ATF Agent Warren Newman who spearheaded that Sting enlisted the assistance of Officers Glenn Daniel (currently with the Russellville Police Dept.) and Chris Goodman (currently with the AR State Police). Daisy Edberg a patient of his, was offered \$2,500 if she would buy a machine gun from him, without proper documentation (see transcription of phone recording, exhibit 1). Similar deals were struck with his patient Richard Herrera, who despite having a felony record was told that his cocaine related conviction would be annulled upon his having my Dad sell him a gun (see transcription of phone recording, exhibit 2). Deals in the same theme were also made with his patient Julie Hernandez (see transcription of phone recording, exhibit 3) and patients David and Patricia Blevins (see transcription of phone recordings, exhibit 4). Rewards were offered to his patient Barry Downs, a felon and informant, upon his purchasing a gun from my Dad. Feeling confident in his entrapment measures, Agent Newman began bragging publicly as to

how he would confiscate all of my Dad's property, keeping his Dodge Viper for himself as his reward (see transcription of phone recording, exhibit 5). Finally upon having enough of these shenanigans Dad went to the Little Rock ATF Office and personally met with Agent Newman's boss, Mr. Brzozowski. Dad went in great depths describing Agent Newman's activities, requesting Mr. Brzozowski to have Agent Newman quit targeting and harassing him. Also to have Agent Newman refrain from interfering with Dad's medical practice (see copy of letter, exhibit 6). Despite that request, Agent Newman did not back down. Dad even met personally with FBI Agent Lance Smythe at the Little Rock FBI Office to discuss his predicament and to solicit Agent Smythe's assistance. Getting none, he even took his plea to DEA Agent Bill Bryant (see transcription of phone recording, exhibit 6B). That too proved to be an exercise in futility. Nonetheless, unable to get Dad to break the law, Agent Newman then resorted to a new scheme.

The Second Sting Operation entailed attempting to get patients of my Dad to get into a sexual relationship with him in order to make him lose his medical license. In addition, if an exchange of drugs took place to go ahead and arrest and convict him. When Daisy Edberg propositioned my Dad, he went ahead and let Mr. Brzozowski know of that endeavor as well. Paradoxically instead of backing down Agent Newman even sent his own wife, Terri Jacobs, a nurse who lived and worked in Little Rock, AR, to become a patient of his, all with the sole purpose of getting him into an illicit relationship with her and thereby having my Dad's medical license revoked. When Terri Jacobs advances were spurned, Agent Newman resorted to even more nefarious measures. He embarked on a venture to suborn some extremely damning perjured testimony from his patients. Sums of money were offered to patients who would falsely testify that they had sexual relations with him in exchange for drugs provided by him. A patient of his, Amanda Virden, testified at the Arkansas State Medical Board hearings in June 2003, as to how she had been offered \$500 by Agent Newman and Officers that accompanied him, just to make a false claim that my Dad had sex with her in exchange for drugs that he had provided (see transcription of ASMB hearings, exhibit 7)

Before my Dad's trial commenced, Chris Ridenhour and several other officers once again approached Amanda Virden and paradoxically served her a summons to appear in court as a Government witness. Yet at the same time she was told to stay away from the proceedings and not under any circumstances to make an appearance on her own volition. All this in an effort to keep the defense from contacting her, for fear of evoking an obstruction of justice insinuation.

Other patients of my Dad, Shelly Green (see affidavit, exhibit 8) and Asia Montgomery-Wells (see affidavit, exhibit 9) also came forth with how Officers Goodman, Glenn Daniel and John Waid had tried to persuade them to file false reports against my Dad, alleging them having had sex with him in exchange for drugs in order to have their pending legal charges expunged. Brenda Beavers, another patient, claimed that Officer Waid had maliciously slandered my Dad, telling her that she should find a new doctor if she cared about her health (see affidavit, exhibit 10). Finally getting nowhere with their Sting Operations Agent Newman and his enlisted underlings appeared to have backed down for a while.

Of late, my Dad has made several attempts to get the ATF, under the Freedom of Information Act to provide him with the details and specifics of these Sting Operations. Yet despite making four separate requests to their Washington, DC and Little Rock, AR Offices neither have they provided him with any information, nor have they even acknowledged any of his requests (see copy of the FOIA requests, exhibit 11)

Numerous attempts were made before and during trial to serve subpoenas to the ATF Agents in order to get them on the stand. Only under oath and having the threat of perjury looming over their heads, would they have been expected to truthfully answer and clarify the plethora of the quasi-legal and the outright illegal issues that permeated my Dad's case. The ATF Agents kept dodging the subpoenas with the process server being unable to deliver them. The Judge was made aware of this situation and at one time even went as far as threatening to declare a mistrial if the Agents continued to dodge the subpoenas and not make an appearance as was required of them. Nonetheless, the ATF Agents, including Agent Newman, continued to dodge the subpoenas and as a result, avoided taking the stand altogether. Being well aware of the wishy-washy testimony that the Government had presented in my Dad's case, his attorneys decided not to push the mistrial issue, which of course was not declared (see trial transcript, exhibit 12).

On 2/3/2009, a bomb placed near Dr. Pierce's car, in West Memphis, AR detonated, critically injuring him. Later that day, ATF Agent Tony McCutcheon and Stacie Rhoads of State Police came to my father's house to confirm his whereabouts during the bombing. My father denied any involvement in the bombing, told them about his whereabouts 24 hours surrounding the bombing, and even showed the Agents his gun collection, including his registered grenade launchers. McCutcheon asked my father if he owned live grenades for the launchers, at which point, my father stated that he did not. The ATF then confirmed my father's whereabouts, and continued their investigation. For weeks, the ATF had no leads or perpetrators. There was no evidence to link my Dad to the act either in the form of correspondence, e-mails, phone calls or records or even testimony. Yet once again they decided to target him, setting about on a quest to make the means fit the end, to "make" him the perpetrator of the crime.

Incidentally, a month later, on 3/3/2009, an individual, Mark Rinke, while walking through the woods, 875 feet from my house "found" a box containing 98 40mm HE grenades. The Pope County Sheriff's Department arrived upon 911 being called. Pictures were taken by the Officer immediately upon his getting to the scene. The testimony of Mark Rinke was (1) That the box was completely buried in the ground. It got exposed when he accidentally stepped on it. (2) That it took him "20 minutes" to "dig" the box out of the ground. (3) That the pictures were taken by the Sheriff's Department's Officer just "several minutes" after he "dug" it out (see transcript of Rinke's and Kimbell's trial testimony, exhibit 13 and 14)

The pictures taken and in evidence show clearly, convincingly and conclusively that (1) That the hole is not "several minutes" old, but rather weeks to months old. (2) That the hole is not big enough to have accommodated a box the size depicted (17 3/8 inches x 7 1/2 inches x 14 3/8 inches) within its entirety. (3) That there is no evidence of any excavation whatsoever, let alone "20 minutes" of it, as was Rinke's testimony. These views have been shared by experts in the fields of Photogrammetry, Soil Science/Agronomy, and Crime Scene Recreation. Nonetheless, having independent experts, possibly even those employed by the Department of Justice, evaluate the evidence and render their fair and unbiased opinions will lay further credence to what I am so emphatically alleging: That the box and its contained contraband was never dug out of the hole depicted in the pictures on 3/3/2009 as was the sworn testimony of Mark Rinke and Ryan Kimball. This was evidence that was fabricated and subsequently planted next to a pre-existing hole in the woods, in order to obtain a search warrant and a conviction (see enclosed pictures that were in evidence, exhibit 16).

Rinke's subsequent statements to a reporter in an interview revealed some material differences from what was in testimony at trial. In that, the box being only "half buried", so as to explain its not so outlandish coincidental discovery. For a clip of Rinke's interview and the entire trial testimony of Rinke and Kimball go to the web site: "mannr.hostingsiteforfree.com". Note: There is no "www." in that web site address.

Further evidence of the planting of the evidence is the fact that (1) The DNA and fingerprints found on the grenades were not Dad's but rather those of Agent Warren Newman's. (2) The box had three sets of fingerprints on it. None of those matched my Dad's. (3) The duct tape and plastic that had been used to wrap the box in did not match the duct tape and plastic taken from his premises after a search warrant was promptly executed. Nonetheless, The Eight Circuit Court of Appeals affirmed my Dad's conviction, citing that very fabricated and planted evidence as being "overwhelming evidence of his guilt".

Interestingly, when the latter set of pictures taken by the ATF on 3/4/2009 are viewed alongside the former set taken by the Officer responding to the 911 call on 3/3/2009 and a comparative analysis undertaken, another extremely alarming fact comes to light. Paradoxically, the latter set of pictures taken by the ATF shows the hole to be "fresher" a day later from the date of its excavation. The well-settled leaves appear to have been agitated, the soil loose, the walls freshened revealing moist soil. That however is not the norm in nature. It is rather obvious, even to an individual of average intelligence, that this was yet another attempt by the ATF Agents to alter the evidence in order to make it appear that the hole was indeed, newly excavated. Arguendo, even if the hole was "unaltered" it was still not wide enough or deep enough to have accommodated a box of the given dimensions within it, in its entirety. This being yet another example of how far the ATF was willing to go to build a case against me. In that, not only did they plant the evidence, but took pains to deliberately alter it as well, all to enhance the credibility, which it so obviously lacked.

Recently when the Mayor of London, AR Mr. Edwin Price who also happens to be Mark Rinke's boss, attempted to question Rinke about the questionable testimony and circumstances pertaining to the discovery of the box, Rinke stated, "I was told not to talk about it", before abruptly walking away. Rinke did not provide specifics as to who told him not to talk about the "discovery" of the box, by whom and when he was so instructed.

While my Dad was incarcerated, the Government continued to work desperately in trying to indict him for the bombing on which they had nothing to inculcate him. In line with their creation of the "means to fit the end", AUSAs Karen Whatley and Michael Gordon along with two ATF Agents approached inmate Hamis Alshareqi/Alsharki (BOP # 25438-009) who at one time had been housed with Dad. The Government worked on Alshareqi, threatening, coercing and even bribing him with promises of immigration to provide false testimony derogatory and inculpatory to my Dad. Coached and prepared, Alshareqi was then taken before the Grand Jury where he conformed to the wishes of the Government. Alshareqi's suborned perjured testimony to the fact that my Dad had confessed to Alshareqi of his involvement in the bombing and the fact that my Dad had possessed the grenades was instrumental in getting the needed indictment for the Government. A few months later, well before my Dad's trial was to commence Alshareqi recanted his testimony. He essentially said that the AUSAs and ATF Agents had wanted him to lie as they had no direct evidence against my Dad. That in essence proved to be just the case. In that twenty-page recantation addressed to the Judge, Alshareqi elaborated in vivid detail as to how the Government systematically suborned that perjured testimony (see affidavit, exhibit 15).

By recanting, Alshareqi had then become a rather substantial liability to the Government. While at Pulaski County Regional Detention Facility, Little Rock, AR another Government informant, Steven Briscoe, managed to provoke Alshareqi into a physical altercation. That event provided the Government the opportunity it needed. Alshareqi was threatened with extreme retribution, possibly even a thirty year incarceration for "assaulting a Government witness, with an intent to kill", if he turned

against the Government. Petrified of that consequence, Alshareqi never took the stand. By Alshareqi not getting to testify, these egregious acts were never brought to light.

After my uncle, Sandip S. Mann posted the pictures of the box, the testimonies of Rinke and Kimball from the trial, Rinke's TV interview with its discrepancies and even the entire trial transcript on the internet, the response obtained was overwhelming, to say the least. Thousands expressed their sentiments as to how appalled they were that such nefarious conduct could even be introduced into our Courts and even shocked that it could have unanimously convinced a Jury, in addition to the 8th Circuit Court of Appeals seconding the Jury's verdict. All that in a Nation renowned globally for having by far the best legal system in the world. Incensed by my Dad's victimization by the Government, I quit my job where I had worked for Tyson in Clarksville, AR so as to spend time ascertaining the truth related to the fabricated evidence. The Private Investigator Dad had retained prior to the trial had been unsuccessful in getting to talk to anyone pertinent, and had essentially gotten nowhere. I tirelessly canvassed the neighborhoods in London, AR where I took up a part time job working at Dollar General. That gave me an opportunity to interact with the people in the community. I painstakingly spread the word around about the bogus evidence and testimony that related to it. The conspiratorial agreement between the Government and the two citizens of London, who "found" and "dug" up the box was blatantly obvious to all. As the word of the "set up" spread through the community, increasing number of intrigued people came to Dollar General to meet me, see the evidence for themselves, discuss the facts, express their views and opinions in addition to rendering their suggestions. It wasn't before long that Rosa Torres, a resident of London also met me and learnt about the circumstances and facts behind the discovery of the grenades. She in turn, made a mention of the salient facts to Will Elkins, who now was able to put the facts in perspective. Till then, everyone seemed to have the notion that the grenades were found on my Dad's property, dug out of his backyard. Elkins recalled that way back on 3/1/2009 (a date that stuck with him), while working for his boss Donnie Arnold, digging a trench in the subdivision in the general vicinity of the woods where the box was later "found" happened to witnesses Mark Rinke, Ryan Kimball both of whom he was familiar with, along with a third individual unknown to him carry and bury a box. The box which had two handles and appeared black (which was the color of the plastic it was wrapped in) was buried and a few hours later was retrieved by them from the same general area where the box was "found" by Mark Rinke on 3/3/2009. (see narrative, [exhibit 17](#))

Now that a growing number of people in the community were talking about these new developments, trying persistently albeit unsuccessfully to get Rinke and Kimball to divulge as to what really happened, it did not take long before the ATF got wind of it. The Lead Agent, Agent David Oliver and Agent Newman came to London, AR where they interrogated Will Elkins before presenting him to a Grand Jury in December 2013. Incessantly trying to target our family, this time they endeavored to indict me for witness tampering. The ATF Agents found it incredible that despite precautions, there could have been an eye witness at that early hour, on that particular day. That Will Elkins was telling a lie to help my father in order to receive some form of compensation for his testimony, would have been in line with the modus operandi of the ATF Agents themselves. That however was not the case as the Grand Jury transcript so readily available to you would attest. Before the Grand Jury hearing Agent David Oliver also ignored Will's and his guardian, Jackie Torres, repeated demands for an attorney.

Becky Kimball, the ex-spouse of Ryan Kimball who had been married to Ryan Kimball back in March 2009, was another person whom I met while I had been canvassing in London, AR. Becky recalled Ryan telling her way back when the grenades had been "found" that a grenade launcher too had been recovered. Recently when Becky texted Ryan, feigning that "someone" (myself) had been inquiring about the grenade launcher, that he had alluded to in the past, Ryan got upset. Agitated and paranoid he stated, "You don't know shit about it. So don't tell them shit". Apparently Lloyd Han, a gun dealer and Government witness who had testified against Dad at trial under cover of immunity, in his Grand Jury testimony had referred to a grenade launcher that he had sold illegally to Dad in the mid to late nineties. I can only surmise that way back in March 2009, the planting of a grenade launcher may very well have been in the works along with the grenades.

Agent Oliver met with me while he was in London. I was told unequivocally, to cease going around asking questions and digging into the case and that I was liable to get myself into trouble if I continued to snoop around. He said at one stage, "You need to worry about yourself Dan. I don't know why you're still talking to people and investigating this stuff. Your Dad is never getting out." The threat of retribution was enough to scare me into backing off. I have witnessed, first hand, what these Agents' capacity and capability is. I am aware that they are virtually untouchable, above the law, subject to a different standard of oversight and scrutiny in the normal course of events. They have no problem going rogue with callous disregard for the "Due Process" guaranteed by our Constitution. I have witnessed what they did to my Mom, Sangeeta Mann just for staying by my Dad's side through this ordeal. Being realistic, in that we are too small and insignificant to take on the juggernauts that not only represent our Government, but are the Government we decided to solicit the assistance of Investigative Agencies, such as yours

On November 15, 2013, Phil Barthelme, a witness for the Government, came forth to reveal how he had been coerced, before the initiation of my Dad's trial, to concoct the testimony that he finally provided. Phil Barthelme was interrogated at the Pope County Sheriff's Station in a room in the presence of the AUSA Michael Gordon and several Agents conducted a rather exhaustive interrogation, which Barthelme had voluntarily participated in. The Agents had, prior to the interrogation, already made up their mind as to what they had wanted Barthelme to regurgitate. Finally, when that didn't spontaneously materialize, the Agents got agitated and irate. Barthelme was threatened with incarceration, in that they would "cuff and stuff" him if he didn't tell them "what they wanted to hear". Being the sole provider of a family comprising of two minor children and a handicapped wife Barthelme had no choice but to conform to the wishes of the Government, doing what it took, as egregious as it may have been, to keep himself from being incarcerated and his family devastated. (see affidavit, [exhibit 18](#))

(4)

The Supreme Court has time and again reiterated, as they did way back in *Olmstead v United States*, 277 US 438 (1928) that decency, security and liberty alike demand that Government Officials be subjected to the same rules of conduct that are commanded to all citizens. In a Government of laws, existence of Government shall be periled if it fails to obey the law scrupulously. To declare that in the administration of the criminal law the end justifies the means, to declare that the Government may commit crimes in order to secure the conviction of a private citizen, would bring terrible retribution.. Against that pernicious doctrine this court should resolutely set its face.

There is nothing in our legal system that shocks the conscience more than the very Agents of the Government, sworn to uphold the law, go about desecrating it fueled by prejudice and hatred towards an individual targeting him because of his being different, be it his race, religion, color, accent, way of life, or ethnicity.

If you have any questions or if you would like to hear the actual recordings for yourself, do let me know. I will make them available to you. My e-mail is: dan_731@hotmail.com, or manndan97@gmail.com, and my alternate contact numbers are (479) 264-9155 and (479) 264-8646.

My entire family and I would be extremely grateful if you could do everything in your power to have these reprehensible acts investigated and addressed. Thank you for any and all assistance you could provide us in this regard.

Yours sincerely,



Dan Carlton/ Mann