

United States District Court
Southern District of Texas

FILED

MAR 21 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

David J. Bradley, Clerk of Court

LAWRENCE STOWE,	§	
	§	
Petitioner,	§	
	§	
vs.	§	Civil No.: _____
	§	
UNITED STATES OF AMERICA,	§	Related Criminal No.: 4-11-CR-0083-001
	§	
Respondent,	§	
	§	
_____	§	

MOTION TO VACATE A SENTENCE BY A PERSON IN FEDERAL CUSTODY
PURSUANT TO 28 U.S.C. § 2255 WITH BRIEF IN SUPPORT

Preliminary Statement

COMES NOW, Lawrence Stowe, Pro Se, hereinafter, "Petitioner" and MOVES this Honorable Court to vacate his sentence under 28 U.S.C. § 2255 as the present conviction and sentence imposed rest upon egregious violations of the United States Consitution and the laws delineated from those bulwark protections. Specifically, Petitioner claims violations of the Fifth and Fourteenth Amendment's Due Process Clause' and violations of the Sixth Amendment's guarantee of "effective counsel" for failing to raise jurisdictional issues stemming from "[p]rocedural due process" of law protections regarding the "right" of agency review [b]efore a criminal referral under 21 U.S.C. § 335.

Further exacerbating these conditions are counsel's failure to object to the trial judges Rule 11 participarion and his utter lack of defense after such, as Petitioner's plea was "coerced" and is neither "knowing, intelligent,

or voluntary. In actuality, Petitioner was induced to accpet a plea under the guise that he would receive a one year sentence, that resulted in a Hobson's choice because it became plain to Petitioner that counsel was not going to subject his case to "meaningful advesarial testing" under the auspices of *Cronic v. United States*, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

This entire story and legal matter turns on matters related to stem cells and the administration of therapies stemming from immuno based concepts. Every great story and medical breakthrough, engineering marvel, and human enlightenment concept requires select individuals to suffer trials and tribulations because they are outside societal "[b]eliefs and comprehensions" until such time they are not. In a nutshell, there simply are no "incurable diseases" . . . there are only conditions waiting to be cured through the enlightenment of bright and capable minds whom ask questions that have yet to be asked. Medicine and the practice of such of healing arts have always been this way whether it be through the use of FDA approved drugs, the use of nutritional supplements and exercise, or the "pioneering vaccines" like those of Dr. Jonas Saulk, et. al. All times relevant, Dr. Lawrence Stowe has maintained his actual innocence and the law is clearly on his side regarding the affirmative defenses to the allegations in this case. Poignantly, he provided counsel with "[a]mple material to challenge and investigate" the Government's overreaching claims.

It is well established that in order for a guilty plea to be legally accepted, said plea must be of a "knowing, intelligent, and voluntary nature. See *Brady v. Maryland*, 397 U.S. 742. The Supreme Court has routinely held that a plea is not intelligent unless a defendant receives "real notice of the [t]rue nature of the charge/s against him, the first being a most universally

recognized requirement of due process." **Smith v. O'Grady**, 312 U.S. 329; See also, **Murray v. Carrier**, 447 U.S. 748. "A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, with [s]ufficient awareness of the relevant circumstances and likely consequences." **Bradshaw v. United States**, ___ U.S. ___, 125 S. Ct. 2045. Here sui juris, and while under duress, Petitioner Stowe was never made aware of the "relevant conduct" enhancing provisions as he was induced to plea because he would receive "approximately" one year, in which he decided he would fight on appeal to vindicate himself after having to make a Hobson's choice. See: Exhibit "A" - Affidavit of Lawrence Stowe.

The matter was later exacerbated when the Government utilized "proffer protected" information to enhance his sentence in [d]irect violation of the "spirit of the contract" and rudimentary contract law. Contract law governs the plea process as "a general matter, we interpret plea agreements in accordance with ordinary principles of contract law." **United States v. Ingram**, 979 F. 2d 1179, 1184 (7th Cir. 1992). These "principles extend to "all" documents and inducements, especially those prepared by the Government via a proffer agreement. Ineffectively, counsel failed to "object" during sentencing or at any time throughout this entire adversarial process, regarding the illegal use of the proffer.

More detrimentally, Petitioner's counsel tells the judge during the Rule 11 plea colloquy that he is not aware "of any meritorious defenses" although notably, he raises a crucial "mens rea" during sentencing that was never addressed. At all times relevant, counsel either knew or should have known, especially when directed to raise defenses and investigate the case that he should have raised "mens rea" in the alternative to the functioning agency

law and administration. Mens rea has been at the forefront of multiple cases recently and is a most certain defense to the alleged infractions, especially when Petitioner [w]as not given the chance to "present his views", pursuant 21 U.S.C. § 335, or given the chance to appeal the administrators "final decision via a "notice of violation" or an opportunity to enter into a "consent agreement." See **Elonis v. United States**, 134 S. Ct. 2819, 189 L. Ed. 784; **Yates v. United States**, 2015 BL 47842 (US Feb 25, 2015)(96 CrL 228, 6/3/15); and **McFadden v. United States**, 2015 BL 193525 (US June 18, 2015)(97 CrL 317, 6/24/15). **Bond v. United States**, 572 ___, 134 S. Ct. ___, 189 L. Ed. 2d 1.

It is in light of these claims that Petitioner will develop and demonstrate "prejudice" as counsel's actions repeatedly have fallen "outside the scope of prevailing professional norms" with each sub-issue being cultivated in a succinct manner. It is with these precepts in mind that Petitioner asks this Honorable Court to consider his claims as his "substantial liberty" hangs in the balance resulting in "[a]dditional jail time" with "Sixth Amendment significance." **Glover v. United States**, 531 U.S. 193, 203 (2001). See also: **Hicks v. Oklahoma**, 447 U.S. 343, 100 S. Ct. 2227, 65 L. Ed. 2d 175 (1980). As such, Petitioner would not have accepted an eleventh hour plea had he been fully advised regarding all possible laws and defenses, quintessentially, a mens rea defense, as at all times relevant, he has maintained his actual innocence and he would have proceeded to trial. See: **Hill v. Lockhart**, 474 U.S. 52, 88 L. Ed. 2d 203, 106 S. Ct. 366 (1985).

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ARGUMENT ONE: PETITIONER RECEIVED INEFFECTIVENESS OF COUNSEL DURING THE PLEA PHASE WHEN COUNSEL FAILED TO SUBJECT THE PROSECUTIONS CASE TO MEANINGFUL ADVERSARIAL TESTING, FAILURE TO ADVISE REGARDING THE ACTUAL CONSEQUENCES AND FAILURE TO OBJECT DURING SENTENCING TO RELEVANT CONDUCT AND LOSS CALCULATIONS.

Ineffective assistance of counsel is a mixed question "of law and fact that is reviewed under the two-part test established" in *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed 2d 674 (1984). It requires a defendant to show: (1) counsel's performance was deficient by [falling] below an objective standard of reasonableness," *id.* 687-88; and (2) that the defendant was "prejudiced" by such deficient performance. *Id.* at 691-92.

To determine if counsel's performance is deficient, the court must "conduct an objective review of [counsel's] performance, measured for 'reasonableness under prevailing norms,' which includes a context-developed consideration of the challenged conduct as seen 'from counsel's perspective at the time.'" *Wiggins v. United States*, 539 U.S. at 523 (quoting *Strickland*, *supra*); *Poindexter v. Mitchell*, 454 F. 3d 564, 577 (6th Cir. 2006). This review requires consideration of the norms of practice as reflected in the American Bar Association Guidelines. SEE: *Rompilla v. Beard*, 545 U.S. 374, 387, 125 S. Ct. 2456, 162 L. Ed 2d 360 (2005).

To establish prejudice under *Strickland* "[t]he defendant must show that there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, *supra*. This threshold showing is less than a preponderance of

the evidence and the Sixth Circuit held in *Skaggs v. Parker*, 235 F. 3d 261, 271 (6th Cir. 2000) that "a petitioner need not prove by a preponderance of the evidence that the result would have been different, but merely that there is a reasonable probability that the result would have been different." The Petitioner "must overcome the presumption that, under the circumstances, the challenged conduct 'might be considered sound trial strategy'", *Strickland*, supra, which is precisely the action that Petitioner challenges within. SEE: *Michel v. Louisiana*, 350 U.S. at 690, (1995)); See also *Groseclose v. Bell*, 130 F. 3d at 1167. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable . . . Id at 690-91 (1984), however, when counsel fails to employ a sound strategy, he renders that adversarial testing process deficient."

Further, "the burden rest on the accused to demonstrate a constitutional violation." *United States v. Cronin*, 466 U.S. 648, 658, 104 S. Ct. 2039, 80 L. Ed 2d 657 (1984). Showing a constitutional violation requires showing that "counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." *Nix v. Whiteside*, 475 U.S. 157, 175, 106 S. Ct. 988, 89 L. Ed 2d 123 (1986). "Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him." *Lockhart v. Fretwell*, 506 U.S. 364, 372, 113 S. Ct. 838, 122 L. Ed 2d 180 (1993). As such, a reviewing court must ask itself "whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt in

respect to guilt." Strickland and Groseclose, *supra*.

In evaluating an ineffectiveness claim for failure to investigate, the court must consider the claim by assessing the reasonableness of the decision and by giving heavy deference to counsel's judgement. SEE: *Glenn v. Tate*, 71 F. 3d 1204, 1207 (6th Cir. 1995); See also *Austin v. Bell*, 126 F. 3d 843, 848 (6th Cir. 2000). There is a constitutional duty on the part of counsel to investigate as delineated in Strickland, and highlighted in *Carter v. Bell*, 126 F. 3d 843, 847-48 (6th Cir. 2000)(Counsel must make some effort at independent investigation in order to make a reasoned, [i]nformed decision as to the [utility of mitigating factors offered by the defendant]).

The American Bar Association set forth Guidelines for the Appointment and performance of Counsel (1989)(2003)(2010). The Supreme Court of the United States has held that these guidelines "provide the guiding rules and standards to be used in defining the 'prevailing professional norms.'" See: *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed 2d 471 (2003)(reinforcing *Glenn v. Tate*, *supra*) the ABA has set the standards as:

"investigations into mitigating evidence should comprise effort to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." ABA Guidelines for the Appointment and Performance of Counsel.

Here Petitioner points to four main errors during the plea phase that constitute both "prejudice" and actions well below the "objective reasonableness standard". Defendant's are entitled to effective counsel at each stage of the judicial proceedings. See *Lafler v. Cooper*, 132 S. Ct. 1376, 182 L. Ed 2d 398, 402 (2012) and *Missouri v. Frye*, 131 S. Ct. 156, 178 L. Ed 2d 379 (2012).

A.) COUNSEL FAILED TO PURSUE PETITIONER'S DEFENSE AND TO INVESTIGATE THE FDA REPORTS WHICH THE FDA DID NOT FOLLOW PROCEDURAL DUE PROCESS OF LAW

Petitioner, on multiple occasions, provided counsel with detailed information regarding the Government's accusations in an effort to spur counsel to thoroughly investigate the FDA investigatory records. Specifically, Petitioner repeatedly asked counsel to withdraw his plea as he contested the Government's actions regarding the PSR phase and he further stated: "I would like to revoke my plea agreement on the basis that it was coerced and even the original indictment should have been squashed and attorney client privilege was violated during the investigation." See Exhibit "A" - Affidavit of Lawrence Stowe and Exhibit "B" - attachment to email to Tom Moran.

Petitioner Stowe continued to challenge and direct counsel. In fact, he states: "I still maintain that I was coerced and intimidated into pleading guilty to a crime that never happened". See Exhibit "C" - attachment to email to Tom Moran. He goes on to further state: "if nothing else I would like to explore revoking my plea deal and at least get a formal hearing of my case in front of the judge." In this communication, Petitioner continues to assert his innocence as he request to depose Agent Chris Romolo about the findings of his own field investigation reports. (Petitioner explicitly reserves his right to introduce the FDA records as evidence in support as he is currently in the process of obtaining them).

The Petitioner continues to maintain actual innocence as he contest various line items of his PSR in discussion with counsel. Petitioner states: "but with the table containing such egregious errors - the whole table should be tossed." Further he points out that line eight never happened as the State of California investigated him for practicing medicine without a license

at Stowe Bio Therapy and . . . "dismissed the charges for lack of evidence." Then the heart of the matter is explained which sheds light on how Dr. Stowe got involved with the counseling regarding biological products. He states in Exhibit "D" : "I informed clients what effects the biological products had on my mom's pancreatic cancer which was verified and recorded in Mom's medical records kept by board certified oncologists. I also informed clients about the effects the biological products had on my sisters MS which were contained in her medical records kept by a board certified neurologist." More importantly, Petitioner offered those records, to counsel for review. However, in Exhibit "E", Petitioner details the crux of his procedural due process claim where he states: "we did not market and distribute the unapproved drugs . . . we would have stopped if the FDA had ever objected which typically comes about through a warning letter not a criminal conspiracy charge." See: 21 U.S.C. §§ 335, 360bbb(b).

The Due Process Clause of the Fourteenth Amendment states that "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. XIV, §I. This clause has been "interpreted to provide two kinds of due process protection: procedural due process and substantive due process." *McKinney v. Pate*, 20 F. 3d 1550, 1555 (11th Cir. 1994)(en banc). "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. *Carey v. Piphus*, 435 U.S. 247, 259, 98 S. Ct. 1042, 1050, 55 L. Ed. 2d 252 (1978). Here Petitioner was denied Due Process when the FDA did not provide "notice of violation" where a "consent order" could be entered into or an "official appeal where" the administrator could

have been requested. To be final, an agency decision must mark consummation of the agency's decision making progress. "To be final, an agency action must be an action by which rights or obligations have been determined, or from which legal consequences will flow." **Bell Company, L.L.C. ; Kent Recycling Services, L.L.C., v. United States Army Corps of Engineers**, 761 F. 3d 383, 2014 U.S. App. Lexis 14544. Because typical infractions of agency law are mostly civil, the agency [m]ust give notice of such whereby violation would constitute a knowing position there by meeting the "mens rea" requisite. In this instant matter, the agency presumed that the Petitioner's actions were illegal. "If any question of fact or liability be conclusively presumed against him, this is not due process of law." **Black's Law Dictionary** 500 (6th ed. 1990); accord, **U.S. Department of Agriculture v. Murry**, 413 U.S. 508 (1973); **Stanley v. Illinois**, 405 U.S. 645 (1972).

Plainly stated, Tom Moran, counsel for Petitioner was completely deficient in his performance for failure to review the FDA records prepared by Chris Romolo and to lodge a procedural Due Process violation of behalf of his client. "It is established by the decisions in this and in Federal jurisdictions that due process of law means notice, a hearing according to that notice, and a judgement entered in accordance with such notice and hearing." **Frahn v. Greyling Realization Corp.**, 239 Ala. 580, 195 50. 758, 761 (ala. 1940) **Crook Creek**, 11th Circuit. To succeed on an IAC claim, a defendant must show that "counsel's deficient performance prejudiced the defendant." **Roe v. Flores-Ortega**, 528 U.S. 470, 476-77 (2000)(quoting **Strickland**, 466 U.S. at 688, 694). Under prevailing professional norms, Tom Moran was deficient for failing his client as articulated. For this reason alone, this Honorable Court should

vacate Petitioner's sentence, or in the alternative, order an evidentiary hearing to determine the "facts outside the record."

B.) ACTUAL INNOCENCE IS FACTUAL INNOCENCE AND PETITIONER'S ACTIONS DO NOT GIVE RISE TO CRIMINALITY

Actual innocence means factual innocence, not mere legal insufficiency." *McKay v. United States*, 657 F. 3d 1190, 1191 (11th Cir. 2011). As the Supreme Court has explained, "actual innocence" means that the Petitioner is actually innocent of the crime of conviction. *Bousley v. United States*, 523 U.S. 614, 623-24, 118 S. Ct 1604, 1611-12, 140 L. Ed 2d 828 (1988). Correctly stated, counsel failed to properly represent his client when he not only failed to adequately explain the plea and the ramifications of the alleged conduct but he plead his client out to a crime that he would not have "elementaley" committed. Here, at this instance it is factually impossible for Petitioner to have "misbranded" AIMS PRO or any of the other immunotherapy products simply because at no time did he manufacture or alter [a]ny of these products. Poignantly, the products of question here were obtained lawfully through the FDA's "compassionate use standard" and some of those products enjoyed "orphan drug status." During sentencing, counsel delivered the FDA's internal operating manual and bought forth the argument of "mens rea", although he stated on the record that "he knew of no meritorious defenses available for Mr. Stowe," during the Rule 11 colloquy.

This entire matter was in fact at the "orphan" stages because the agency never made a ruling. Any action "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennet v. Spear*, 520 U.S. 154, 177-78, 117 S. Ct. 1154, 137 L. Ed 2d 281 (1997). In

fact, the District Court never had jurisdiction without affording the Petitioner procedural due process - a "fact" that counsel did not raise on Petitioner's behalf and perhaps the most egregious mistake of all.

C.) COUNSEL FAILED TO RAISE MENS REA AS A DEFENSE

Does it make any sense to raise a "mens rea" issue at sentencing when "mens rea" is a pre-requisite to the crimes Petitioner was charged with? The crimes that Dr. Stowe was charged with are "specific intent" which mandates careful deliberation and knowledge must be proven. How could there be a mens rea to crimes that actually or factually did not occur? May a Petitioner plead guilty to a crime he did not commit? It is here where a look into the pioneering medicines, procedures and process takes center stage. The treatments offered through the Stowe Foundation, a 501(c) public charity are similiar to those offered across the United States and other countries. Simply stated, Petitioner could have presented multiple professional witnesses from well recognized universities and leading authorities when would go on to testify on his behalf. Counsel's failure to raise a "mens rea" defense until sentencing simply constitutes deficient performance. The "off label usage is an accepted - necessary corollary of the FDA's mission to regulate pharmaceutical's without directly interfering with the pratice of medicine. "Examples of off- Label uses include prescriptions of the drug for a condition not indicated on the label, treating an [i]ndicated condition at a different dose or frequency that specified on the label, or treating a different patient population that approved by the FDA." See *Elgin Nursing & Rehab Ctr. v. United States HHS*, 718 F. 3d 488 (2013); *FTC v. Watson Pharms*, 677 F. 3d

1298 (2012); and **McNeil Consumer & Specially Pharms**, 672 F. 3d 372.

The Federal Food Drug and Cosmetic Act (FDCA), 21 U.S.C.S. § 301 et seq., is a Federal law that regulates the manufacture, use or sale of drugs with exemptions. The (FDCA) proscribes manufacturers from promoting or marketing their drugs for off-label uses. Thus, although the (FDA) permits treating physicians to [p]rescribe drugs off-label. See C.F.R. § 202.1(e)(6)(2008). As such, Petitioner Stowe's actions were "completely legal", authorized by law and one hundred percent defensible. CFR § 202.1(e)(6)(2008) and the (FDCA) regulates manufacturers and [n]ot private physicians. In a nutshell, each of Petitioner's actions were taken with the guidance and care of licensed physicians. See Exhibit "A" - Affidavit of Lawrence Stowe.

It is because Congress vested agencies with the requisite power to administrate and administration requires the procedural due process of law, that Petitioner is now a victim of an over zealous prosecution and deprived Due Process as he never had the required "mens rea." In addition to proving an intent to further an unlawful objective, there must also be proof that the defendant acted willfully, that is "with specific intent to do something the law forbids." **United States v. Garcia**, 762 F. 2d 1222, 1224 (5th Cir. 1998). Respectfully and humbly, this Honorable Court should vacate Petitioner's sentence and remand his case for further proceedings.

D.) COUNSEL FAILED TO CHALLENGE CALCULATION'S USED AT SENTENCING

Assuming arguendo that [a]ny of Dr. Stowe's actions give rise to criminality, counsel's failure to defend against a conspiracy and to challenge figures used at sentencing to enhance his sentence, which totally negated

any benefit of the bargaining he preceived in the plea process. The Government must have proved that a.) a conspiracy actually existed and b.) that Petitioner "knew the essential nature of the conspiracy". **United States v. Gamboa**, 166 F. 3d 1327, 1332 (11th Cir. 1999). Petitioner "was cleared of the unlicensed pratice of medicine in California and the State of Texas has approved limited stem cell therapy by physicians in their state." page 3 Defendants Sentencing Memorandum. Petitioner not only did not make money from the Stowe Foundation, he paid substantial fees to Dr Morales, Duvall International, Chisholm Biological, and other well reputed laboratories in conjuction with licensed Physicians. Simply put, nearly all of the proceeds and "self-funding" mechanism of the Stowe Foundation were applied to the cost of operating a legitimate 501(C)(3) charity

Counsel was ineffective for failing to raise a defense regarding calculation of loss pursuant **United States v. Santos**, 553 U.S. 507, 128 S. Ct. 2020, 170 L. Ed 2d 912 (2008). The Supreme Court held in Santos that the gross receipts of an illegal gambling operation were not "proceeds" for purposes of a so called promotional money laundering offense. Hence forth, the "gross receipts" approach dramatically charges the calculations for loss, which drove the "unexpected" sentence Dr. Stowe received. Based upon the Exhibit's A-H, aptly attached, petitioner directed counsel to challenge all sorts of alleged conduct - inclusive of the loss calculation sheet and the figures contained. See Exhibit "D", page 1.

It is for ineffective counsel during sentencing that this Honorable Court should vacate Petitioner's sentence or in the alternative, order an evidentiary hearing to determine the amount of prejudice and the effect upon the length of sentence imposed.

ARGUMENT TWO: PETITIONER STOWE IS ACTUALLY INNOCENT PURSUANT TO THE PROVISIONS OF THE FOOD, DRUG AND COSMETIC ACT AS HE IS NOT A MANUFACTURER OF DRUGS AND AT ALL TIMES WORKED THROUGH LICENSED PHYSICIANS.

Prejudice is established if there is a probability that, but for counsel's unprofessional errors, the "result of the proceeding would have been different." *Rompilla v. Beard*, 545 U.S. at 390. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Wiggins, supra*, 539 U.S. at 534. "To assess that probability", this Honorable Court considers "the totality of the available mitigation evidence-both that adduced at trial, and the evidence adduced in the habeas proceeding - and reweigh it against the evidence in aggravation." *Porter v. McCollum*, U.S. 30, 41, 130 S. Ct. 447, 175 L. Ed 398 (2009)(quoting *Williams v. Taylor*, 529 U.S. 362, 397-98 (2000)).

Tom Moran, counsel for the Petitioner failed to raise the claim that his client was not a manufacturer or promoter of the immuno-therapy products and at no time did he alter or misbrand the custom products created by certified laboratories and companies. At bar, the relevant statute is Title 21 U.S.C. § 3335 which explicitly states:

"[B]efore any violation of this chapter is reported by the Secretary to [any] United States attorney for institution of a criminal proceeding, the [p]erson against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such proceeding"

At all times relevant, Petitioner tried to explain his position to his counsel as he stated in Exhibit "G" : "the normal course of action by the FDA is to send out warning letters to the nutritional companies to cease and

desist making unsubstantiated medical claims for their products." He went on to request that counsel get a true comprehension of the nature of Stowe Biotherapy and that counsel read the copy of the letter provided to Herman Martinez, attached as Exhibit "H". The law is on the Petitioners side as his activities are not only "inside the parameter", the Court should have dismissed the procedure as they did in *Kent v. Benson*, 945 F. 2d 372 (11th Cir.).

21 U.S.C. § 360bbb(b) - Expanded access to unapproved therapies and diagnostics, clearly discusses "legal exceptions" as "any person, acting through a physician licensed in accordance with State law, may request from a [m]anufacturer or distributor, and any manufacture or distributor may, after complying with the provisions of this subsection, provide to such physician an investigational drug or investigational device for the diagnosis, monitoring, or treatment of a serious disease or condition if --"

(1)"the licensed physician determines that the person has no comparable satisfactory alternative therapy available to diagnose, monitor, or treat the disease or condition involved, and that the probable risk to the person from the investigational drug or investigational device is not greater than the probable risk from the disease or condition" SEE: Exhibit "I"

Petitioner Stowe made his claims directly to counsel as he clearly articulated: "Our source of adult stem cells came from an FDA certified and approved medical device by Harvest Technologies . . . Stowe Foundation was Harvest Technologies liason to the following Universities and Commercial Organization . . .

§ University of San Diego

§ University of California Irvine

§ University of Texas

§ Cornell University

§ Charles River Lab

§ Angeles Hospital Mexico City

Petitioner worked directly with Dr. Klehr, a licensed physician and progenitor of a cancer vaccine, the makers of SF 1019 and AIMS PRO- all in accordance with FDA guidelines for "unapproved drugs and personal use . . . all within the law as memorialized in the Food, Drug Cosmetic Act as claimed herein.

This matter hinges on the trial judge's words and the subsequent fear that trial counsel was under after hearing those words "Judge Miller mandated from the bench that a plea agreement be struck between all parties because he did want the media circus of Sixty Minutes in his Courtroom.: SEE: Exhibit "I". In fact this matter begins with a malicious 60 minutes story in which the FDA investigation uncovered as wholly baseless. SEE: Exhibit "J" - FDA Reports (To be included in another filing as Petitioner is in the process of obtaining them.) Without Judge Miller's participation in the plea process, Petitioner would have proceeded to trial SEE: Exhibit "A". It is well established that a defendant must establish that he would have proceeded to trial without judicial participation under a "reasonable probability standard." On multiple occasions Petitioner informed counsel and more importantly directed him to withdraw the plea deal as he felt he was "coerced" into such. Ref. Exhibit "B & C". Counsel refused to withdraw the plea and did not file an appeal - nor did he investigate the FDA records or the intricacy of the law" which was crucial to petitioner's decision to plea. In a nutshell, Petitioner was faced with a Hobson's choice of having to choose between "ineffective counsel" and the right to proceed to trial with a meaningful defense because counsel failed to introduce the case to "meaningful - adversarial testing" pursuant to *Cronic v. United States*, SEE: *Gideon v. Wainwright*, 372 U.S. 339.

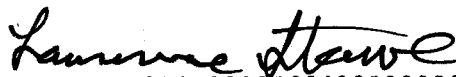
It is for the facts presented herein, respectfully, this Honorable Court should vacate Petitioner's conviction and remand for an evidentiary hearing to determine "facts outside the record."

CONCLUSION

Petitioner's facts, if taken as true, entitle him to relief simply because the Constitutional guarantee's effective counsel via the Sixth Amendment and the Due Process Clauses of the Fifth and Fourteenth Amendments. Due to the evidence that Petitioner has introduced regarding his directions to his counsel - See Exhibit "K" (petitioner expressly does not waive his attorney-client privilege absent a limited ruling of the court), his allegations equate to a "prima facie" showing of serious Constitutional violations. See *Miller-El v. Cockrell*, 537 U.S. 332, 336-38. It is for the foregoing reasons that this Honorable Court should vacate his sentence in the "interest of justice". Alternatively, Petitioner request an evidentiary hearing to develop facts outside the record. "Federal Courts may not only GRANT evidentiary hearings to habeas corpus applicants, but must do so upon appropriate showing." *Kaiser v. New York*, 394 U.S. 1025. Requirements in 28 U.S.C.S. § 2243 that the court act "forthwith" mandating application of habeas corpus be given high priority on court calendars." *Ruby v. United States*, 341 F. 2d 585, cert. den. 1996, 384 U.S. 979.

Dated this the 16th day of March, 2016.

Respectfully submitted,



Lawrence Stowe, Petitioner, Pro Se

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAWRENCE STOWE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

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Civil No.: _____

Related Criminal No. : 4-11-CR-0083-001

CERTIFICATE OF SERVICE

On this the 16th day of March, 2016, I did place a true and accurate copy of this Motion to Vacate in the United States Mail, postage prepaid, for delivery to the Clerk of Court and the Office of the United States Attorney. Pursuant to *Houston v. Lack*, 487 U.S. 266 (1988).

Dr. Lawrence Stowe

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