21-1896-cr(L),

21-1923-cr (CON)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

_____

UNITED STATES OF AMERICA,

Appellee,

-V-

BRANDON GREEN, Pro Se,

Defendant, Appellant.

_____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMENDED SUPPLEMENTAL PRO SE PRINCIPAL BRIEF OF DEFENDANT-APPELLANT BRANDON GREEN SEEKING REVIEW OF THE DISTRICT COURT PROCEEDINGS, INCLUDING HIS TRIAL, PRESIDED OVER BY THE HONORABLE PAUL G. GARDEPHE

Brandon Green Reg. # 56400054

Pro Se, Defendant-Appellant

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PRELIMINARY STATEMENT

This Suppl. brief is being submitted in conjunction with Greens and Counsel's brief and documents in district court, the recusal motion/affidavit/IAC, the Rule 35a motion and the Addendum to the PSR. (Doc.955,1003,1071). Green fully adopts and incorporates the information in these filings. That information is relevant when considering the issues and arguments raised herein.

ISSUES PRESENTED

I. Whether the District Court erred in denying Green's motion to suppress evidence seized from his apartment following his arrest in 2017, where the agents involved in the arrest did not need to conduct a protective sweep, where the protective sweep far exceeded its scope, and where any alleged permission to search given by the other occupant of the house was not knowingly, willingly, nor intelligently made.

II. Whether the Government committed misconduct, and engaged in a pattern of misconduct, to wrongfully charge, indict, and arrest Green, to coerce him into taking a plea deal and cooperating; and/or otherwise to wrongfully try, convict, and sentence him, for crimes he did not commit, using false testimony, perjury, and illegally obtained, inadmissible, and fabricated evidence.

III. Whether Green was deprived of his Sixth Amendment right to the effective Assistance of Counsel.

IV. Whether Green was actually or constructively denied his right to the effective Assistance of Counsel, due to a total or near-total dereliction in representation.

V. Whether due to the issues and prejudices raised by Green and Counsel, was Green deprived of a fundamentally fair trial, whether such resulted in a complete breakdown in the adversarial process; whether such was and/or resulted in plain, plain structural, and/or structural errors, which undermined confidence in the proceedings to the point warranting this courts intervention.

VI. Whether all Counts should be vacated due to these issues and due to a real concern, that Green is actually innocent.

VII. Whether the evidence was sufficient to convict Green on any of the three counts.

STATEMENT OF CASES AND FACTS

This brief is being submitted by Green, along with his Pro Se Brief in 2d. Cir. No. 21-2244 ("the Pro Se Brief") and Counsel's brief submitted in this case ("Counsel's Brief). Both appeals stem from the same case and are being heard on the same panel. This brief is intended to raise issues not addressed by Counsel or Green in his other brief. Green presumes this Court has an adequate understanding of his case based upon review of these and other filings. He'll limit this brief to only the most essential information deemed necessary to understanding the issues he raises.

A. The District Court's Denial of Green's/His Attorneys' Post-Trial Motions

On July 25, 2019, Green hired Zoe Dolan to replace Trial Counsel. In September 2019, the Court, knowing Green wasn't satisfied with his Trial Counsel's post-trial Rules 29 and 33 motions, issued its Mem. Op. & Order denying such. (Johnson II, Dkt.680,955). The Court only addressed "some" of Green's complaints raised in his Suppl. Decl. Ms. Dolan later moved the Court to reconsider its denial of Green's and his attorneys' post-trial submissions, but that was denied. In Ms. Dolan's reconsideration motion, she focused primarily on the RICO Conspiracy charged in Count One. (Doc.746) She discussed how the jury "conflated if not misunderstood the elements necessary to sustain a conviction under Count One with the elements required under Count Five." She argued how the unconstitutionally vague language regarding the definition of a crime of violence infected the verdict, considering the Supreme Court's then-recent, decision in United States v. Davis, 588 U.S. _____ (2019). She mentioned many problems with the Government's case, including ineffective assistance of counsel, weak witness testimony, inter alia, how weak the Government's case was. (Id. ("It is not often that a federal jury will find against the prosecution to the degree they did in this case.")). She pointed out how there was only a single act, the alleged narcotics conspiracy, supporting Green's RICO Conspiracy and that one act is insufficient to form a pattern. (Id.). However,

like Trial Counsel, Ms. Dolan didn't address the full extent of the issues he wanted raised.

Before sentencing, Green submitted a pro se sentencing memorandum to voice his concerns and raise issues regarding the Court proceedings. (Doc.760). In response, the Court postponed Green's sentencing, conducted a conference and treated the sentencing memorandum as a motion for a new trial and judgment of acquittal. (Oct. 31, 2019, Status Conf. Tr. at 2,8-9). The Court never reviewed or inquired into Green's claims raised in his memorandum or submissions throughout various court proceedings. (A28-45, Tr.2,8-9).

B. The Government's Harassment of Green and his Family

Green was constantly targeted and harassed by Bureau of Prisons staff; this was confirmed by the staff members who told Green they were after him. Jameelah Branch, the mother of Green's daughter who was employed by the NYPD for almost a decade was harassed, and forced to resign in early October of 2019, not long after Green informed probation department who she was and where she worked when doing his presentence report. Lindsey Arceneaux suffered the same fate after she wrote a letter in or around April of 2019 stating, among other things, that she would testify about the illegal tactics used by Green's attorneys and the government to try and get him to take a plea deal and cooperate. Afterward, she was called downtown to AT&T headquarters and fired from her senior position.

C. Green's Entertainment Company and Alleged Gang Involvement

Green's an entrepreneur, owning an entertainment company that does music production, among other things. Some of his customers are in the music scene. Through his business, he came to do work for, and to that extent associate with Johnson. This resulted in him being indicted in this "gang" case even though he was not involved with anyone on a criminal level.

D. The BHB's Drug Trafficking; Green's Alleged Dealings in Narcotics

As noted by the Court in its Mem. Op. & Order addressing the Rule 29 and 33 motions filed by the trial defendants, "[m]uch of the Government's evidence concerning the BHB's drug trafficking dealt with the Gang's activities in Elmira, a city in upstate New York… (Tr.332 (Adams)." Johnson II. This didn't begin until 2012. Id. at *34. At trial it was claimed "Light" and a BHB member who used the name "Wheezy" supplied the drugs that the Gang sold in Elmira. Id. at *37. There was no evidence offered at trial to show Green was a member of a gang at all, or prior to 2010. (Sent.Tr. at 39-40, "there was "no evidence that Mr. Green was a member of the B[HB] prior to 2010." (District Court); (A1-5.) "). Green maintains he's not now and has never been a member of this or any gang (A1-2, NY FOIL request stating no records exist classifying Green as a Gang Member and A3-5, Aug. 3, 2010, arrest report showing Green has no gang affiliation).

None of the CWs who testified to being introduced to Green said they were introduced to him as a drug dealer or supplier of any kind. (Tr.1158 (Morton testifying to being introduced to Green by David Cherry); Tr.168-174 (Adams testifying to being introduced to Green by Johnson). Morton testified he was told by other gang members, Cherry, other hounds that this connect supplied Evans and Light drugs; there was no evidence of who this person was (Tr.856). Morton testified that he got his heroin from whoever had the best or whoever had it then and there. (Tr.880-82). He also testified to supplying several Gang members with heroin, including Donnell Murray and Saeed Kaid. (Tr.885,873,1016).

E. The Traffic Stop

On August 3, 2010, Green was involved in a traffic stop ("Traffic Stop"). This incident was thoroughly discussed in Counsel's Brief.

F. Problematic Testimony and Other Evidence

1. Discrepancies and Issues with Witness Testimony, 302/Investigatory Notes

Several statements by cooperating witnesses ("CWs") during proffer sessions didn't match what they said in court, raising concerns about their credibility and fairness of the grand jury and District Court proceedings. Daly stated, "I don't know why that person wrote it. I guess you have to speak with the person who wrote it, but I didn't say it." and "Maybe that's something they write as a note, just like shorthand." (Tr.2729-30). Daly testified he and the Government would go back

through the notes and change the dates. (Tr.2715). Adams testified, "I don't know why somebody writes what they write. I'm not the one writing. So I don't know. All I'm doing is talking."(Tr.709). “Q. Now, do you think they were just writing their own thoughts? A. I don’t know what they were writing in their pads. They were just writing. Q. They were just writing. It could have been anything, right? A. Correct.” And "[l]ike I said, I don't know what this is, and I don't remember saying anything about talking to Showtime on the phone. Only person I spoke to on the phone from jail was Ten Thousand, that's it."(Tr.671-72). At trial, Jones was asked: "Looking at the document there doesn't refresh your recollection at all?", replying "No, it's written wrong."(Tr.1910) (Tr.1908, "Like I said they could put a mistake on the paper, because I never would say Prince shot and killed Easy.").

Adams' testimony contradicted statements he made in multiple proffer sessions; inconsistencies he couldn’t explain at trial. (Tr.692-93). The Government relied heavily on such to support their false claims Green was a primary supplier of drugs and guns and that he lived and operated out of the Honeywell complexes.

a. The Fabricated Murder Plot

Adams testified about an alleged plot in 2011 to murder David Cherry (a/k/a "Showtime"). Adams claimed he and Michael Evans (a/k/a "Puff") didn't know what Showtime looked like; this was the only way the plot could have been possible. (Tr.202,229-33,991). Adams' testimony about the murder plot was contradicted by

Morton, who testified to telling the government countless times, that he was introduced to Evans by Cherry in person in 2007 or 2008 (Tr.1271-74).

At sentencing, Cherry stated this case was full of lies from the CWs, stating how he knew Evans since before 2005,"[so] why would he have to call Johnson or Brandon Green to find out how I look? That does not make sense, a lot of this stuff is built on lies . . .." (A77). The jury didn't believe Adams' testimony as it found Green not guilty. (Doc.570). The Court found, for the purposes of Green's sentencing, based on this significant contradiction, that a preponderance of the trial evidence did not prove Green's involvement in this alleged murder plot. (Doc.1025 at 3; Sent'g Tr. at 24-25). The Government presented this fabrication to the grand jury and Green's jury at trial; even after it was proven to be built on lies, still using it to try and enhance Green's sentence. Adams had no problem lying about this because he was seeking a 5k1 letter. (Tr.3238).

2. CW's Testimony Calling into Question the Government's Case

Green expressed to his attorneys that he didn't understand why he was being prosecuted and other than Evans, he didn't know these people that well. Green's attorneys made clear he was simply collateral damage in the Government's witch-hunt for Johnson and the Gang. Green wasn't the only person indicted in the case with concerns. Morton made similar complaints: Tr.1148-49 ("[I]n the beginning…I didn't understand like why I was part of this case. Yeah, so I got locked up [for about

seven years] …They (the federal government) came and got me for this [case]. Eight months later it was like January 4, 2017. So, in that time I'm like, yo, I don't mess with these dudes, I'm not around them, so I didn't understand like how I just did all of that time I just did, and now I'm sitting in the feds for a gang indictment that, you know, I haven't been around them (these co-defendants)"; Tr.1158 (Morton discussing his statements that "these feds are not playing, man. This case is a bunch of lies, you know, they just take whatever and go with it"; and describing how "seeing that I'm charged with keys of cocaine, to me, I was like…oh, you're being charged with a key of heroin and five keys of crack cocaine. Like, I didn't possess that…I never had that much stuff.") This didn't stop Morton from cooperating, and falsely testifying against Green, among others. Daly and Jones also expressed similar concerns about what they were being charged with in this case. (Tr.1801,2707-08).

3. The District Court's Comments About CW Rosario's Inconsistent Statements

In recorded telephone calls, Rosario made statements reflecting his disagreement with the charges brought against him in this case; something even the Court commented on (Tr.3029).

4. CW Rosario's Statements Concerning CW Adams' Truthfulness

Rosario made several comments calling into question the truthfulness of Adams and the Government's case. "I mean . . . from the discovery that I've seen and what Measy (Adams) stated, I seen fabrications"; "I wouldn't rely on him (Adams), what Measy says")). Rosario also testified that Adams lacked integrity, and that he wasn't an honest person. (Tr.3501-3052).

5. CW Moore's Fabrication

Moore testified to seeing Green "with his 7-year-old son" at a pow-wow in 2013 at the courtyards (Tr.2257-58,3236). However, Green's son hadn't been born yet or was just a few weeks old. He claimed Green did not collect any kitty dues this day, and extended all pedigree's deadlines, for failure to pay his pedigree fees; to later testify that he instead sent their kitty dues directly to Johnson's inmate account. (Tr.2170-71).

6. Improper Government Statements to the Jury

In opening statements to the jury, the Government told them Green "kept a stash of loaded guns for the Blood Hound Brims" and promised that "the six loaded guns seized from Light" will be shown during the Government's case. (Tr.60,65).

G. Green's Complaints About the District Court and Proceedings

Green experienced many problems in the District Court, from issues with judicial bias and partiality to his court submissions not being timely or properly filed,

if filed at all. These issues were more thoroughly discussed in his Pro Se brief and being the same panel is hearing both appeals, he presumes its familiarity (A78).

1. The District Court's Review of the 3500 Materials

The Court admitted to reviewing the 3500 materials throughout Green's trial. (Tr.2961.)

H. It's Not Just Green That Has Concerns About This Case

Several people have questioned the Court proceedings including reporters, lawyers and those who advocate for justice. Many comments express concern about the integrity of the proceedings and how cooperating witnesses were given leniency, questioning why certain CWs were used, while others raised concerns about their reliability.

1. Inner City Press Articles

The news outlet was present throughout the trial and during post-trial proceedings, stating,

> "The case began with a sealed indictment, signed by Preet Bharara in 2016, alleging the use of a firearm for a drug dealing conspiracy in the Bronx. Preet has moved on, but the trial continues. "The public has spent much money on this prosecution; the government called it a proceeding of interest. But where are the exhibits? Where is the commitment to notice?" id. "Requests to be informed when the jury came back were unavailable, despite talk of general deterrence." (http://www.innercitypress.com/sdny5latiquetrial032819.html).

id[1]. In a separate article discussing Green's sentencing, they write, "Not mentioned by the prosecutors was the last minute letters of protest from Brandon Green, about a Mr. Bash calling him, his right to self-representation, and request for new trial. These were all denied.[2]"

2. Truthout.org

"How Prosecutors Use Conspiracy and Questionable Testimony in 'Gang' Cases", discusses how prosecutors use questionable testimony from police officers and CWs to increase their chances of securing wrongful or suspicious convictions. Done mostly in conspiracy and gang cases, it further weakens confidence in the system, plaguing and undermining confidence in our justice system. The article highlights serious concerns with this case stating:

> "For the defendants and their families, their hopes now rest in the appeals process that could take years. The trial, fueled by decades old tactics designed for the Mafia and testimony from cops with a record of alleged abuse, leaves a bitter taste in their mouths." https://truthout.org/articles/howprosecutors-use-conspiracy-and-questionable-testimony-in-gang-cases/."

(A46-56). Green couldn't have said it better.

[1] http://www.innercitypress.com/sdny6latiquetrial082720.html (discussing how CW Rosario was given time served), http://www.innercitypress.com/sdny2bubacarrcamaraicp121119.html(discussing how CW Adams, despite killing Bubacarr Camarra, a shop keeper in the Bronx, in 2015, for $279.00, was sentenced to seven years, although the U.S. Sentencing Guidelines called for a life sentence, plus 15 years, for the senseless murder).

[2] https://www.innercitypress.com/sdny7latiquetrial072221.html

3. Law Professor Babe Howell

Green's family contacted CUNY law school professor Babe Howell, to bring attention to his case and get help and guidance regarding the violations of his rights that occurred. They were shocked to discover Professor Howell said she was "somewhat familiar with this particular case." (A79). She stated she'd "been reading some of the transcripts with great concern." (Quoting id.). Professor Howell was particularly focused and interested in the corrupt NYPD and the Government's use of them in this case; stating that she intended on writing an article about it and was trying to get journalists interested in the case to do the same.

4. Television Producer and Attorney Isaac Wright

Green reached out to television producer and attorney Isaac Wright, who responded by noting the torrid procedural history of this case stating that "it is clear to me that you were not treated within the proper and lawful administration of justice." (A80).

5. Petitions[3] for A New Trial and New Judge

Green's family started two online petitions after he realized how badly his rights had been violated before, during, and after trial. The first online petition was for a new trial and the second asking for a new judge, totaling around 3,000 supporters.

[3] https://chng.it/hHJJpZnM, https://www.change.org/NEWjudgeBRANDONGREEN

I. Green's Complaints About His Attorneys

Green has several complaints against his lawyers, most directed at trial counsel. Many were discussed by Green in the District Court throughout various court filings and at multiple conferences. Green refers this Court to these documents and conferences for a more detailed discussion of these complaints, focusing on A28-45, A8-15, A81-99, Oct.31, 2019, Conf.Tr.; Dec. 8, 2020, Tel.Conf.Tr.; and, Jan.5, 2021, Tel.Conf. Tr.

1.Trial Counsel's Opening Statements

Trial Counsel erroneously told the jury they would see a "pile of guns" and "BIG scales" possessed by Green even though this wasn't true. (Tr.86). There were absolutely no scales in evidence against Green, only a few (6) handguns that they claimed to have found.

SUMMARY OF ARGUMENT

"In the United States, it is estimated that about two people are wrongfully convicted every day." (A46-56). Some leading causes of wrongful convictions are perjury, false accusations (often by incentivized government witnesses), official misconduct (including misconduct of police and prosecutors), and inadequate legal defense. (e.g., Wrongful Conviction: Law, Science, Policy (2d ed.). "False accusations or perjury is the most common feature of wrongful convictions and has been a factor in 60% of documented exonerations. Most often, witnesses lie because

they receive some benefit for testifying against the defendant."[4] This worsens the problem because prosecutors frequently force people to take guilty pleas and testify falsely against those who don't. ("The fear of suffering prosecutorial vindictiveness after exercising the right to trial has resulted in approximately 97% of criminal cases being resolved through plea bargains…The trial penalty has altered the balance of power and tilted it in favor of government. 'Society pays a price when, inevitably, guilty pleas operate to foreclose litigation that would have exposed unlawful government actions or practices and police misconduct[.][5]'") (internal quotations in original) (citations omitted).

Our constitutional framework provides that all individuals are guaranteed the right to fair treatment and to a fair trial. And "[t]he purpose of the trial is to decide whether the Government can prove beyond a reasonable doubt the truth of the charges against the accused.[6]" However, "without ensuring [strict] adherence to the rule of law and vigorous and competent counsel for defendants, we cannot live up to these guarantees.[7]"

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[4] https://www.colorado.edu/outreach/korey-wise-innocence-project/our-work/why-do-wrongful-convictions-happen

[5] https://www.criminallegalnews.org/news/2021/aug/15/trial-penalty-harm-coerce-prosecutorial-tactics-and-plea-bargains/

[6] https://www.fbi.gov/resources/victim-services/a-brief-description-of-the-federal-criminal-justice-process

[7] https://www.govinfo.gov/content/pkg/CHRG-112shrg93800/html/CHRG-112shrg9300.html

What went wrong here is the Government didn't play by the rules, Green's attorneys failed to perform effectively, and the District Court didn't hold anyone accountable. And all this occurred after Green refused to plead guilty to something he was innocent of, after the Government tried to coerce him to, through his lawyers. Green also experienced difficulties with his court submissions not being uploaded to his docket properly and went through four sets of lawyers before proceeding pro se after all of them "misinformed or lied [to him], in some way shape or form." (Nov. 17, 2020, Tel. Conf. Tr. at 15, ll. 1-16).

Green never should have been subjected to such unethical and illegal tactics as was used by the Government to convict him here because "the Government's interest in a criminal prosecution is not that it shall win a case, but that justice shall be done." Kyles v. Whitley, 514 U.S. 419, 439 (1995). There are constitutional safeguards in place that were designed and supposed to protect against such improper Government misconduct; the most essential of which being the Sixth Amendment right to the effective Assistance of Counsel, "Without the aid of an effective lawyer, almost anyone stands the risk of going to jail when charged with a crime. The majority of us would not know, for example, what is not admissible in a court of law, let alone how to procedurally convince twelve jurors that the

government has not proven the charges beyond a reasonable doubt.[8]" and Powell v. Alabama, 287 U.S. 45, 68069 (1932)(stating similar); and United States v. Cronic, 466 U.S. 648, 654 (1984)("Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." (Quotations in original) (footnote omitted). However, even if the government and an accused's counsel fail to adhere to the rule of law and respect the rights of the accused, shouldn't our courts step in to correct such injustices? The Constitution was written to limit government power, but those limits are meaningless unless judges restrain public officials when they overstep their bounds (https://ij.org/center-for-judicial-engagement/). Unfortunately, the criminal justice system doesn't' always operate as designed; and it didn't in this case.

As detailed as the issues presented by Green and his Counsel in their briefs are, most neutral observers would judge that the District Court proceedings were fundamentally flawed, with a genuine concern that Green is actually innocent. And despite submitting three separate briefs (Green's and Counsel's) he has still yet to address all the problems with his case. It's evident from review of these briefs that Green didn't receive due process or a fair trial; including being denied his right to the effective assistance of counsel. At a minimum these proceedings were

[8] https://sixthamendment.org/systemic-right-to-counsel-failures-cannot-be-resolved-by-case-by-case-reviews

fundamentally flawed; at worst there was a complete breakdown in the adversarial process here. And since our justice system is in dire need of reform, with public confidence in the judiciary at an all-time low, this Court should take Green's case as an opportunity to let the public see that when such injustices do occur, they won't be tolerated.

ARGUMENTS

I. The District Court Erred in Denying Green's Motion to Suppress Evidence Seized from the Residence in Bridgeport, CT, Following His Arrest

A. Standard of Review

This Court reviews de novo the legal issues raised in a motion to suppress evidence. (e.g., United States v. Rommy, 506 F.3d 108,128 (2d Cir. 2007); United States v. Casado, 303 F.3d 440,443 (2d Cir. 2002). This Court reviews a district court's factual findings for clear error, viewing the evidence in the light most favorable to the government. Casado, 303 F.3d at 443.

Analysis of Law and Facts

B. Agents Illegally Entered Green's Residence

The morning of Green's arrest, agents illegally entered the apartment and had no warrant to enter and search. They only possessed an arrest warrant and could have attempted to arrest Green without entering the apartment. Any evidence obtained

because of that illegal entry was the fruit of the poisonous tree and should be suppressed.

C. The Warrantless Search Was Not a Protective Sweep

1. Agents Had No Reasonable Suspicion of Dangerous Third Parties and No Right to Search the Apartment

The Government failed to meet its burden to establish the existence of a valid exception to the warrant requirement that would justify a warrantless search. The Court erred in denying Green's motion to suppress evidence illegally seized as the result of a warrantless search of the residence on May 16, 2017, following his arrest.

> "As an incident to an in-home arrest, police may, as a precautionary measure and without a search warrant, probable cause, or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched; beyond that, however, the Fourth Amendment permits a protective sweep, without a search warrant, in conjunction with an in-home arrest-extending only to a cursory inspection of those spaces where a person may be found, lasting no longer than is necessary to dispel the reasonable suspicion of danger, and in any event no longer than it takes to complete the arrest and depart the premises..."

Maryland v. Buie, 110 S.Ct. 1093, 108 L.Ed.2d 276,278-79,494 U.S. 325 (1990) (Brennan and Marshall, JJ., dissented from this holding). Where officers cannot supply specific and articulable facts warranting a reasonably prudent officer to believe that an individual posing a danger is lurking in an area to be swept, the court has found lacking an essential element necessary to justify a search under the protective sweep doctrine. United States v. Hassock, 631 F.3d 79 (2d Cir. 2010).

The Government identified no facts that supported any reasonable suspicion that a third party was lurking in the apartment. Instead, they argued the agents lacked information and couldn't "demonstrate conclusively" that Green was alone in the apartment. Doc.355, at 14 (Arguing that: (1) it was possible that another individual was in the apartment) id. at 15 (2) Ms. Turcios returning to the apartment could have given a third party the chance to hide); (3) the officers had no way of knowing that a third party was inside); (4) Ms. Turcios' word did not "demonstrate conclusively" Green was alone in the apartment), and (5) after Green appeared on the balcony, he could have warned someone inside to hide). However, this isn't the law.

It is uncontroverted in this Circuit that a "lack of information cannot justify a protective sweep." United States v. Moran Vargas, 376 F.3d 112,117 (2d Cir. 2004). Nearly every other circuit concurs. At the suppression hearing no Government witness provided evidence that a third person was hiding in the residence. In fact, the agents' own actions demonstrated no real individualized concern that a third person was in the apartment. It's undisputed that agents immediately moved Green to the front of the apartment to "get him out of the way." (Doc.355., at 12 n.2). Had the agents had a real concern someone was lurking on the second floor; they wouldn't have purposely placed themselves and Green in the one key spot where they would be most vulnerable to an attack from above. Without having any articulable facts agents searched Green's entire apartment without a warrant. This

wasn't a protective sweep, but a full search for the object of their inquiry. Even the agents did not seem to think it a real concern, judging by their movements on the first floor after Green's arrest. The thorough search of Green's residence, especially the second floor, was a warrantless search in violation of the Fourth Amendment, therefore the guns and other materials seized should have been suppressed. (United States v. Fann, 462 Fed. Appx. 128, *2 (2d Cir.2022) (upholding district court's granting of defendant's motion to suppress because "the Government fail[ed] to identify specific, articulable facts that demonstrate[d] that the officers who conducted the search of the residence reasonably believed that an individual was present at the time of [the defendant's] arrest and that such an individual posed a danger to them").

2. The Protective Sweep Extended Far Longer Than Necessary to Effect the Arrest and Withdraw

Even where agents have a reasonable suspicion to justify a protective sweep, the "sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises." Buie, 494 U.S. at 326.

Green was arrested within seconds on the first floor, about 15 feet from the front door. Agents didn't even make it into the apartment before he surrendered. (Supp. Pg.203). Agents made sure to secure Green first. (Supp.Tr. at 205). Only after

Green was secured, did the agents begin their "protective sweep." id. About five to ten minutes later, Agent Masterson heard from the loft space that guns had been found. id. at 260:6-9. The length of time needed to conduct a sweep of this very small apartment further "undermine[s] the argument that protection from third parties was the impetus for sweeping" Green's residence. See United States v. Barone, 721 F. Supp. 2d 261, 274 n.25 (S.D.N.Y. 2010) (Buchwald, D.J.) (observing that 15 minutes to search a 2,500 square foot split level house was excessive for a protective sweep and noting that leading protective sweep cases involved searches of significantly shorter duration).

Once the agents secured Green, they were required to leave, and didn't do so. There were plenty of places Green could have been moved to out of the apartment. Despite this, he was kept in the apartment and according to several of the agents was still present in the apartment when Ms. Turcios returned. (Agent Amaldas, Supp.Hr'g Tr. at 278: 1-2). This was not a valid protective sweep as it continued well after agents had Green in custody, and well after they could and should have removed themselves from the residence. The guns and other materials seized therefore should have been suppressed.

D. Ms. Turcios' Subsequent Consent to Search Was Invalid and Other Evidence Seized in the Apartment Should Be Suppressed

The remaining evidence seized from the apartment was purportedly found in a search of the apartment after Ms. Turcios was shown the firearms; and this is when she gave consent. (Supp.Tr.212) The evidence seized during this search was illegally obtained for two reasons. First, Turcios' consent was not voluntary. Second, even if it was "voluntary," for purposes of the Fourth Amendment it is still the fruit of the poisonous tree and should be suppressed. The agents' actions that morning suggested that their purpose was to put as much pressure on Turcios as possible to obtain consent. The entirety of Turcios' experience that morning should be considered when addressing this.

The agents stopped her that morning, illegally, based on review of their testimony which revealed they had no reason to do so, claiming she was acting suspiciously. This was not true and refuted by the testimony of the other agent(s). Agents took Turcios back to the apartment and waited until she was outside the door, if not actually inside. There, instead of saying that guns had been located in the upstairs room, so that she would know what they found, Agent Kushi remained vague, telling her about unspecified "illegal items." As Ms. Turcios testified, the implied threat was still there. The agent then brought her upstairs, where the guns were laid out, to include a “pink” handgun, after that she was presented with the

consent to search form. No one ever informed her she had the right to refuse consent, the right to refuse the document the Government filled out for her, or that agents did not have any legal rights to be inside her home. (United States v. Turner, 23 F. Sup. 3d 290, 308 (S.D.N.Y. 2014) (Ramos, D.J.) (noting that "[i]t is well-established that consent to search will be found involuntary if it is found to be the 'product of duress, coercion, express or implied…to be determined from the totality of the circumstances.'" (Quoting Schneckloth v. Bustamonte, 412 U.S. 218,227 (1973)). These circumstances were coercive in the extreme. Turcios' consent was clearly the product of this, therefore, it's invalid.

E. Even if voluntary, the consent is fruit of the poisonous tree. Any consent flowing from the illegal search is fruit of the poisonous tree.

F. Conclusion

The Court erred in denying Green's motion to suppress, and because the evidence, especially the guns, should have been suppressed, the Court's order should be reversed, all counts vacated, and Green given a new trial, especially due to the prejudicial spillover effect that the guns had on his trial. (See Counsel's brief, discussing spillover effect with supporting case law.)

II. Green Was Deprived His Right to Effective Assistance of Counsel Before, During, and After Trial

A. Standard of Review

The standard for ineffective assistance of counsel ("IAC") under the Sixth Amendment is straightforward, "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668,104 S.Ct. 2052,2064,80 L.Ed. 2d 674 (1984). To prevail, a defendant must show both deficient performance and prejudice. id. at 2068. However, where a defendant shows a "total or near-total dereliction [] in representation" by an attorney, the law will identify a constructive denial of counsel, triggering a presumption of prejudice. Restrepo v. Kelly, 178 F.3d 639,641 (2d Cir. 1999). Constructive denials of counsel include counsel's total or near-total dereliction in representation. id. (United States v. Cronic, 466 U.S. 648,658-59,80 L.Ed.2d 657 (1984) (presumption of prejudice applies when counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing," where counsel is actually or constructively denied during a critical stage of the proceedings, or where there are "various kinds of state interference with counsel's assistance").

B. A Brief Discussion

All Green's attorneys in the District Court failed to perform effectively and all "misinformed or lied [to him] in some way, shape or form." (Nov.17 Tel. Conf. Tr. at 15).

C. Failure to Suppress Cocaine

Appellate counsel thoroughly discussed this issue in his brief. Green contends this Court should address this issue because its clear from the record he was prejudiced by Trial Counsel's failure to suppress the cocaine allegedly recovered from the Traffic Stop.

D. Failure to Challenge Government's Obtaining and Use of the Dismissed and Sealed Arrest Records

Green's August 3, 2010, arrest was dismissed and sealed. From review of the Disposition (A58), the Traffic Stop wasn't just dismissed, but such dismissal was "a termination of the criminal action in favor of… [Green][,] and pursuant to Section 160.60 of the Criminal Procedural Law [of New York] 'the arrest and prosecution [was] deemed a nullity and [Green] was restored, in contemplation of law, to the status occupied before the arrest and prosecution' and all official records and papers relating to [the Traffic Stop] were sealed. "Pursuant to Section 160.50(1)(c) of the Criminal Procedure Law, all official records and papers relating to [the Traffic Stop

were] sealed." The statute states such sealed arrest information that is "on file with…any…police agency shall be sealed and not be made available to any person or public or private agency." This pertains to the sealed arrest records in possession of the NYPD, like the sealed arrest records of Green in connection with the Traffic Stop. Whether it's a federal civil suit, or federal criminal case, if any party desires to obtain a copy of the sealed records they must apply to the state court to unseal the records, subpoena the district attorney, or seek discovery if the district attorney is a party to the proceeding. (Fountain v. City of NY, 2004 U.S. Dist. LEXIS 7539 (S.D.N.Y. May 5, 2004); United States v. Ceballo, 2003 U.S. Dist. LEXIS 14242 (S.D.N.Y. August 18, 2003). If that doesn't work, then the issue is properly before the federal court, which has the authority to issue an order compelling production of files that are sealed pursuant to NY CPL Section 160.50. See Fountain, supra. Green never waived the protection of the sealing statute or authorized the release of the sealed records to anyone. Despite Counsel obtaining information from the Government, and Green's civil attorney, Peter Ridge, they never made any motions. Instead, they falsely stipulating to the Bronx District Attorney dismissing it and the testimony of the chemist who performed the second round of testing on the cocaine allegedly recovered from Green. (Tr.2883,2885, GX1012,1014, and an email exchange between Geller and the Government stating Green wouldn't be inclined to waive his constitutional rights to challenge the chemist).

Counsel said they would submit a letter to the court regarding this (Tr.19,26,27), but never did, admitting later to having completely forgotten about it (Tr.1162). Review of several letters filed by Counsel in the months preceding trial, and emails between the Government, show that Counsel had plenty of information about the Traffic Stop, including the Disposition, sealed arrest report, and a partial file from the attorney who handled Ms. William's and Green's lawsuit against Sisco and the NYPD (Docs.491,502,521,522, A63). It appears the Court even noticed there may have been Fourth Amendment issues surrounding the Traffic Stop stating, "I guess I'm under the impression that the DA's office dismisses all the time in cases where it concludes there might be a search issue." (Tr.25)

Counsel waited until Sisco's direct examination to make an objection to the Government's use of the Traffic Stop. Counsel went on to immediately raise another objection, stating that he felt there was "a 403 issue as well." (Tr.2847,2848). The Court disagreed and overruled the objection (Tr.2848-49). Counsel was ineffective for not challenging the Government's obtaining and use of the Traffic Stop and sealed records associated with such, prior to trial. In a motion of limine, he contends they should have moved the Court, in advance of trial, to preclude the Government's use of the Traffic Stop. The Government illegally obtained the sealed records associated with such. There was no nexus to the Traffic Stop to the crimes he was charged with. There was no evidence that any of the vehicle's occupants, including

Green, were gang members at the stop's time, nor was there anything else linking such to the crimes charged in the indictment. There wasn't anything strategic about Counsel allegedly "losing track of the issue", (Tr.1162) stipulating to everything and waiting until trial to raise any objection. And it should come as no surprise the Court denied Counsel's last-minute efforts at objecting to this.

> "A discouraging aspect of criminal defense practice is that evidentiary motions are denied with little or no comment. If a meaningful defense is to be made against conspiracy or other complex crimes as well as against evidence of uncharged conduct, prosecution evidence must be identified and objected to well in advance of trial."

Cf. Vol 1A Cipes, Bernstein & Hall, Criminal Defense Techniques Sec. 23A.01[2] (Matthew Bender, Rev. Ed.) (2022). Had Counsel challenged the Government's obtaining and use of the Traffic Stop prior to trial, the Court would have prevented the Government from using it or limited its use; allowing Counsel to better defend against this evidence and limiting its prejudicial effects. There's a reasonable probability that absent this evidence, and/or if the evidence had been limited, the result of the proceedings would have been different, i.e., the jury would have acquitted Green on all or some of the counts.

E. Failure to Challenge Venue

Appellate counsel thoroughly addressed this issue.

F. Failure to Object or Defend Against Government Misconduct

Had Green's attorneys moved to dismiss the indictment for Government misconduct, among other things, he would have never had to go to trial because all

issues argued herein would have been exposed and the indictment (at least the charges against him) would have been dismissed. Their failure to do so cannot be excused.

G. Witness Credibility

Trial Counsel was ineffective for failing to "cross examine the CWs on, and [for failing] to note in summation, nearly all of the incredible aspects of their testimony ", (quoting Counsel's Brief), and forth herein and in Counsel's Brief. Cf. United States v. Tucker, 716 F.2d 576,585-87 (9th Cir. 1983)(Counsel's failure to impeach witness with prior inconsistent statements was ineffective assistance); Moore v. Marr, 254 F.3d 1235,1241 (10th Cir.2001) ("Counsel's failure to impeach a key prosecution witness is potentially the kind of representation that falls outside the wide range of professionally competent assistance."); and, Nixon v. Newsome, 888 F.2d 112 (11th Cir. 1989)(failure to properly impeach witness was ineffective assistance where glaring and crucial discrepancies existed in witnesses' testimony).

H. Heroin Trafficking and the 924(c) Count

Trial Counsel's post-trial motions "sa[id] nothing in [their] brief about the evidence concerning Green's involvement in heroin trafficking." (Quoting Johnson II, n. 38), failing to adequately argue all the insufficiency-of-evidence concerning the 924(c)-count set forth in Part I of Counsel's Brief. There's a reasonable probability that had they done so the Court would have vacated those counts.

Because the evidence on all counts was legally insufficient and due to the numerous egregious violations of Green's rights that occurred throughout his case, this Court should vacate all counts or reverse his convictions.

I. Failure to Obtain Gang Expert

Trial Counsel was ineffective for not obtaining a gang expert to testify at trial; specifically, an expert on the bloods gang. Had they done so the expert could have helped support his claims that the CWs were lying (Burr v. Lassiter, 513 Fed. Appx. 327,346 (4th Cir. 2013) (trial counsel was ineffective when he failed to obtain expert witness testimony); and Stermer v. Warren, 360 F. Supp. 3d 639 (E.D. Mich. 2018) (IAC for failure to hire fire expert). There's a reasonable probability this expert testimony could have significantly swayed the jury in his favor. The jury did not credit the CWs, especially Adams. The expert would have further undermined the Government's already weak case, who the jury already didn't believe.

J. Failure to Call Eric Swinney

Counsel failed to call Eric Swinney as a witness. Green informed Counsel Swinney would testify to (inter alia) the guns found in his residence in Bridgeport, CT, were Swinney's. This would have refuted the Government's claims and further cast doubt on the rest of their case against him. They were ineffective in not calling Swinney as a witness. Cf. e.g., Pavel v. Hollins, 261 F.3d 210 (2d Cir. 2001) (attorney's failure to put on a defense and call important fact witnesses was

ineffective assistance). Counsel spoke to Swinney before trial, and he told them the guns were his. Unfortunately, Swinney was killed after Green's trial, so he can no longer be called.

K. Autonomy

There exist other reasons why Trial Counsel was ineffective, and for his argument prejudice should be presumed. There was good reason to challenge Ofc. Sisco's testimony, who was named in no less than six state and federal lawsuits and had several CCRB complaints filed against him like false arrest, and fabricating evidence. Counsels' failure to present and defend Green's complaints that Ofc. Sisco planted the drugs on him likely left the jury to believe that Green did possess the cocaine. Cf. McCoy v. Louisiana, 138 S. Ct. 1500,200 L. Ed. 2d 821 (2018) ("Counsel's admission of a client's guilt over the client's express objection is error structural in kind. Such an admission blocks the defendant's right to make the fundamental choices about his own defense. And the effects of the admission would be immeasurable because a jury would almost certainly be swayed by a lawyer's concession of his client's guilt."). Therefore, prejudice should be presumed. This Court should vacate/reverse all counts and remand the case back to the District Court for a new trial. Cf. McCoy, supra ("Counsel could not admit his client's guilt of a charged crime over the client's intransigent objection to that admission, and violation of a defendant's Sixth Amendment secured autonomy constituted structural error,

warranting a new trial, because the admission blocked the defendant's right to make fundamental choices about his own defense.").

L. Cumulative IAC and Constructive Denial

The errors of Green's attorneys deprived him of a fundamentally fair trial, and this Court should consider these errors in aggregate. (Lindstadt v. Keane, 239 F.3d 191, at *20-21 (2d Cir. 2001)(citing Moore v. Johnson, 194 F.3d 586 619 (5th Cir. 1989)(holding that [the] court should examine [the] cumulative effect of errors committed by counsel across both the trial and sentencing), Caballero v. Keane, 42 F.3d 738 (2d Cir. 1994)(A claim of ineffective assistance can hinge on one allegation or, the cumulative effect of several). These errors were noted by Green and in Counsel's Brief. Although any one of these errors on their own may not be significant enough to warrant a new trial, collectively they do. These errors demonstrate he was constructively denied his right to the effective assistance of counsel.

The actual or constructive denial of the assistance of counsel altogether, whether at the trial level or in a first appeal as of right, is a constitutional error. Restrepo v. Kelly, 178 F.3d 634 (2d Cir. 1999). Constructive denials of counsel include counsel's total or near-total dereliction in representation. id. (United States v. Cronic, 466 U.S. 648,658-59, 80 L.Ed.2d 657 (1984) (A presumption of prejudice applies when counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing[.]"). Green was constructively denied his right to the effective

assistance of counsel due to Trial Counsels' total or near-total dereliction in representation. Although Counsel filed some pretrial motions, half-measures are known to avail nothing.

Quoting appellate Counsel, "Trial Counsel[s'] ineffectiveness is apparent from the record in countless ways." There's plenty of issues with their performance that are not apparent from the record. Green was not only prejudiced by the cumulative impact of these errors, but this serves to give credence to his claims that he was constructively denied his right to the effective assistance of counsel. Cf. Stouffer v. Reynolds, 168 F.3d 1155,1163-64(10th Cir. 1999) ("Taken alone, no one instance establishes deficient representation. Cumulatively, each failure underscores a fundamental lack of formulation and direction in presenting a coherent defense."). Therefore, he argues that a presumption of prejudice should apply here because it's clear he was constructively denied his right to the effective assistance of counsel due to their total or near-total dereliction in representation. If Green needed to show prejudice, he and appellate Counsel have done so throughout their briefs. Nevertheless, if any of Green's convictions are not otherwise vacated or reversed due to the other arguments presented by him and appellate Counsel, he should be discharged or given a new trial. If this Court declines to hear any of Green's IAC claims, he intends on addressing them in a 2255 motion; and, if further development of any of these claims are needed, this Court should remand this case back to the

District Court for further fact-finding proceedings.

III. Green Was Deprived of His Rights to Due Process and Fair Trial Due to Government Misconduct

A. Standard of Review

Reversal is a drastic remedy that courts are generally reluctant to implement, and the appellate court will only do so when a prosecutor's tactics cause substantial prejudice to the defendant and thereby serve to deprive him of his right to a fair trial. United States v. Muzaffar, 714 Fed. Appx. 52 (2d Cir. 2017),United States v. Percoco,13 F.4th 158 (2d Cir. 2021)(A dismissal for purported prosecutorial misconduct, following a conviction, is an extraordinary remedy, but pursuant to the appellate court's supervisory powers, it may dismiss an indictment for prosecutorial misconduct if the grand jury was misled or misinformed, or possibly if there is a history of prosecutorial misconduct, spanning several cases, that is so systematic and pervasive as to raise a substantial and serious question about the fundamental fairness of the process. The appellate court reviews the denial of a motion to dismiss for prosecutorial misconduct de novo). An appellate court reviews unpreserved due process errors under plain error review. United States v. Richards, 667 Fed. Appx. 336 (2d Cir. 2016) (United States v. Campbell, 850 Fed. Appx. 102 (2d Cir. 2021, United States v. Dukes, 727 F.2d 34 (2d Cir. 1984).

B. A Brief Discussion

Prosecutorial misconduct is when a "prosecuting attorney overstep[s] the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense." Berger v. United States, 295 U.S. 78, 84 (1935). To warrant reversal for prosecutorial misconduct, the misconduct "must cause the defendant 'substantial prejudice' by 'so infecting the trial with unfairness as to make the resulting conviction a denial of due process.'" United States v. Elias, 285 F.3d 183, 190 (2d Cir. 2002) (quoting United States v. Shareef, 190 F.3d 71, 78 (2d Cir. 1999).

Green's case, especially his trial, was loaded with Government misconduct. The Government indicted and tried Green using false, fabricated, perjured, inadmissible, and illegally obtained physical evidence and testimony. Good prosecutors with good cases play it straight and have no need to do the things that the Government did here. And they did it because they had no case at all, because Green is actually innocent.

C. The Investigation and Indictment

One of the first attempts by the Government to indict Green came back a No Bill. The Government didn't have a case against him, so they made one (Tr.3403,3441-42). To indict Green, the Government did whatever it took: i.e., they

manipulated the 302's/investigatory notes, coerced and compelled several individuals to cooperate, coerced, and/or compelled those CWs to manipulate the truth and lie. One example is Adams' false allegations of a plot to murder "Showtime". Another is the Government's allegations, mentioned in Agent Snead and Serotta arrest affidavits, (Doc.133), that Johnson ordered Green to supply drugs to BHB members. No evidence offered at trial supported this and it wasn't corroborated by any of the Government's witnesses and the Government should have known this wasn't true. The information they used to secure search and arrest warrants, and the indictment, was based on lies. The government is known to do whatever it takes to secure a conviction[9].

D. The Trial

Green's trial was loaded with fabricated evidence including perjury. The testimony was highly untrustworthy and unbelievable. The Government relied on Adams to make it appear as if Green lived at the Honeywell Complexes and supplied drugs and guns to members of the Gang there. (Id.). Adams was a liar and couldn't

[9] https://www.criminallegalnews.org/news/2020/oct/15/fifth-circuit-reverses-conviction-basedprejudicial-prosecutorial-misconduct/(discussing how the Fifth Circuit reversed Thaddeus Beaulieu's criminal contempt conviction based on the prosecutor's remarks that rose to the level of prejudicial misconduct and how the FBI agent took inaccurate interview (302) notes to create a perjury trap to coerce Beaulieu into testifying (United States v. Beaulieu, 2020 U.S. App. LEXIS 27749 (5th Cir. 2020)) ;https://www.washingtonexaminer.com/opinion/michael-flynn-judgeemmet-sullivan-is-destroying-a-mans-reputation-his-own (discussing the case against Michael Flynn, which was later dismissed, that was loaded with government misconduct, including missing and manipulated FBI FD-302 interview forms, and ineffective assistance of counsel;

keep up with his lies. Adams claimed to have met Green at the Honeywell Complexes, to have received a gun, drugs and to have done third party drug transactions with him there. Adams would later testify that he never saw Green doing any drug transactions; when asked by the Government to identify exactly where Green lived at the Honeywell Complexes, he couldn't (Tr.36263, GX227-28). Adams claimed "Lite" gave O-Dog a bag in exchange for some money, however he didn't know what was inside the bag at this time; further contradicting his testimony; stating he never saw Lite doing hand-to-hand drug transactions (Tr.346,363). His trial testimony also conflicted with notes from his many interviews. After testifying to resupplying with kilos of cocaine and doing all these drug transactions, the Court asked Adams how much a brick (kilo) of cocaine weighed, he responded that "he's not too good with drugs." (Tr.343). Adams testified to getting drugs from "Wheezy" (Tr.345), but later testified that he had never dealt with Wheezy before. (Tr.367-68).

The only evidence the Government produced that Green was a gang member came through testimony of their highly incredible CWs; no two could agree on his role in the gang, contradicting themselves throughout the entire trial. Adams testified Green was once a "low020" but didn't provide a basis for this. Since Adams first met Green in 2011, and claimed that at that time he held the acting GF position; how did it come to be that Green got demoted to a "low 020"? The only evidence of anyone getting demoted was of Adams by Kaid when CW Rosario first came home.

(Tr.2907-09). The Government presented alleged paperwork to the jury (GX170) and tried to have Adams authenticate it, which stated, inter alia, T-Mob was the Godfather of the feds. Nowhere in the listed chain of command of federal prisons did it show Green held any position in BHB while serving his federal prison sentence from 2004-2010.

1. How the Government Framed Green and Evans for a Conspiracy to Murder David Cherry Using CW Adams Who Sought 5k1.1

There were serious issues with and surrounding the Government's seeking to indict and try Green and Evans for allegedly conspiring to murder David Cherry (a/k/a "Showtime"). They concocted more lies, claiming, among other things, that Green and his co-defendants conspired to murder Cherry, and that this was in furtherance of the RICO Conspiracy (Doc.27 (S1 Indictment, Count 1 RICO Conspiracy, Overt Acts). The Government, including investigator SA Stefano "Steve" Barcanni, under form U.S. Attorney Preet Bharara, fed these lies to Green's grand and trial jury. There were several problems with the Government's claims, which were based entirely on the lies of Adams, who lied to seek a 5k1[10]. It was established Adams lied about this and the Government still rewarded him. Green can demonstrate the alleged murder conspiracy never took place. The Government lied

[10] https://innercitypress.com/sdny2bubacarrcamaraicp121119.html discussing Adam's murder of an innocent shopkeeper

about it to meet the elements of their false charges. It was established by the witness who testified after Adams that this was a lie, and by Cherry when he was sentenced. The Government lied to the grand and petit juries, making them believe that the issues between Johnson and Cherry were Gang related; to "advance within the BHB". However, it was over a woman (Tr.229). CW Morton (a/k/a/"Ten Thousand") similarly demonstrated that the Government was complicit in framing Green (Tr.819,852, 1281,1272,1274, GX 14).

> (Tr.1275) COURT: And when you say "mess? Can you tell us what you mean by "mess" with him. WITNESS: Meaning that you have people that would still interact with him, and then you had people that maybe would have seen him and tried to do something. You had people that would talk crap about him and then you had people that, you know, 'said that the situation was personal,' that that was 'between La and Show.' IT was a personal situation. It wasn't really like gang beef.")

CWs testimony supported the falsified charges against Green; Daly testified the supplier of heroin was a Dominican guy (not Green), Jones testified he (not Green) supplied guns to the gang and his supplier was a sanitation worker.

When faced with a motion for new trial for perjury, "[e]ven in a case where perjury clearly has been identified, the court is reluctant to approve the granting of a new trial unless the court can say that the jury probably would have acquitted in the absence of the false testimony. It's only in the rare instance where it can be shown that the prosecution knowingly used false testimony that the court applies a less stringent test and permits the granting of a new trial where the jury might have

acquitted absent the perjury." United States v. Sanchez, 969 F.2d 1409 (2d Cir. 1992). Green's case is unique, and this Court should take a different approach.

It's not just perjury. The Government's pattern of misconduct requires reversal; with the lack of corrective measures taken, and the fact that the case against Green wasn't strong. Cf. Berger v. United States, 79 L.Ed. 1314, 295 U.S. 78,89 (1935) ("we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential. A new trial must be awarded"), id. at 85 ("the situation was one which called for stern rebuke and repressive measures and, perhaps, if those were not successful, for granting of a mistrial. It is impossible to say that the evil influence upon the jury of these acts of misconduct was removed by such mild judicial action as was taken"), and id. ("Improper insinuations and assertations calculated to mislead the jury, in the argument of the prosecution attorney…are ground for setting aside a conviction, where such misconduct was pronounced and persistent, and the case against the defendant was not strong, depending upon the testimony of an alleged accomplice with a long criminal record.").

The Government misconduct in this case permeated the entire proceedings. They used perjured testimony and fabricated evidence to indict, try, and convict Green. One example of this is the fabricated murder plot. (Doc.640 (Trial Counsels' post-trial Rules 29 and 33 motion discussing, inter alia, the elaborate story CW Adams made up about a plot to murder Cherry); A8,Doc.655 (wherein Trial Counsel, in n.1, notes the Government's concession to Adams' perjury, and tries to argue that such did not warrant reversal), Counsel's Brief (also discussing the problems with Adams' testimony, esp. concerning the fabricated murder plot). There were Western Union Charts made by the government and the map(s) (GX 500,236), which the Government had Sisco execute for the jury to show the Traffic Stop occurred near the Honeywell Projects (Tr.2836-37). This map constituted a materially false statement under 18 U.S.C. Sec. 1001 (Under 18 U.S.C.S. Sec. 1001, in the course of a government proceeding, it is a crime (1) to… (2) make a materially false statement, or (3) to make or use a document containing a materially false statement. 18 U. S.C.S. Sec. 1001 (a).

There was a pattern of misconduct at Green's trial. It was loaded with similar unethical and illegal Government practices. The Government repeatedly asked leading questions and questioned their CWs without laying a proper foundation, to control the narrative, and easily present false, fabricated, perjured, and misleading testimony. (Tr.846 ("Let me make a general point, which is that I am not going to

permit questioning which doesn't have any foundation" (Quoting the Court); and Tr.1008 ("[T]his has been…a recurring problem. And so, what I'm going to require from the witness is they can recount some specific conversations they've had with coconspirators. But the amorphous you know, I heard it through the grapevine, those things are not going to happen, that I cannot permit because there's no way to cross that. There's no way to challenge that." Under the Fifth and Fourteenth Amendments' Due Process Clauses, individuals have "the right not to be deprived of liberty…" result of fabrication of evidence by a government officer…" McDonough v. Smith, 898 F.3d 259, *8 (2d Cir. 2018) (quoting Zahrey v. Coffey, 221 F.3d 342,349 (2d Cir. 2000)); United States v. Young, 17 F.3d 1201, 1994 U.S. App. LEXIS 3460,94 Cal. Daily Op. Service 1494, 94 Daily Journal DAR 2681 (9th Cir. 1994) (A conviction based on false evidence, even false evidence presented in good faith, hardly comports with fundamental fairness).

The Government tried to present another false theory, in their motion in limine (MIL), that Green met a drug connection and rose in ranks in the Gang while in federal prison, claiming Green was in federal custody "from the beginning of the charged conspiracy through October 21, 2006[.]" (Doc.469-email exchange between AUSA and probation claiming she didn't have an exact year). This wasn't true. Green was in custody from 2004 until 2010. It may have helped Green had the jury

heard he was in custody those years, and nowhere around the members when the Gang allegedly formed in New York State prison.

The many instances of egregious Government misconduct occurring throughout his case are indicative of the systemic and misconduct that was prevalent in the U.S. Attorney's Office for the Southern District of New York (SDNY) at the time of his indictment and prosecution, under former U.S. Attorney Preet Bharara Cf., e.g., http://www.innercitypress.com/sdny6latique082720.html (stating about this case, "The public has spent much money on this prosecution; the government called it a proceeding of interest. But where are the exhibits? Where is the commitment to notice? What of general deterrence if it comes to that?", and, "The case began with a sealed indictment, signed by Preet Bharara in 2016, alleging the use of a firearm for a drug conspiracy in the Bronx. Preet has moved on, but the trial continues."); https://www.law360.com/articles/1364454/bury-it-inside-a-hiddenevidence-scandal-that-rocked-sdny (discussing hidden evidence scandal the U.S. Attorney's Office for the SDNY); (discussing misdeeds of SDNY's prosecutors, and complaints made by Judge Alison Nathan, in the Ali Sadr case[11]); and https://theappeal.org/nypd-detective-with-a-shady-past-helped-lock-up-a-potdealer-for-federal-conspiracy (Discussing how authorities, led by Preet Bharara,

[11] http://www.forbes.com/sites/walterpavlo/2020/11/16/federal-judge-calls-out-sdny-investigative-practices-not-her-first-time/

charged 120 people with a federal conspiracy. most of whom were poor, black, and Latin men who had grown up in and around public housing. And how one of the defendants who chose to go to trial had a gun planted on him by a cop with shady past, and was forced to defend against the officer's testimony, much like Green and Ofs. Sisco) (United States v. Anilesh Ahuja, No. 18-cr-329 (KPF) CDF Nos. 385, 424 (SDNY Jan. 13, 2021) (noting untrue representation to the court regarding the government communications with a cooperating witness, which were revealed by a defense post-trial FOIA request, and ordering sworn statement on the mater by members of the prosecution team. Out of the 3 AUSAs, only Max Nicholas was involved and AUSA Griswold and Naftalia were not); United States v. Juan Rivera, SDNY 2018 (prosecutor withheld Brady and Giglio materials from the defense. Abigail Kurkland was involved in this case and in Green's case); and, United States v. Robert Pizzaro, No. 17-cr-151 (AJN), ECF No. 135 (SDNY May 17, 2018) (postponing trial in matter handled by AUSAs Jason Swergold, Jessica Ferider, and Jared Lenow, who was also involved in this case, and criticizing prosecutors for delaying production of start of the trial).

All counts should be reversed or vacated, Green given a new trial, and/or his entire case, including his indictment, dismissed with prejudice. Cf. United States v. Hepburn, 86 Fed. Appx. 475 (2d Cir. 2004) ("A new trial is only warranted if a prosecutor's misconduct is of sufficient significance to result in the denial of the

defendant's right to a fair trial. The severity of the misconduct, curative measures, and the certainty of conviction absent the misconduct are all relevant to the inquiry."); and Percoco, supra("[P]ursuant to the appellate court's supervisory powers, it may dismiss an indictment for prosecutorial misconduct if the grand jury was misled or misinformed, or possibly if there is a history of prosecutorial misconduct, spanning several cases, that is so systemic and pervasive as to raise a substantial and serious question about the fundamental fairness of the process.").

E. Conclusion

The Government's tactics in Green's case raise serious questions about the fundamental fairness of the process that resulted in his indictment, conviction, and sentence and the grand and trial jury were misled and misinformed. This Court should vacate/reverse Green's convictions, dismiss his indictment with prejudice, and/or order his immediate release. He cannot receive a fair trial now or at any time in the future, due to the Government's misconduct, thus he cannot be afforded due process of law. Cf. United States v. Banks, 383 F. Supp. 389 (D. SD. 1974), disapproved, United States v. Owen,580 F.2d 365 (9th Cir. 1978) (Under its inherent supervisory power, a federal court is empowered to dismiss an indictment on the basis of government misconduct.). Otherwise, Green contends that he should be given a new tria9sl, and/or released.

IV. The District Court Proceedings, Including Green's Trial Were Fundamentally Flawed, Green was Deprived of His Rights to Due Process, a Fair Trial; and There Was a Complete Breakdown in The Adversarial Process

A. Standard of Review

"A motion for new trial must be granted if the trial was not fair to the moving party. An appellate court must review a district court's denial of a new trial for abuse of discretion." Rivas v. Brattesani, 94 F.3d 802 (2d Cir. 1996). An appellate court reviews unpreserved due process errors under plain error review. United States v. Richards, 667 Fed. Appx. 336 (2d Cir. 2016); (Keeling v. Hars, 809 F.3d 43 (2d Cir. 2015)(An appellate court reviews claims which lacked prior objection for plain error, and will only grant relief if there was: (1) error; (2) that is plain; (3) that affects substantial rights; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.). Plain error is defined as an error so egregious and obvious as to make the trial judge and prosecutor derelict in permitting it, despite the defendant's failure to object. The plain error doctrine is used sparingly when necessary to redress a miscarriage of justice. United States v. Tillem, 906 F.2d 814 (2d Cir. 1990), (Schaafsma v. Morin Vermont Corp., 802 F.2d 629 (2d Cir. 1986) (In the rare case where the record discloses an error that is plain and may result in a miscarriage of justice, the appellate court shall take cognizance of it though timely objection was not made). However, the prohibition "may be relaxed where the

appellant raises an objection to an order which he had no opportunity to raise at the district court level." Wright v. Hanna Steel Corp., 270 F.3d 1336,1342 (11th Cir. 2001). Also, the prohibition does not apply if "the proper resolution [of the issue] is beyond any doubt," or if the issue is one of "general impact or of great public concern." id. Some courts retain broad flexibility to consider newly raised issues "where the interest of substantial justice is at stake." id. Additionally, "a per se rule of reversal applies when a structural error is present at trial, even if the record contains overwhelming evidence of guilt." Peck v. United States, 106 F.3d 450 (2d Cir. 1997). A structural error is a "defect affecting the framework within which the trial proceeds, rather than an error in the trial process itself," so that the process can no longer "reliably serve its function as a vehicle for determination of guilt or innocence." Arizona v. Fulminante, 449 U.S. 279,310,111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991). Structural errors cannot be excused as harmless; rather, "a per se rule of reversal applies when a structural error is present at trial." Peck v. United States, 106 F.3d 450,454 (2d Cir. 1997); accord Daillo v. Spitzer, 343 F.3d 553,559 (2d Cir. 2003).

Analysis of Law and Facts

B. A Brief Discussion

"[T]he Due Process Clause guarantees the fundamental elements of fairness in a criminal trial." Spencer v. Texas, 385 U.S. 554,563-64,87 S.Ct. 648,17 L.Ed.2d

606 (1967). Touchstone of due process is protection of individual against arbitrary action of government. Wolff v. McDonnell, 418 U.S. 539,94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); U.S. Const. amend. V. Green's trial lacked fundamental fairness and he wasn't protected from arbitrary Government action by the Court, or his attorneys, both standing idle while injustice unfolded. His lawyers were ineffective, the Government engaged in misconduct, and the Court didn't hold either of them accountable. He experienced problems with the Court with judicial bias and partiality, and/or the impermissible appearance of such, as well as problems with his court submissions not being timely filed, properly filed, or filed at all to his docket. These issues resulted in a complete breakdown in the adversarial process, and amounted to plain error, plain-structural error, structural error, and/or resulted in a denial of due process, and/or caused so to undermine confidence in the outcome of the proceedings that the results cannot be held to be reliable. These issues are even more troubling because there is real concern that Green is actually innocent.

Green vehemently tried to get his attorneys, especially trial counsel, to challenge the search and arrest warrants, indictment, the inadmissible and illegally obtained evidence, and fight the Government misconduct. They were extremely deficient in their performance. This prejudiced his right to a fair trial. They stipulated to nearly everything, failed to suppress the cocaine from the Traffic Stop, didn't challenge the Court as being the improper venue for the guns allegedly found during

the search of his residence in CT, and for crimes alleged to have occurred there; and, inter alia, they didn't challenge the indictment, call witness(es), nor object to several instances of Government misconduct.

Green realized his only hope of freeing himself from these injustices was to speak up, hoping that if he voiced his concerns to the Court, it would step in and correct the injustice. In addition to speaking up in protest during several conferences, filing several pro se submissions raising the issues he was having with the proceedings, the Government, his attorneys, and his court submissions, Green eventually chose to represent himself.

C. This Court Should Vacate/Reverse Green's Convictions, Dismiss His Indictment, and Order His Immediate Release, or a New Trial

This Court should vacate/reverse all counts, and/or his judgment of conviction and sentence, dismiss his indictment, order his immediate release, and/or a new trial, due to the errors that occurred in the District Court. The District Court proceedings were loaded with plain, plain-structural, structural, Constitutional, and other errors. Although he raised these issues in the District Court, (A8-15,A16-20,A28-45,A8199, Doc.1048), regardless, this Court should intervene because "proper resolution [of the issues are] beyond any doubt," the issues are of "great public concern [,]" and "the interest of substantial justice is at stake." Wright at 1342. Also cf., e.g., Knight v. United States, 213 F.2d 699 (5th Cir.1954)(To avoid manifest

miscarriage of justice, Court of Appeals has power to reverse conviction, notwithstanding fact that no motion for judgment of acquittal was made in trial court.); and, United States v. Tucker, 552 F.2d 202 (7th Cir. 1977), app. after remand, 581 F.2d 602 (7th Cir. 1978)(Failure of appellant to make express prayer for new trial will not prevent Court of Appeals ordering reversal and remand where justice so requires).

The District Court didn't just err by failing to order a new trial but stood idle while knowing the Government fabricated evidence and suborning perjured and false testimony and evidence during trial. The Court admitted to reviewing the 3500 materials in this case (Tr.2961), which included Ofc. Sisco 3500 materials. Therefore, the District Court knew the Government was suborning perjured testimony and presenting fabricated or otherwise false evidence to the jury to try and tie the Traffic Stop to the Honeywell Complexes.

Green was subjected to severe Government misconduct and grossly deficient legal representation. The errors of his Trial Counsel alone led to a fundamentally unfair and structurally unsound trial, compounded by other problems. Ergo, he contends the District Court proceedings were anything but fair. It can't be said with confidence that the result of these proceedings were reliable.

A defendant has a due process right to a trial process in which the truth-seeking function has not been corrupted. State v. Lotter, 771 N.W.2d 551 (Neb.),

cert. den. 526 U.S. 1162 (2009). Moreover, "society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." Brady v. Maryland, 373 U.S. 83 (1963). Green contends that the interest of substantial justice is at stake and these issues are of great public concern. The problems that occurred here were many, and involved errors committed by the Government, District Court, and even his own legal counsel. This is a situation that calls for stern rebuke. This Court should intervene and correct these injustices, issue an opinion to let society, and everyone know, the Government included, that such conduct will not be tolerated in the future[12].

1. Cumulative Errors and a Complete Breakdown

This issue is being submitted in conjunction Counsel's brief submitted in this appeal and he fully adopts and incorporates all the information submitted in. That information is relevant when considering the issues and arguments raised herein. This Court should vacate his convictions due to the cumulative effect of errors discussed throughout his and Counsel's briefs. The "cumulative unfairness" doctrine is firmly embedded in these Circuits precedents. e.g., United States v. Gugliemini,

[12] https://www.pewresearch.org/politics/2020/09/14/americans-views-of-government-lowtrust-but-some-positive-performance-ratings/(For years, public trust in the federal government has hovered at near-record lows. That remains the case today[.]"); and https://www.pewresearch.org/politics/2022/06/06/public-trust-in-government-1958-2022/("Public trust in government remains low, as it has for much of the 21st century.").

384 F.2d 602,607 (2d Cir.1967) (holding that, even though not "any one of the errors committed during the trial would have required reversal of the convictions," "the total effect of the errors we have found would cast such a serious doubt on the fairness of the trial that the convictions must be reversed.") Green's convictions should be vacated under the "cumulative unfairness" doctrine. The errors serve to give credence to his claims there was a complete breakdown in the adversarial process. Cf. Cronic, 466 U.S. at 662.

V. The Evidence Was Insufficient to Support Any of Green's Convictions

A. Standard of Review

Sufficiency-of-the-evidence claims are reviewed de novo. United States v. Hassan, 578 F.3d 108,122 (2d Cir. 2008).

Analysis of Law and Facts

B. Some Relevant Law

A defendant challenging a jury's guilty verdict bears a heavy burden…because, in evaluating a sufficiency challenge, [this Court] must view the evidence in the light most favorable to the government, crediting every inference that could have been drawn in the government's favor, and deferring to the jury's assessment of witness credibility and its assessment of the weight of the evidence." United States v. Pauling, 924 F.3d 649,656 (2d Cir. 2019). But the "heavy burden is not an impossible one." United States v. Jones, 393 F.3d 107,111 (2d Cir. 2004).

Reversal is required if no rational jury "could have found the essential elements of the crime beyond a reasonable doubt." United States v. Snow,462 F.3d 55,61-62(2d Cir.2006).

1. The Evidence Was Insufficient to Support Green's Sec. 924(c) Conviction

This argument was thoroughly presented by Green's appellate Counsel.

2. The Evidence Was Insufficient to Support Green's RICO, Sec.846 Convictions

The Government's RICO and Sec. 846 counts were based on a single alleged possession of cocaine and the unreliable, severely contradictory testimony of the CWs. When Green was alleged to have been in possession of that cocaine, in August of 2010, it wasn't shown that he or the other passengers were members of the Gang, nor engaged in any drug trafficking conspiracy. No nexus showed when or whether Green ever joined the Gang or had any real status. Green was never shown to have a tracking number (Tr.423).

Regarding the Elmira drug conspiracy, evidence corroborated Green's claims he had nothing to do with this (GX500). It was a "Greyhound" operation in Harlem (Tr.2985). No evidence attributed Green as the primary narcotics supplier for the Elmira drug conspiracy. CWs Rosario and Daly testified to all who were a part of this conspiracy and they never stated Green or Lite were involved (Tr.__) Testimony of the CWs demonstrated they received their drugs from various sources

(Tr.345,367-68,873,2639,2655,2606-07,2991,3002,3005). CW Morton testified that he supplied heroin to O-dog (Tr.1016). CW Rosario testified the marijuana they sold in Elmira came from a person in the Bronx he was introduced to by a Greyhound member, named Mace (Tr.3005). The only witness to testify that Green provided cocaine for the Elmira operation was CW Adams. However,
Rosario's testimony contradicted this, testifying that Greyhound member Wheezy supplied all the cocaine in Elmira. (Tr.342-43,361).

Rosario testified he never saw a drug transaction between Lite and O-Dog or that Lite sent someone to sell him heroin. He testified he went up to Elmira because the greyhounds in Harlem didn't have anything going on, so he went up there to help O-Dog out. (Tr.2975-76,2986,3002-06), Rosario and Morton testified the heroin they bought was already cut (Tr.2999), Daly testified that cut was used to dilute the drugs and add more weight to it (Tr.856,2665,2999), the AUSA illicit from Daly he saw heroin coming into his home twice a week (Tr.2606-07); Daly testified he never kept count of crack he sold or remember seeing the hounds weigh the cocaine.

The CWs who claimed to be involved in the Elmira operation contradicted each other countless times, befuddling important details. CWs who claimed to have been substantially involved in the operation could not identify the trailer they claimed to operate out of. Adams tried to make it appear like he was more involved than he was; however, it was proved he was only in Elmira for a couple of weeks at

most; lying about his reasons for going there in the first place (Tr.351,2814). Adams claimed he purchased kilos of cocaine during this short period of time. When asked by the Court how much those kilograms weighed, he couldn't, claiming he was "not too good with drugs." (Tr.339-40). This contradicted Adams' claims that the drugs they purchased were stored on their person. (Tr.340). Several CWs claimed to be the ones who drove to NYC to purchase the drugs; however, they contradicted each other regarding who or where the drugs came from, and what those drugs were. (Tr.343-45,2592,2606-07,2624,2628,2628,2814,3002-03). Rosario's testimony contradicted Adams' testimony, when he testified to Adams never coming along. (Tr.3091). Rosario testified that he participated in the Elmira operation from around November 2012 to January 2013; however, CW Daly testified to only seeing Rosario in Elmira for 2-3 weeks (Tr.2771-72). Daly also testified that the heroin resupplies came from a Dominican guy, and the Gang (in Elmira) didn't like to get cocaine. This contradicted the testimony of CWs Adams and Rosario. Daly testified to making numerous trips to New York City for resupply of drugs and stated that he made those trips mostly with Greyhound member Mace, G (who is O-Dog) [13], to Harlem; never mentioning CW Adams or Rosario as being involved. (Tr.260607,2814,2624-25).

[13] Daly testified he made sure all firearms in his apartment belonging to this group of people were unloaded. (Tr.2628).

The Government's RICO and Sec. 846 case against Green was insufficient to support his convictions. To prove any conspiracy, the Government "must show more than evidence of a general cognizance of criminal activity, suspicious circumstances, or mere association with others engaged in criminal activity." United States v. Ogando, 547 F.3d 102,107 (2d Cir. 2008), (United States v. Nusraty, 867 F.2d 759,764 (2d Cir. 1989) (providing that "mere presence is not enough to prove knowing conspiratorial agreement" and that "mere association with those implicated in an unlawful undertaking is not enough to prove involvement"). To "prove RICO conspiracy the government must prove that the defendant agreed with others to participate in the conduct of the affairs of the enterprise and that the affairs of the enterprise would include the acts charged as predicate acts of racketeering." United States v. Laurent, 33 F.4th 63,82 (2d Cir. 2022), (United States v. Zemlyansky, 908 F.3d 1, 11 (2d Cir. 2018) ("RICO conspiracy requires proof: (a) of an agreement to join a racketeering scheme, (b) of the defendant's knowing engagement in the scheme with the intent that its overall goals be effectuated, and (c) that the scheme involved, or by agreement between any members of the conspiracy was intended to involve, two or more predicate acts of racketeering."). With respect to a Sec. 846 conspiracy, the Government must prove that (1) the defendant knew of, and intentionally joined and participated in, the drug scheme charged, and (2) the "drug

type and quantity charged" were "known or reasonably foreseeable" to him. United States v. Santos, 541 F.3d 63, 70-21 (2d Cir. 2008).

Although the evidence showed Green did know or otherwise associate with some of the members of the Gang, the evidence did not sufficiently prove that he is guilty of the RICO and Sec. 846 Counts. The physical evidence against Green provided a far from sufficient basis from which a rational jury could find that he was guilty of the RICO or Sec. 846 Counts. The evidence was insufficient to support the findings of drug amounts made by the jury, especially considering the lack of physical evidence, and problems with the testimony of the CWs. The most damaging physical evidence was the cocaine alleged to have been found in August 2010. But it was not shown that Green or any of the other vehicle passengers were members of the Gang at that time, nor engaged in narcotics trafficking. The evidence allegedly found at his residence following his arrest in 2017 was found after the charged conspiracies ended. Other than the scant physical evidence, all that remains is the unreliable and severely contradictory evidence of the Governments CWs. That testimony corroborates Green's claims that he is innocent of these charged offenses and that the evidence is legally insufficient. The issues with Adams' testimony should be viewed in a different light given the proof that he lied on several occasions, especially in his attempts to frame Green for conspiring to murder Showtime. If Adams has no problems framing Green for murder, then it's likely he had no

problems framing him for a RICO and Sec. 846 conspiracy. Adams and the rest of the CWs were trying to save themselves. That's what the Government's case consisted of and there was nothing here other than speculation, at best, and that's not enough. Cf. Pauling at 656 ("[T]he Government must do more than introduce evidence at least as consistent with innocence as with guilt."), United States v. Jones, 393 F.3d 107, 111 (2d Cir. 2004)("While we defer to a jury's assessments with respect to credibility, conflicting testimony, and the jury's choice of the competing inferences that can be drawn from the evidence, specious inferences are not indulged."). In fact, this Court "may not credit inferences within the realm of possibility when those inferences are unreasonable." Pauling, 924 F.3d at 656-57.

Because the evidence was insufficient on all counts this Court should vacate Green's convictions and direct the District Court to enter a judgment of acquittal on those counts. If for any reason this Court finds sufficient evidence for the RICO and/or Sec. 846 Counts, then there was insufficient evidence to support the special verdict of the jury determining the quantity of drugs involved. Accordingly, then, this Court should vacate the jury's findings regarding such, and Green's sentence(s), and remand his case back to the District Court for resentencing under the lowest possible drug quantities and under the correct base offense level and guidelines range.

CONCLUSION

Green's convictions should be reversed/vacated, the case/indictment against him dismissed with prejudice, and/or he should be retried within 60 days or released; and/or, his convictions should be vacated, and the District Court to enter a judgment of acquittal, and/or to resentence him; and/or his convictions and/or sentence should be vacated, and his case remanded back to the District Court for further factfinding, and development of his post-conviction claims of IAC and Government misconduct; and/or this Court should reverse/vacate Green's judgment of conviction and sentence, reassign his case to a different judge, and/or remand the case back to the District Court to the time of Green's filing of his recusal pleadings. In any event if Green's case is remanded back to the District Court, the Case should be reassigned to a different Judge.

Respectfully Submitted,

_____x

Brandon Green 564-00054 Pro Se Appellant

CERTIFICATE OF COMPLIANCE

This document complies with the Court's Order in this case (Document 179) by limiting it to 14,000 words and does not incorporate any reference filings from any other appeals.