21-1896-cr(L),

21-1923-cr(CON)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-V-

BRAOND GREEN, Pro Se,

Defendant, Appellant.

_____

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

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 STATEMENTS

A. Nomenclature

Herein this Suppl. Brief the following terms and words have the following meanings:

- "Trial Counsel/Counsel": collectively refers to Green's trial attorneys, Eric R. Breslin and Melissa S. Geller; when referring to all of Green's various lawyers he had throughout the District Court proceedings, to include his Trial Counsel, he will refer to them collectively as his "attorneys" or "lawyers".
- "District Court": refers to the United States District Court for the Southern District of New York.
- "Judge": refers to the Hon. District Court judge, Paul G. Gardephe, who presided over Green's trial.
- "Government": collectively refers to the investigatory and prosecuting United States Attorneys who worked on this case.
- "Cooperating Witness (CW)": refers to a witness who offers information to the Government, to include testimony at trial, as part of a plea agreement, and in exchange for some type of benefit, most often a 5k1.1 letter from the Government (in hopes of a reduced sentence, among other benefits). Also termed "incentivized witness."

B. Green's Briefs

This Suppl. Brief is being submitted in conjunction with Green's Pro Se Brief filed in Case No. 21-2244 and his Counsel's Brief submitted in this case. Green fully adopts and incorporates herein all the information submitted in those other briefs. That information is relevant when considering the issues and arguments raised

herein. Through these briefs Green intends to establish, inter alia, that he was treated unfairly, that the District Court proceedings were fundamentally flawed, and, that there was a complete breakdown in the adversarial process. He will show how the evidence against him was insufficient, he's actually innocent and his wrongful convictions and sentence is the result of the Government engaging in several acts of misconduct, failure of his attorneys to perform effectively, and the District Court's refusal to hold either of them accountable, or otherwise to recuse or review Green's complaints about all of this prior to sentencing him. These are serious allegations, but they are (for the most part), supported by the record.[1] Green prays that this Court will intervene and correct this miscarriage of justice.

STATEMENT OF JURISDICTION

Green fully adopts and incorporates herein by reference the jurisdictional statements made by him in his Pro Se Brief, and his lawyer in Counsel's Brief. Where reasons discussed herein and in Counsel's Brief, Green submits that the District Court did not have jurisdiction, and or wasn't the appropriate venue, for any

[1] When Green states that his claims are for the most part supported by the record, he's referring to some of his claims which would normally require an evidentiary hearing, such as his claims that his attorneys were ineffective for not calling certain witnesses, or for not timely offering plea offers. Green has submitted claims in to help support his overall contentions that he was constructively denied his right to effective assistance of counsel and that there was a complete breakdown in the adversarial process.

wrongdoings alleged to have been committed by him in the district of Connecticut (where he was arrested).

ISSUES PRESENTED

I. Whether the District Court erred in denying Green's motion to suppress the 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 District Court should have been recused and or assigned the case to a different judge.

III. Whether the District Court should have reviewed Green's ineffective assistance of counsel and other post-conviction claims prior to sentencing him.

IV. 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.

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

VI. 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.

VII. Whether the issues, and the prejudices Green suffered from the issues, raised by Green and his Counsel in their briefs, Green was deprived of a fundamentally fair trial; whether such resulted in a complete breakdown in the adversarial process; and, whether such was and or resulted in plain, plain-structural, and or structural errors, which undermined confidence in the outcome of the proceedings to the point warranting this court to intervene.

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

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

STATEMENT OF CASE AND FACTS

A. Brief Discussion

It's presumed this Court has an adequate understanding of Green's case based upon its review of Counsel's Brief and his Pro Se Brief. The following therefore is limited to the information deemed necessary for an adequate understanding of the issues and arguments presented herein. When convenient, he will refer to Counsel's

Brief and his Pro Se Brief when a sufficient understanding of information being discussed can be achieved from review of the same for efficiency.

B. The Indictment

Green was charged with three counts in a multi-count indictment. As discussed in his Pro Se Brief, the Government tried to indict him before, and wasn't successful. Later they succeeded in first indicting the head of the indictment, Latique Johnson, on his own, before later indicting Green and nearly a dozen others, superseding that indictment several times. (Pro Se Brief at 7-8, Counsel's Brief, and Doc.27 (S1 Indictment). The indictment charged Green with three counts; Count One charged him with a RICO Conspiracy under 18 U.S.C. Sec. 1962(d); Count Four charged him with a Narcotics Conspiracy under 21 U.S.C. Sec. 846; and Count Five charged him with a Firearms Offense under 18 U.S.C. Sec. 924(c)(1)(A). Doc 418. Green's indictment was premised upon fabricated, false, and manipulated information; based upon the Government's "investigation", including their notes which the agents took, and they testified to, which conflicted with the actual testimony and statements given by those witnesses, and it was also based upon the lies of the Government's witnesses.

C. Synopsis of the Government's "Case" Against Green

Green and several others were indicted for racketeering and related offenses for their alleged involvement with a gang known as the Blood Hound Brims

(hereafter the "BHB" or the "Gang"). Green maintains that he's not now, nor has he ever been a member of this or any gang and has documentation showing this. (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). The BHB was alleged to have been founded by the head of the indictment, Latique Johnson (a/k/a "La Brim"), in 2005[2] while incarcerated at Attica Correctional Facility, in New York. See United States v. Johnson, et al., 2019 U.S. Dist. LEXIS 160088, *5 (S.D.N.Y. 2019) (hereafter "Johnson II") (Mem. Op. & Order addressing the motions for new trial and judgment of acquittal filed by the trial defendants). Of the near dozen indicted, only Green, Johnson, and Donnell Murray a/k/a "Don P", elected to go to trial.

The Government claimed Green was a member of BHB, at times held leadership positions, supplied guns to members of the Gang, and that he was the primary supplier of drugs for the Gang, allegedly heroin for the operations in Elmira and elsewhere in up-state New York, and that he lived at and operated out of the Honeywell Complexes (otherwise known as the Honeywell Projects), located in the Bronx. This conspiracy was based almost entirely upon the highly questionable

[2] CW Morton testified that pedigrees were not a part of the Blood Hound Brims. (Tr. 806, 839, 856, 873, 885, 1016).

testimony of CWs and NYPD officers with checkered pasts and illegally obtained and otherwise inadmissible and highly prejudicial and fabricated evidence.

Following a five-week trial, ending on March 27, 2019, Green was convicted on all counts. Moreover, concerning the RICO Conspiracy, the jury found that Green had committed at least two predicate offenses that constitute a "crime of violence." However, the jury concluded that the Government had not proven beyond a reasonable doubt that "the pattern of racketeering activity that [Green] agreed would be committed involved [1] attempted murder or conspiracy to commit murder . . . [or] [2] robbery, attempted robbery, or conspiracy to commit robbery under either Federal or New York law." Doc.570.

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

Green's Trial Counsel submitted a motion for judgment of acquittal and a new trial. (Doc.639). He asked them several times before filing this to meet with him and go over the issues and arguments that he wanted raised, and to review what it was that they intended on filing. Trial Counsel never met with him before filing this and he was unable to review it until after it was sent by mail. When he was finally able to review it, he wasn’t happy. They failed to incorporate all his issues and still failed to address arguments that he'd request be raised before the trial started. Green had been adamant and vocal to his counsel they argue the Government shouldn’t have been able to utilize his dismissed and sealed August 3, 2010, New York state arrest,

and, inter alia, they seek to suppress the evidence associated with such as being obtained in violation of his Fourth Amendment protections against unreasonable searches and seizures. Green wrote counsel requesting they ask the District Court for a stay to go over and correct issues with their post-trial motions. However, Trial Counsel wrote back to him stating that, "*no one is giving you a stay* "and "*there is no such thing as a stay.*" (A6-7). Green then wrote the District Court several documents to complain about Trial Counsels' post-trial motions and to request a stay and or continuance so that these issues could be addressed and rectified. (A8-15, A16-20, A21-25, Pro Se Brief at 11-13).

Not long after, on July 25, 2019, Green and his family decided to hire Zoe Dolan out of California to replace Trial Counsel. Then, in September 2019 the District 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. (See Johnson II, Pro Se Brief at 43-33). The District Court only addressed "some" of Green's complaints raised in his Suppl. Decl. Ms. Dolan later moved the District Court to reconsider its denial of Green's and his attorneys' post-trial submissions, (Doc.746), but that was also denied.

In Ms. Dolan's reconsideration motion, she focused primarily on the RICO Conspiracy charged in Count One of the indictments. (Doc.746). She also 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." (Quoting id.). 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 even mentioned the problems with the Government's case, ineffective assistance of counsel, the incredible witness testimony, both by the Government cooperating and law enforcement witnesses, and, inter alia, the weakness of the Government's case. (See 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, as Trial Counsel, Ms. Dolan didn't address the full extent of the issues he wanted to be raised.

Green informed Ms. Dolan about his complaints with the District Court proceedings, including the Government misconduct, and his attorney's performance. He also informed her that he wanted her to address these issues prior to sentencing and she responded several times by telling Green that his complaints, especially those against his Trial Counsel, were issues that should be raised in a motion for post-conviction relief, under 28 U.S.C.Sec.2255. (A26-27). Nevertheless, Ms. Dolan informed Green that if he wanted to, he could address the issues to the District Court himself prior to or at sentencing.

Therefore, before Green's sentencing date he submitted a pro se sentencing memorandum to voice his concerns and raise issues regarding the District Court proceedings, his trial, the performance of his lawyers, and misconduct of the Government. (A28-45, Doc.760). In response, the District Court postponed Green's original sentencing, where the court conducted a conference, and treated the sentencing memorandum as a motion for new trial and judgment of acquittal. (Oct. 31, 2019, Status Conf. Tr. at 2, 8-9, Pro Se Brief at 13-15). But the District Court never reviewed or further inquired into Green's claims raised in his sentencing memorandum, other pro se submissions, and throughout various court proceedings, before sentencing him.

E. Green's Arrest & The Illegal Search of His Residence

On May 16, 2017, Green was arrested at the two-story townhouse in Bridgeport, CT, where he was living with Jennifer Turcios. That morning agents illegally stopped Ms. Turcios in her vehicle around the corner from the apartment. Some of the agents claimed they pulled her over because she was acting suspiciously. They said she had left the apartment and came back twice. However, the agent that was closest to the apartment that morning stated this is not what happened. These armed agents held her on the side of the road, where she wasn’t free to leave and took her house keys, identification, and cell phone. This was

discussed at the suppression hearing held on June 18, 2018, and the suppression pleadings filed by Green's Trial Counsel. (Doc.243,244).

Not long after agents seized Ms. Turcios, they made it to the apartment. Within seconds Green was arrested on the first floor, about 15 feet from the front door. In fact, most of the agents did not even make it into the apartment before he surrendered. As Agent Kushi testified,

> "I didn't physically enter the apartment at the time. I know that when we slowly made entry into the apartment, Brandon Green was seen coming down the stairwell towards law enforcement commands." (Supp. Hr'g Tr. at 203:1-4), "…. I'm sorry. We made entry into the apartment, but we didn't physically go further into the apartment because we could physically see Brandon Green coming towards the front door of the residence." (Supp. Hr'g Tr. at 203:8-11). "A few of us actually made further entry into the apartment and met Brandon Green at a halfway point into the apartment in kind of the living room/kitchen area, and he was taken into custody." (Supp. Hr'g Tr. at 203:13-16).

Agents first made sure to secure Green in handcuffs and shackles. (Id. at 205). Only after he was secure did they begin their purported "protective sweep." (Id.) They kept him handcuffed and shackled in the apartment while they conducted this search. About five to ten minutes later, Agent Masterson heard, from the loft space, that guns had been found. (Id. at 360:6-9).

The agents also found U.S. Currency totaling $2,000. No evidence was offered by the Government as to exactly where the cash was seized (albeit the Government claimed that it was located near some loaded firearms, (there was no

pictures or other proof of this), or where the rest of the items were found: i.e., whether those items were discovered during the "protective sweep", and or after Ms. Turcios gave consent (which Green maintains wasn't voluntary).

F. Trial Counsel's attempt to Suppress the Evidence Illegally Obtained from the Search of Green's Residence, and the District Court's Denial

On February 19, 2018, Green's Trial Counsel submitted a motion to suppress the evidence illegally obtained from the search of the residence in Bridgeport, CT. (Doc.243). Subsequently, a hearing was held where the agents involved in the search testified, as well as Ms. Turcios. After the suppression hearing the District Court ordered a post-hearing briefing on Green's motion to suppress. (Doc.327). In response, Counsel filed a memorandum in support of their motion to suppress, (Doc.336); and later filed a reply memorandum of law in support of the same. (Doc.361). In these pleadings, Trial Counsel maintained that the Government failed to meet its burden to establish the existence of a valid exception to the warrant requirement (namely, that the agents warrantless search was not a valid protective sweep), that the protective sweep (if it was one) extended far longer than was necessary to effect the arrest and withdraw, and, inter alia, that Turcios' consent was invalid. (Docs.243,244,336,361). However, Green submits that his Trial Counsel didn't address or otherwise challenge everything associated with the illegal stop of Ms. Turcios, the illegal entry, search, and seizure of his residence. For instance, they

didn't argue that the agents lied about allegedly finding the money near loaded cartridges and guns, lied about why they pulled over Ms. Turcios, and lied about the unidentified paid confidential informant they allegedly used to obtain Green's cell phone number. (A28-45)

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

Green went through four sets of lawyers in this case before electing to proceed pro se. Nearly all these attorneys, before his trial and even after it was over, attempted to persuade him to cooperate with the Government. The Government made clear to him through his lawyers that it wasn't him they were after, but Johnson who they wanted, and that Green was simply collateral damage. (Pro Se Brief at 7-9). Green's attorneys didn't contest his complaints that he was being wrongfully and illegally prosecuted; but instead tried to get him to take part in the Government's misconduct by falsely testifying against Johnson and the others. However, he refused to do this, electing to go to trial.

Green submits in addition to all the other illegal and questionable tactics used by the government in this case to get him to take a plea deal and cooperate, to punish him for not doing so, and for going to trial, they also harassed him and his family throughout the District Court proceedings. For instance, Green was constantly targeted and harassed by Bureau of Prisons staff; and this was confirmed by the staff members who personally told Green they were after him. Also, Jameelah Branch,

the mother of Mr. Green's daughter, was employed by the NYPD for almost a decade, 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 (PSR). Similarly, 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 questionable and illegal tactics used by Green's attorneys and the government to try and get him to take a plea deal and cooperate. Afterwards, she was called downtown to AT&T headquarters and fired from her senior position.

H. Green's Entertainment Company and Alleged Gang Involvement

First and foremost, Green submits that he's not now nor has ever been a member of the BHB or any gang (A1-5). Green *is* an entrepreneur; he owns an entertainment company which does, among other things, music production; and "[h]is primary customers are those in the hip-hop music scene." (Pro Se Brief at 7). Through his business he came to do work for, and to that extent associate with, a couple of individuals also indicted in this case, including Johnson. He knew Michael Evans, but other than that he was not in a gang with any of these people, he just knew them. And this resulted in him being indicted in this "gang" case.

Green submits the only evidence produced by the Government suggesting he was a member of BHB came through testimony of their highly incredible CWs; and no two CWs could agree on Green's role in the Gang, contradicting themselves and

each other throughout the entire course of trial. For instance, CW Michael Adams testified Green was the acting godfather (GF) when he first met him around 2011. (Tr.168,174). Adams testified he first met Green when he was introduced to him by Johnson, days after Johnson was released from state prison. (Tr.172-73,227-28,363). However, Green couldn't be the acting GF around that time, if the undisputed GF, Johnson, made the initial introduction. (Tr.168,1019,1268-69). That's because the only time an acting GF would be appointed is if the actual GF was incarcerated. Adams also testified that Green was once a “low020” but didn’t provide a basis for this. Being that Adams first meet 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 CW Adams by Kaid when CW Rosario first came home. (Tr.2907-09). The Government showed alleged paperwork to the jury, (GX 170), and had Adams authenticate it, which stated, inter alia, allegedly T-Mob was the GF of the feds, but nowhere in the listed chain of command of federal prisons does it show Green held any position in BHB while he served his federal sentence from 2004-2010. That's because Green was not a member of the Gang, ever.

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

As noted by the District 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 also testimony by CW Adams that Green would supply him with cocaine. (Tr361-62); and gave him some cocaine and a "little black . . . handgun" at the direction of Johnson after his release from prison in 2011. (Tr.173,174) (however this testimony conflicted with Adams' earlier statements made during proffer sessions). CW Morton testified to buying heroin from Evans between 2009 and 2011. (Tr.854-55,884-85 (Morton)); also see Johnson II at *43). Evans never told where the drugs came from, Morton alleged to have heard rumors about where the drugs come from. (Tr.854-56,884-85). The only evidence concerning Green and drugs was text messages allegedly discussing a marijuana deal in or around 2017. (Tr.2569,2574-75,2578, GX600A,601A); and testimony from Ofc. Sisco, concerning some cocaine he claimed to have recovered from Green during a traffic stop that occurred on August 3, 2010, approximately $1,980.00 was recovered from Evans who was also a passenger in the vehicle. (Tr.2845, 2864,2884; GX 141 (cocaine))[3]. There wasn't

[3] Sisco testified that the alleged cocaine seized from Green that was put inside of a narco envelope marked as GX141, wasn’t in the same or substantially not in the same conditions as when he recovered it, back in 2010. (Q. Detective Sisco, I'm handing up to you what's been marked as

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.)

Furthermore, of the Government CWs who testified to being introduced to Green, none of them said they were introduced to him as being a drug dealer or supplier of any kind. (See, e.g., Tr.1158 (CW Morton testifying to being introduced to Green by David Cherry); Tr.168-174 (CW Adams testifying to being introduced to Green by Johnson). Morton testified that he was told by other gang members, Cherry, other hounds that this connect supplied Evans and Light with drugs; there was no evidence of who this person was.

> “THE COURT: Did you ever have a conversation with Puff in which he told you where he got heroin from? THE WITNESS: No. A: The word I got is Light been somewhere and he ended up meeting the connect, the drugs come from him and Light sells them and Puff sells them.”

(Tr.856). It was Morton who testified that he got his heroin from whoever had the best at the time, or whoever had it then and there. (Tr.880-82). He also testified to supplying several Gang members with heroin, including Donnell Murray a/k/a Don

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Government Exhibit 141. Do you recognize that? A.Yes, I do. Q. What is it? A. It's a narco envelope containing the narcotic found on Brandon Green.) (Q. "It is" in the same or substantially the same conditions as when you recovered them? A. No); (Tr. 8274-80).

P (Tr.873), BHB members selling drugs in Binghamton, NY (Tr.885), the Mount Vernon Pedigree, and Saeed Kaid a/k/a O-Dog. (Tr.1016)

J. The Traffic Stop

On August 3, 2010, Green and Michael Evans were passengers in a car driven by Crystal Williams. The vehicle was pulled over at the Northeast corner of Monterey Ave. and 180th Street in the Bronx. (A57, NYPD Omniform/Sisco 3500 material (3516-04,28362839-40). Several minutes after the car was stopped more NYPD officers arrived, and Ofc. Jeffery Sisco approached the car and asked Green to step out of the vehicle. (Tr.2840). During this traffic stop (hereafter the "Traffic Stop") an altercation ensued after Green was harassed by the NYPD officers, and these officers ended up excessively beating him. (Tr.2843). While this was taking place a crowd of people began to form and started throwing bottles and yelling at the officers. (Tr.2843). This caused them to stop beating Green and place him in the back of the patrol car. An officer then came, opened the door, and maced Green while he was handcuffed in the back of the car. Because of Green's injuries he was later hospitalized. It wasn't until later that he discovered they were charging him for allegedly possessing cocaine. But this wasn't true, he never possessed anything illegal that day, including cocaine.

On February 18, 2011, the case against Green stemming from the Traffic Stop was dismissed, and all pending charges related to such were also dismissed, by the

Honorable Judge Greenberg, E., of the Bronx County Supreme Court. (Certificate of Disposition (A58)). From review of the Disposition, 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.' Additionally, "pursuant to Section 160.50 (1C) of the Criminal Procedure Law, all official records and papers relating to [the Traffic Stop were] sealed."

In connection with Green being wrongfully and excessively beaten by the NYPD, to include Ofc. Sisco, and due to the violations of his rights that occurred during that Traffic Stop, he and several others filed complaints, and he sued Sisco and the NYPD. (Tr.2843). Green ended up winning, represented by his attorney, Peter Ridge, settling out of court for around $30,000. Most importantly, when the Traffic Stop occurred, none of the vehicle's occupants, including Green, were members of the BHB. Ms. Williams was not, Green was not, and Evans was not, nor did the trial evidence prove otherwise. In fact, Evans swore in two separate affidavits stating, inter alia, that he stopped being a member of the Gang in 2009; and that Green did not possess any drugs during the stop. (A59, A60-62).

Prior to trial, Green informed his Counsel of the circumstances surrounding the Traffic Stop. He also informed them of the civil lawsuit and provided them with the name of his civil attorney, Peter Ridge. He maintained his rights were severely violated that day, the officers involved illegally seized and searched him, badly beat him, and planted cocaine on him to try and cover up their wrongdoings. (See Tr.2843 ("[I]n the lawsuit that arose out of this case is Green's allegation and there was a companion CCRB complaint by both Mr. Green and the driver of the car that . . . what happened [is] . . . that they grabbed him, they threw him to the ground, they kicked him. There was a crowd of people. They were throwing bottles." (Ms. Geller) (explaining how Green and the driver of the vehicle refuted what was alleged by the NYPD to have occurred that day). Green informed Trial Counsel that the Traffic Stop was dismissed and sealed, and they could locate the Disposition to support this. He also informed them that he wanted them to challenge the Government's use of the Traffic Stop, how they obtained and used these sealed records, and asked them to move to challenge the evidence associated with such as being illegally obtained (though he did tell them it was planted on him, nevertheless, he asked, if need be, to challenge it that way). He made it clear to them he wanted to challenge everything, and that he would not waive any of his rights.

In response counsel told Green they were unable to locate the Disposition and records associated with such. Also, they told the Court this at the start of the trial.

(Tr.19 ("As to the August 2010 arrest . . .. we're having a lot of difficulty getting, because the records are sealed, getting sufficient information, but no underlying reasons." Trial Counsel went on to claim the records were in storage somewhere upstate. (Id. ("They're in like storage . . .."; in response to the District Court stating,"[s]o I need to understand more than I do now about the circumstances of Mr. Green's arrest on August 2010[.]" (Tr.18). This occurred at the start of the trial when the District Court and Counsel were discussing the Traffic Stop, and what may and may not be admissible or otherwise permissible for the purpose of cross-examination. (Tr.17-27). Trial Counsel said several times they would submit a letter to the court regarding this (Tr.19,26,27). However, they never did this, admitting later to having completely forgotten about it. (Tr.1162 ("I may have lost track of this issue, your Honor . . .." However, review of several letters filed by Trial Counsel in the months preceding trial, and emails between the Government, show that Counsel actually had plenty of information about the Traffic Stop, to include the Disposition, sealed arrest report, and a partial file from Green's civil attorney who handled Ms. William's and Green's lawsuit against Sisco and the NYPD. (Docs. 491,502,521, and 522; also see (A63) (email between Trial Counsel and the Government showing that they had, inter alia, the Disposition from the Traffic Stop). This information provided a sufficient basis to justify Trial Counsel filing a motion to suppress the cocaine alleged to have been recovered from Green during the Traffic Stop. Ms.

Geller stated Ofc. Sisco had admitted in the civil depositions that Green did not match the description of the suspect from the 10-10 call, the alleged reasoning behind the stop (Tr.2841, also Counsel's Brief). It appears the District Court even noticed that there may have been Fourth Amendment issues surrounding the Traffic Stop stating himself, "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)

Trial Counsel didn't respect Green's requests to challenge the Government's obtaining and use of the sealed records and information relating to the Traffic Stop, nor did they move to suppress the evidence associated with such. (See Counsel's Brief discussing Counsel's failure to move to suppress the cocaine). Instead, Trial Counsel did the exact opposite by stipulating to the "Bronx District Attorney's Office dismiss[ing] the [Traffic Stop]" (A64-65; also Tr.2884), and to the testimony of the chemist associated with the testing done on the cocaine that was allegedly seized from Green from that incident. (Tr.2883-84).

Trial Counsel informed Green, they couldn’t locate the Disposition, and he wouldn't be able to either. Counsel even told him that Jesus Christ himself could come down from the heavens, and he (Green) would still not be able to find it. (See Pro Se Brief at 10-11). However, Green did find the Disposition.

The alleged reason for Sisco and the NYPD being called to the scene of the Traffic Stop was because they'd received a 10-10 call (Tr.2836,2839, 2875,2880-81). The call gave a description of a black male with a baseball hat and a green shirt. (A68, Depo. Tr.10). Apparently, a "few minutes prior" to the vehicle being pulled over dispatched received the 10-10 call. (A67-68, Depo. Tr. At 9-10). It wasn't Ofc. Sisco that pulled the vehicle over, either; it was his Sergeant, Ofc. Polanco. (A66, Depo. Tr. at 8)). However, about thirty seconds prior to this vehicle being pulled over Ofc. Sisco had already stopped and frisked the other passenger of the car, Michael Evans, in the courtyard of the complexes where the location for the 10-10 call came in from. (A71, Depo. Tr. at 13). At the time Ofc. Sisco frisked Evans he didn't find any weapon; he said he frisked him, and "it ended up being a cell phone pouch and a cell phone, he didn't have a weapon."(id.). It wasn't long after this that the vehicle that Green and Evans were in was stopped by Ofc. Polanco. (Id.).

If you look at Sisco's memo book it appears that at "1501" he "canvass[ed]" the area and stopped "1 male" that "fit the description" of the "Baseball hat [,] Green Shirt [,] [and] male black." (A75). This was Evans. (A71-74, Depo. Tr.13-16). And it was not long after this that Ofc. Polanco stopped the vehicle that Green and Evans were in (A72-73, Depo. Tr.14-15) as soon as Sisco arrived at the location of the Traffic Stop, he had already searched Evans, and Green did not match the description (Tr. 2875), yet he still had Green step out of the car. Ofc. Sisco then harassed Green,

leading to a physical altercation and Green being excessively and severely beaten. Sisco planted drugs on him to cover up his and the other officers' own misdeeds, which is not too surprising if you look at the nature and number of lawsuits and complaints against Ofc. Sisco. (See Doc.521,522; letters by Trial Counsel noting and discussing Ofc. Sisco, and his "extensive history of being sued in New York's state and federal courts.")

The Traffic Stop actually occurred about a mile away from the Honeywell Complexes, on East 180th Street and Monterey Ave. This can be seen by a review of, inter alia, Sisco's memo book (A75), and notes from meetings the Government had with Sisco, (A76), and the sealed arrest report (A3-5). This didn't fit the Government's narrative, so they did what they so often did in this case: i.e., altered, and fabricated evidence, suborned perjured testimony to try and tie the Traffic Stop to the Honeywell Complexes.

The picture the Government tried to paint for the jury at Green's trial was that he was the Gang's primary supplier of drugs, and a supplier of guns, and that he lived at and operated out of the Honeywell complexes. (Tr.173 (CW Adams testifying that Green gave him "a gun" and "some drugs" at the Honeywell projects); Tr.360-62 (Adams testifying to doing third-party drug transactions with Green at the Honeywell projects)). The Government had their witnesses testify Green was close friends with Evans ("Puff"), and allegedly Green supplied drugs to Puff at the

Honeywell projects. (See Johnson II, at *43 (Former BHB member CW Morton testified that he went "a few times" to the Honeywell projects to purchase . . . heroin . . .. Morton bought heroin from Puff . . . [and] . . . "Showtime told Morton that Puff got his drugs from Lite") (quotations in original) (citations omitted)). Therefore, the Government desperately wanted the Traffic Stop to fit their narrative, so they lied to and misled the jury to make them believe it occurred right at the Honeywell projects. Counsel stating,

> "The government made a big deal of where this traffic stop took place. I wanted to put it all up here, but it's like three pages long. It took place at 180th and Mohegan Ave., just a block away from Honeywell, just a block. And then, like, they put up another map and they circle where the arrest took place, and they put up another map and they circle [placed a dot] where Honeywell [projects] was, but that's not where the actual arrest took place. It took place somewhere entirely different, on Monterey Ave. and East 180th Street, as indicated in the report that Officer Sisco actually wrote himself."

(Tr.3531-3532.) This can be seen by review of the direct examination of Ofc. Sisco by the Government, "Q. Let me turn your attention to August 3, 2010. On that date, did you respond to a traffic stop at 180th Street and Mohegan Ave. in the Bronx? A. Yes, I did. Q. How far away is Mohegan Ave. from Honeywell Ave.? A. One City Block." Tr.2836. This wasn't where the Traffic Stop occurred. It's where the Government wanted the jury to believe it took place. And they continued with their crimes and lies by showing the jury a map (Government Exhibit ("GX") 236); and

using Sisco to "again" mislead them into believing the Traffic Stop occurred right near the Honeywell projects,

> "MR. CHAN: I'm going to ask Ms. Harney to pull up for everyone what's been admitted into evidence as Government Exhibit 236. Q. Detective Sisco, do you recognize this? A. Yes, I do. Q. What is it? A. This is a map of the location. Q. Can you please indicate using your finger on the screen the location where you went to the traffic stop. A. Sure. Ok. MR. CHAN: Your Honor, let the record reflect that the witness placed a dot in the corner of East 180th Street and Mohegan Ave. Maybe you could circle it just to make it more clear. THE COURT: Thank you, yes. Q. Detective Sisco, is 180th Street and Mohegan Ave. close by any residential apartment buildings? A. Yes. Q. Where are those residential apartment buildings located? A. Would you like me to draw a circle as well? Q. Yes. A. (Complies). MR. CHAN: Your Honor, let the record reflect the witness drew a circle around two buildings located between 180th Street and 181st Street between Honeywell Ave. and Mohegan Ave. THE COURT: Yes."

(Tr.2836-37.) Those residential buildings were the Honeywell projects, and the Traffic Stop didn't occur here. It did occur, at the Northeast Corner of Monterey Ave. and East 180th Street, which was so far away that it wasn't located on the map(s) used by the Government at trial. (Tr.3309 "As it happened, the map that is in evidence doesn't show Monterey, unfortunately." (AUSA Nichols). This was no accident. In fact, the following statements made by the District Court reflect exactly what the Government was attempting to do here. (Tr.2848 ". . .. Puff was previously identified as someone your client (referring to Green) supplied drugs with, who sold drugs in the Honeywell projects area, and this arrest (the Traffic Stop) took place right at the Honeywell projects . . ..").

Green's Trial Counsel pointed out on cross-examination of Sisco that he was wrong about the location of the Traffic Stop; essentially, all Sisco had to say was "I don't recall." (Tr.2868-70,2875). However, Green has a hard time believing that this was an accident. It's worth noting that it wasn't Green's Counsel who caught the issue of Sisco testifying to the wrong address; it was Green and one of the defendant's trial counsels who pointed this out. After trial, Green tried to obtain a copy of the map(s) they used and had Sisco execute to show the jury that the stop occurred at the Honeywell Projects (though it did not); however, to his surprise the Government did not save or preserve this. All they have now is a map with "nothing" on it (referring to the marks Sisco made; they are gone).

K. Problematic Testimony and Other Evidence

This case was loaded with problematic testimony and other evidence and the Government relied heavily on fabricated and otherwise false testimony of their many CWs (with obvious motives to lie), as well as questionable testimonial and physical evidence of NYPD officers with checkered pasts. It's evident from review of this case that these witnesses were coerced or otherwise compelled to tell a story that fit the Government's narrative. This can be seen by reviewing the witnesses' statements, how their stories conflict with each other and other evidence, and with the investigatory/302 notes, among other things. Even the Government acknowledged the inconsistencies between the testimony of their witnesses compared to what's

reflected in the notes taken by investigators. (Tr.2959;"We have told defense counsel that we are obviously willing to enter into a stipulation to the extent that there are inconsistencies between what the witness has said on the stand in prior meetings that they had with the government and what the notes reflect." Green will list and discuss some of the problematic evidence and testimony for use later in his arguments made herein. Please note this isn't all the problematic testimony and evidence; just some of the more glaring examples that are necessary for understanding the issues and arguments being made herein.

1. CWs Discrepancies with Witness Testimony and 302/Investigatory Notes

Several statements made by the Government's CWs indicated there were inconsistencies between what these witnesses said during their proffer sessions with the Government, and their testimony at trial. This raises serious concerns about the integrity and fairness of the grand jury and District Court proceedings, which will be discussed more in the argument herein. CW Patrick 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 "I remember some of those statements, but I don't ever remember saying 'Boss.' Maybe that's something they write as a note, just like shorthand." (Tr.2729-30). Daly also testified that he and the Government would go back through the notes and change the dates. (Tr.2715). And similarly, CW Adams testified saying, "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 CW Jones[4] 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.").

2. Differences Between CW Adams Testimony and Proffer Session Notes; and Other Issues with his Testimony

At trial CW Adams testified that he met Green in 2011 when he was introduced to him by Johnson. (Tr.171-72,665-66). Adams claimed that at this time Green gave him a gun and approximately 60 grams of cocaine because Johnson told Green Adams was just released from prison and was "messed up.". He claimed this took

[4] Jones testified he spelled the name L.I.T.E, however, the transcripts only have the name "Lite" spelled "L.i.g.h.t." The District Court stated he was “getting the feeling by line of questioning; the defense may make the argument down the turnpike that the Lite we heard testimony about during trial is not their client "Brandon Green" that's sitting in this court room today." CW Jones 302 notes reflect the name Lite is spelled three different ways ("Light", "Lite" and "Lyte"), as if it were referring to several different people with the same exact nickname. (Tr.1908-1910.)

place at the Honeywell Complexes. Adams then claimed that he held the gun for two weeks, until Johnson "came and got it back." (Tr.173). However, Adams' testimony was contradicted by statements he made in multiple proffer sessions with the Government in 2016 with inconsistencies he couldn't explain at trial. (Tr.692-93). And this testimony was crucial as the Government relied heavily on such to support their false claims that Green was a primary supplier of drugs for the Gang, supplied them with guns, and that he lived at and operated out of the Honeywell complexes.

a. The Fabricated Murder Plot

At trial CW Adams also testified about an alleged plot to murder David Cherry (a/k/a "Showtime"). Adams claimed that he and Michael Evans (a/k/a "Puff") didn't know what Showtime looked like. (Tr.229-31). This murder plot was alleged to have occurred in 2011 and Adams claimed that Green was involved. (Tr.202,230,232-33,991). Adams' testimony regarding the murder plot was contradicted by the testimony of CW Morton, who testified that he was introduced to Evans by Cherry in person in 2007 or 2008 (a few years prior to the alleged murder plot). (Tr.1271-72; see also id. at 1271). In fact, even Cherry said at his sentencing this case was full of lies, that he read over the transcripts and seen all the lies of the CWs'. He stated how he had known 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 CW Adams' testimony

regarding this alleged plot, as it found Green not guilty of such. (Doc.570). And the District 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). Adams' testimony regarding this murder plot was also contradicted by statements made by him during 2018 proffer sessions. (Tr.3238). Nevertheless, the Government presented this fabrication to the grand jury, as well as to Green's jury at trial; and even after it was proven to be built on lies, they still tried to use it to enhance Green's sentence. Adams had no problem lying about this because he was seeking a 5k1.1 letter, in hopes of escaping a life sentence for his murdering an innocent store clerk, Mr. Camara.

3. *CW Morton's Testimony Calling into Question the Government's Case*

When Green was arrested, he 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, other than primarily through his entertainment company, and the associations accompanied with that, and through the social scene that accompanies it. (See Pro Se Brief at 7-9). Those attorneys made clear he was simply collateral damage in the Government's witch-hunt for Johnson and the Gang. (See id.). Green wasn't the only person indicted in this case who had these concerns. CW Morton appears to have 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 (the seven years), and now I'm sitting in the feds for a gang indictment that, you know, I haven't been around them (these co-defendants)"; also see, 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.")). But this didn't stop Morton from taking a plea deal and cooperating and it didn't stop him from taking the stand and testifying against Green, among others, to whatever the Government wanted to hear, even if it wasn't the truth.

CW Morton also testified about how he felt he was wrongly charged with using a weapon in connection with his drug dealings between 2008 and 2016. (Tr.1059.) It is likely that Morton's experience in the criminal justice system was that the Government can do what they want and charge him whether he is guilty or not, and there's nothing he could do about it. Therefore, he, like so many others, likely decided that if you can't beat them, join them; causing them to cooperate with

the Government, and testify at this trial to whatever it was the Government wanted to hear.

4. *Other CWs Who Similarly Expressed Disagreements with the Truth of Their Charges*

It wasn't just Green, and the witnesses mentioned above who expressed concerns about what they were being charged with in this case. CW Patrick Daly, and CW Rayshuan Jones expressed similar concerns. (Tr.1801,2707-08).

5. *The District Court's Comments About CW Manuel Rosario's Inconsistent Statements*

In recorded telephone calls, CW Rosario made statements reflecting his disagreement with the charges brought against him in this case; something even the District Court commented on. (Tr.3029-30 ("Well, I think that it's fair to say that some of the things that are in these calls are inconsistent. I mean, [Rosario's] testified about a long string of crimes he's committed, including with the B[HB], and one of the calls says: 'I ain't do nothing, not [sic] even contact with these people, understand what I'm saying?'" and "'I don't got nothing to do [with] what they're doing. They (the Government) just threw my name, everybody they think was a leader or had any kind of influence, they threw our names. This is like [what they did] in this indictment.'")). Like the other CWs it's likely that Rosario decided his best hopes for

freedom was to cooperate with the Government and testify to whatever it was they wanted to hear, seeing that they had the power to and would do whatever they please.

6. *CW Rosario's Statements Concerning CW Michael Adams' Truthfulness*

Rosario made several comments that called into question the truthfulness of CW 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).

7. *CW Jones' Testimony*

Jones provided testimony against Green that was inconsistent with statements made during his interviews with law enforcement and during a grand jury proceeding. Because these discrepancies were thoroughly discussed in Counsel's Brief, Green won't restate them here.

8. *CW Kenneth Moore's Fabrication*[5]

CW Moore testified that he saw Green "with his 7-year-old son" at a pow-wow that occurred in 2013 at the courtyards (Tr.2257-58,3236). However, at the time Green's son hadn't been born yet or was just a few weeks old. Furthermore, he

[5] CW Moore testified that his pedigree allegedly was threatened to be faded for not paying their kitty dues by Lady Moolah (Tr. 2170-71). It is also important to note that Moore didn't have a clue who Green was until trial counsel pointed Green out for him. (Tr. 2205, 213-15, 2225, 2253-53).

claimed that Green did not collect any kitty dues this day, and extended all pedigree's deadlines, for failure to pay his pedigree fees; to then later testify that instead of giving the Westchester kitty funds to Green, Moore sent their dues directly to Johnson's inmate account.

9. 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). And in summation, the Government erroneously told the jury that Morton "testified that Light was a GF when he first met him." (Tr.3382).

L. Green's Complaints with the District Court and its Proceedings

1. A Brief Discussion

Green has several grievances regarding the District Court and proceedings. Some of are mentioned elsewhere herein, and within his Pro Se Brief. However, Green will briefly discuss below the facts surrounding these issues, which are relevant to the issues and arguments being presented on this appeal.

2. *Problems with Green's Court Filings and Docket*

Green experienced issues in the District Court with his court submissions not being filed, timely filed, or accurately filed in his docket. There were several court

submissions by Green, when he was and wasn't pro se, that he had these issues with. Some of these submissions concerned matters which related to filing deadlines, his compliance with court orders, and his complaints about the proceedings, his attorneys, and the Government. All this dealt with his attempts to bring to light and redress the violations of his rights that. Green felt like these things were happening intentionally.

Green attempted to move the District Court to address his post-conviction concerns regarding, inter alia, ineffective assistance of counsel and Government misconduct. Regarding the IAC, the District Court informed Green he'd have to sign an attorney-client privilege waiver form and complete an affidavit of facts detailing his claims. (Doc.907). Numerous times Green wrote to the Courts to inform them he never received the Waiver Form and to ask for more time to complete and submit that and his affidavit. These submissions were not filed until Green filed several complaints with proof of services attached. (See, e.g., Pro Se Brief at 1-2, id. at 19, n.6; and id. at 27-28).

3. *Issues with the District Court, Including Bias, and Partiality*

Green experienced issues with the District Court being biased and partial, and at a minimum, existing with an impermissible appearance of bias and partiality, among other things. Green submits these issues compounded the problems and difficulties faced by him in this case. Green couldn't get a lawyer he trusted or rely

on, so he had to fight the Government misconduct on his own, while simultaneously dealing with the problems he had with and in the District Court.

4. *The District Court's Review of the 3500 Materials*

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

5. *Green's Discovery, 3500 Materials and Client File*

Green also experienced problems with not receiving and reviewing his discovery and 3500 materials prior to and even after trial. Originally, his discovery was sent to the wrong jail (A78.) He continuously experienced difficulties getting his attorneys to provide or go over this information with him prior to trial and brought this up to the District Court on several occasions. He discussed the problems he faced trying to get his client files from his former lawyers after he elected to proceed pro se, with the assistance of stand by counsel. (Pro Se Brief 15-34). These difficulties severely prejudiced Green's ability to defend himself, and bring to light and redress the violations of his rights that occurred throughout the District Court proceedings.

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

There's been several comments made casting doubt on the integrity of the District Court proceedings, by various news outlets, members of the legal community and innocence movement, among others. These comments range from

raising general questions and concerns about the integrity of the proceedings, to comments casting doubt on the same due to, inter alios, the Government's use of cooperating witnesses with little to no oversight, and to the District Court granting of extreme leniency to these highly unreliable cooperators. In addition to listing these comments, Green will also demonstrate the support he's received in his online attempts to plead with the public for a new trial and a new judge; as well as statements made to him by a law professor, Babe Howell, and television producer and lawyer, Isaac Wright, who is famous for freeing himself from a similar miscarriage of justice. Green hopes these things will serve to give credence to his claims raised throughout his and his Counsel's briefs, and he'll try to incorporate such in his arguments raised herein.

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." http://www.innercitypress.com/sdny5latiquetrial032819.html. "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."

id[6]. 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." [7]

2. *Truthout.org and Blackagenda.com*

"How Prosecutors Use Conspiracy and Questionable Testimony in 'Gang' Cases", appearing on Truthout.org discusses the problems plaguing and undermining confidence in our Country's criminal justice system, namely prosecutorial misconduct, and how prosecutors use, and courts permit, testimony from police officers (and cooperators) who are severely lacking credibility. Especially how this is done in conspiracy and gang cases to increase their chances at securing wrongful and questionable convictions. The article highlights serious concerns with this case, and discusses how Green's co-defendant, Donnell Murray, was forced to defend against the testimony of corrupt NYPD Officers, who in the past harassed, assaulted, falsely arrested, and even planted a gun on him. Murray, like Green and his NYPD arrest in August of 2010, was still forced in this trial to defend against these surely false allegations. The article says,

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[6] See http://www.innercitypress.com/sdny6latiquetrial082720.html (discussing how CW Rosario was given time served) and 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).

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

> "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/how-prosecutors-use-conspiracy-and-questionable-testimony-in-gang-cases/

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

3. *Law Professor Babe Howell*

Following trial, Green's family also reached out to, inter alios, law Professor Babe Howell from CUNY School of Law in New York, to bring attention to his case, get help and guidance regarding the violations of his rights that occured. They were shocked to discover when Professor Howell said she was actually "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. She stated that she intended on writing an article about it, and that was trying to get journalists interested in the case to do the same.

4. *Television Producer and Attorney Isaac Wright*

Green also 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 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[8] was for a new trial, which has around 1,065 supporters and the second[9], asking for a new judge has around 1,789 supporters.

N. Green's Complaints About His Attorneys

1. *A Brief Discussion*

Green has several complaints against his former lawyers. Most of the complaints concern his Trial Counsel, although some are about his other attorneys. Many of these grievances were discussed by Green in the District Court throughout various court filings and at multiple conferences. (A81-99, A8-15, A16-20, A28-45, also see, e.g., Oct. 31, 2019, Conf. Tr.; Dec. 8, 2020, Tel. Conf. Tr.; and, Jan. 5, 2021, Tel. Conf. Tr. Green refers this Court to these documents and conferences for a more detailed discussion of these complaints; especially (A28-45,A8-15,A81-99).

2. *Coercing Green into Taking a Plea Deal and Failure to Challenge the Indictment or the Government Misconduct*

Green informed Trial Counsel he was innocent. Yet they still tried several times to persuade him to take a plea deal and to cooperate with the Government and

[8] https://chng.it/hHJJpZnM
[9] https://www.change.org/NEWjudgeBRANDONGREEN

their efforts to get Green to cooperate continued through the trial. After Green lost trial, they were still trying to get him to cooperate with the Government. This occurred with Green's other attorneys as well. None of Green's lawyers would challenge the Government's misconduct and tried to get him to take part in it by testifying to things that were not true. Green's counsel should have moved to dismiss the indictment, or at least the counts against him because it was based upon lies and deception of the Government. Counsel should have better defended against and objected to the Government misconduct which occurred before and throughout the trial instead of stipulating to nearly everything, and not challenging inadmissible and illegally obtained evidence. (Tr.2754 ("Your Honor, while we're waiting, the Green defense team has come to an agreement with the government. The defense direct for Mr. Green will just be a handful of stipulations.")

3. *Failure to Call Eric L. Swinney as a Witness*

Green informed his Trial Counsel to call Eric L. Swinney as a witness at trial. He informed them that Swinney would testify that the guns found in the Bridgeport residence were his, not Green's. Green understands Counsel did speak to Swinney prior to trial; and Swinney told him this. Yet, they did not call him to trial to testify.

4.*Trial Counsel's Opening Statements*

In their 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.

5. *Failure to Challenge the Government’s Obtaining and Use of the Sealed and Dismissed Aug. 2010 Arrest; and Failure to Move to Suppress the Cocaine Allegedly Obtained Therefrom*

Despite knowing about the Traffic Stop since the start of the case, Green's Trial Counsel never moved prior to trial to challenge the Government's obtaining using these arrest records, which were dismissed and sealed. Prior to trial, they never moved to challenge its admissibility, nor its use in any way. They failed to move to suppress the cocaine allegedly obtained from this arrest, despite it being seized in violation of Green's Fourth and Fourteenth Amendment rights. This was despite Green asking them several times to do so.

6. *Failure to Challenge the Indictment, Venue, and Jurisdiction*

Green submits that his Trial Counsel failed to challenge the indictment due to Government misconduct and failed to challenge the District Court not being the proper venue or jurisdiction for, inter alia, the guns alleged to have been seized from his residence in the district of Connecticut and for all criminal wrongdoing alleged to have been committed by him within that district.

7. *Failure to Challenge Sufficiency of Evidence for Heroin Trafficking*

Green requested his Counsel challenge the sufficiency of evidence concerning his alleged involvement in heroin trafficking and they neglected to do so. (See Johnson II at n. 38 where District Court mentions Green's counsel neglected to say anything in their post-trial motions regarding this).

8. *Failure to Call a Gang Expert*

Despite this being a RICO/Gang case, the Government claiming that Green was a member of the Gang, and supplier of guns and drugs, who they claimed held leadership positions, his Trial Counsel didn't obtain the services of a Gang expert to assist and testify at trial.

SUMMARY OF ARGUMENT

"Trial by jury, instead of being a security to persons who are accused, will be a delusion, a mockery, and a snare." Thomas Denman (O'Connell v. The Queen [September 4, 1844]. The words of Lord Denman serve to describe what has become of the right to a trial by jury. It describes what occurred in Green's case, which is why he chose to put them as an epigraph in this section of his brief.

Our criminal justice system isn't perfect. Wrongful convictions occur and more often than you'd think. "In the United States, it is estimated that about two people are wrongfully convicted every day." (A46-56). The rate of wrongful

convictions in the United States is estimated to be somewhere between two and ten percent. In a sea of 2.3 million incarcerated people, (that means anywhere between 46,000 and 230,000 are wrongfully charged or convicted.). And some of the leading causes of wrongful convictions are perjury or false accusations (often by incentivized government witnesses), official misconduct (to include misconduct of police and prosecutors), and inadequate legal defense. See, 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."[10] Contributing to and further worsening the problem is how prosecutors routinely coerce individuals into taking guilty pleas and testifying, often falsely, against those who don't and instead elect to go to trial. See, e.g., https://www.hrw.org/report/2013/12/05/offer-you-cant-refuse/how-us-federal-prosecutors-force-drug-defendants-plead ("[T]he right to trial lies at the heart of America's criminal justice system. Yet trials have become all too rare in the United States because nine out of ten federal and state criminal defendants now end their cases by pleading guilty."); ("The fear of suffering prosecutorial vindictiveness after exercising the right to trial has resulted in approximately 97% of criminal cases

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

being resolved through plea bargains . . .. The trial penalty has altered the balance of power and tilted it in favor of government. 'Society plays a price when, inevitably, guilty pleas operate to foreclose litigation that would have exposed unlawful government actions or practices and police misconduct[.][11]'")(internal quotations in original)(citations omitted)); and, https://www.cairn.info/revenue-internationale-de-droit-penal-2012-1-page-109.htm stating that "plea bargaining is a form of extortion for guilty pleas", and "plea bargaining is basically a system to more easily and effectively railroad the poor to conviction for crimes that at times they are innocent of.").

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.[12]" However, "without ensuring [strict] adherence to the rule of law and vigorous and competent counsel for defendants, we cannot live up to these guarantees.[13]" This is essentially what went wrong here; the Government didn't play by the rules, Green's attorneys failed to perform effectively, and the District Court didn't hold anyone accountable. All this occurred after Green refused

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

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

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

to plead guilty to something he was innocent of, after the Government, through his lawyers, tried to coerce him to. Green even experienced difficulties with his court submissions not being uploaded to his docket and went through four sets of lawyers before electing to proceed 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. 15-16 (quoting Green); also see, Pro Se Brief at 1-4).

As stated by Green "[f]rom the moment the Government decided to try this RICO case against the alleged founder of the Blood Hound Brims gang, Latique Johnson, [Green] did not stand a chance." (Pro Se Brief at 34). And the number, extent, and nature of the issues that occurred in this case are proof of this. It appears the Government indicted anyone who felt could be of use to them in their efforts to try and imprison Johnson and other high-ranking BHB members or anyone they felt had any type of influence.

Over time and throughout many proffer sessions the Government coerced and compelled their CWs to tailor the stories to fit their narrative, manipulating the investigatory notes to do so. The Government presented their tailor-made story to the grand jury and once indicted they continued to coerce these individuals to cooperate to testify against Johnson and anyone else, they sought to prosecute (and or would not take a plea deal). The Government misconduct continued throughout trial, where they encouraged false testimony and compelled and coerced their CWs

and other witnesses to lie to and mislead the jury, even going so far as to fabricate evidence using illegally obtained and inadmissible physical evidence and testimony. Doing whatever it took to win this case, regardless of its legality.

Green shouldn't have been subjected to such unethical and illegal tactics by the Government 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 likely 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."[14]; and, Powell v. Alabama, 287 U.S. 45, 68069 (1932) ; also 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). And even if the government and an accused's counsel fail to

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

adhere to the rule of law, and respect the rights of the accused, shouldn't our courts step in to correct such injustices? After all, the constitution was written to limit government power, but those limits are meaningless unless judges restrain public officials when they overstep their bounds. See. e.g., https://ij.org/center-for-judicial-engagement/.) Unfortunately, the criminal justice system doesn't always operate as designed and didn't in Green's case. Most neutral observers, presented with the issues in Green's case as detailed in his and his Counsel's briefs, would judge that the District Court proceedings were fundamentally flawed and there's a real concern that he is actually innocent. This case is overflowing with issues and despite submitting three different briefs (his and his Counsel's) Green has yet to address all the problems with his case. It's evident from review of the briefs that Green didn't receive due process, nor a fair trial. To include his being denied of his Constitutional guarantee to the effective Assistance of Counsel, among other things. At minimum these proceedings were fundamentally flawed; and at worst there was a complete breakdown in the adversarial process here.

With these issues in mind and being that our justice system is in dire need of reform and 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 will not be tolerated and be corrected

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ARGUMENT

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. See, 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). And this Court review's 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

Green argues on the morning of his arrest agents illegally entered the apartment, had no warrant to enter and search, and illegally stopped Ms. Turcios. He argues everything that followed that illegal entry was fruit of the poisonous tree and should be suppressed. Green contends the agents only possessed an arrest warrant and could and should have attempted to arrest him without entering the apartment. Therefore, any evidence obtained because of that illegal entry was a 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*

Green argues that the District Court was not the proper venue for the illegal items allegedly found in the residence in the District of Connecticut. He argues that 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. Therefore, the District Court erred in denying his 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-when the searching officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene."

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).

Green submits the Government identified no facts that supported any reasonable suspicion that a third party was lurking in the apartment. Instead, the Government argued the agents lacked information and couldn't "demonstrate conclusively" that Green was alone in the apartment. See Doc.355, at 14 (arguing that it was possible that another individual was in the apartment), id. at 15 (arguing that Ms. Turcios returning to the apartment could have been given a third party the chance to hide); id. (Arguing that the officer had no way of knowing that a third party was inside); id. (Arguing that Ms. Turcios' word did not "demonstrate conclusively" that Mr. Green was alone in the apartment), id. at 15 (arguing that, after Mr. 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 pointed to any fact that gave rise to any concern that a third person was hiding in the residence. In fact, the agents' own actions demonstrated no real individualized concern 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, as matter of procedure. 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. See 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. wid. 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 they didn't do so. There were plenty of places Green could have been moved to out of the apartment and numerous police and agent vehicles in the immediate vicinity into which he could have been placed and ultimately transported. 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.

3. *The Search Exceeded the Scope of a Protective Sweep*

The search in Green's residence was thorough. It was not a "quick limited search of the premises, incident to an arrest and conducted to protect the safety of the police officers and others." Buie, 494 U.S. at 327. Because the search exceeded the scope of a protective sweep, the guns and other materials seized should have been suppressed. Cf. Hassock, supra (suppression was warranted because the officers undertook a full search for the object of their inquiry rather than a protective sweep incident to an independent lawful purpose).

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

Remaining evidence seized from the apartment was purportedly discovered in a search of the apartment after Ms. Turcios gave consent. The evidence seized during this search was also illegally obtained for two reasons. First, Ms. 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 Ms. Turcios as possible to obtain consent. The entirety of Ms. Turcios' experience that morning should be considered when addressing this.

The agents illegally stopped her that morning, as it's clear from the review of the testimony that they had no valid reason to stop her, so they made one up, claiming that she was acting suspiciously. This was not true and refuted by the testimony of the other agent(s).

The agents brought Ms. Turcios back to the apartment and waited until they had her right outside the front door, if not actually in the apartment. 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." Whether or not he threatened her, 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 that the agent had spoken to her about downstairs. No one ever told her that she had the right to refuse consent, the right to refuse to sign the document that the Government had helpfully filled out for her. No one ever told her that the agents had no right to be in her home. See 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. Ms. Turcios' consent was clearly the product of this, therefore, it's invalid.

E. Even if voluntary, the consent is fruit of the poisonous tree. Lastly, Green argues that any consent flowing from the illegal search is the fruit of the poisonous tree.

F. Conclusion

Because the District Court erred in denying Green's motion to suppress, and because the evidence, especially the guns, should have been suppressed, the District 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. The District Court Should Have Recused or Assigned the Case to A Different Judge

A. About this Argument

Green adopts and incorporates herein his Pro Se Brief, which focused primarily on this issue, and discusses the post-trial proceedings in this case. For the reasons contained therein, and herein this Suppl. Brief, Green maintains that the District Court should have recused or assigned the case to a different judge. This Court should vacate/reverse the final judgment, reassign his case to a different judge,

and remand Green's case back to the District Court to the time of his filing his motion to recuse the Judge.

III. The District Court Should Have Reviewed Green's Ineffective Assistance of Counsel and Other Post-Conviction Claims Prior to Sentencing

A. About this Argument

Green addressed this issue in his Pro Se Brief and adopts and incorporates such as if fully briefed herein. Green argues that the District Court should have reviewed his ineffective assistance of counsel and other post-conviction claims prior to sentencing. He argues that those issues should now be addressed by this Court; to the extent that his convictions and or judgment of conviction and sentence are not otherwise reversed/vacated by this Court, then he contends his case should remanded back to the District Court, preferably before another judge, to review these issues, and for further factfinding, if necessary.

IV. Green Was Deprived His Right to The 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. See 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. Also see 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"). Nevertheless, not all ineffective assistance of counsel claims will be decided on direct appeal. See United States v. Kimber, 777 F.3d 553,562 (2d Cir. 2015) (stating that ineffective assistance of counsel claims will be decided on direct appeal only if "their resolution is beyond any doubt or to do so would be in the interest of justice" (internal quotation marks omitted)); and, Billy-Eko v. United States, 8 F.3d 111, 115 (2d Cir. 1993) (ineffective assistance claims may be considered on direct appeal instead of postponing consideration to a habeas collateral attack "if the defendant has new appellate counsel on direct appeal, and the record is fully developed on the ineffective assistance issue").

Analysis of Law and Facts

B. A Brief Discussion

Green argues that all his previous attorneys in the District Court failed to perform effectively. As Counsel's Brief noted, "Trial Counsel[s'] ineffectiveness is apparent from the record in countless ways." Green maintains all his attorneys performed deficiently and all "misinformed or lied to [him] in some way, shape or form." (Nov. 17 Tel. Conf. Tr. at 15, ll. 15-16 (quoting Green)).

C. Failure to Suppress Cocaine

Green's appellate counsel thoroughly argued this issue, so Green will keep it to a minimum. Green submits he maintained to Counsel that he wanted them to move to suppress the cocaine alleged to have been recovered during the Aug. 3, 2010, arrest. However, they never did, even though it was the "only" physical drug evidence that the Government had against Green (who was charged in a RICO/Drug Conspiracy, under the theory that he was a primary supplier of drugs for the Gang), and where they were aware that there were serious Fourth Amendment issues surrounding Green's search and seizure conducted by the NYPD. (Tr.2843, Ms. Geller stating that Ofc. Sisco stated that Green did not match the description of the 10-10 call (the supposed reason for the stop); also see Counsel's Brief. Therefore, this Court should decide this issue because it's clear from the record that Green was prejudiced by his Trial Counsel's deficient performance; because "resolution is

beyond any doubt," Kimber, supra; and, because it "would be in the interest of justice" to do so. id. Also cf. Laaman v. United States, 973 F.2d 107, 113 (2d Cir. 1992)(attorney's failure to move for suppression of evidence constitutes ineffective assistance only when Fourth Amendment claim is meritorious and absent excludable evidence, there is a reasonable probability the outcome of the trial would have been different); Northrop v. Trippett, 265 F.3d 372 (6th Cir. 2001)(failure to move for suppression of evidence found during illegal stop of defendant ineffective assistance); and Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1996) (failure to move for suppression of bed sheet evidence recovered during illegal seizure was deficient performance; counsel did not conduct any meaningful pretrial discovery and there was no strategic reason, other than incompetence, for his actions; remanding for determination of prejudice).

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 under NY CPL Section 160.60, and 160.50(1)(c). "Under C.P.L. Section 160.50, records relating to an action [that] has been terminated in favor of the accused . . . shall be sealed." C.P.L. 160.50(1). These records include 'all official records and papers . . . relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's

office.' The statute provides further that such documents shall 'not [be] made available to any person or public or private agency.' C.P.L. 160.50(1)(c)."Faison v. MacCarone, 2016 U.S. Dist. LEXIS 46464, *2-3 (E.D.N.Y. April 6, 2016). Moreover, "[t]he statute is designed to 'balance [] the rights of a former defendant to restrict and obtain access to official records and papers in favorably terminated criminal proceedings' by 'requiring sealing in a wide variety of contexts and providing for the disclosure of sealed files in only limited circumstances.'" id. at *3 (citation omitted).

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." NY C.P.L. Sec. 160.50(1)(c). 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. See Fountain v. City of NY, 2004 U.S. Dist. LEXIS 7539 (S.D.N.Y. May 5, 2004); and, 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 protection of the sealing statute. He never authorized the release of the sealed records to anyone. He explained this to Trial Counsel and stated that he didn't agree with how the Government obtained and was using the sealed records, especially being that the case was dismissed in his favor. Green asked Counsel to argue to the District Court that the Government should be prevented from using the sealed records and anything associated with the arrest.

Prior to and at the start of trial, Green's Counsel continued to express difficulties with their inability to obtain records associated with the Traffic Stop because it was dismissed and sealed. Trial Counsel made it appear as though a motion may be made regarding the admissibility of the August 3, 2010, arrest, the cross-examination of Sisco, as well as concerning the possible suppression of the cocaine alleged to have been recovered from Green during the stop once sufficient information was obtained. This never happened. Despite Counsel obtaining information from the Government, and from Green's civil attorney, Peter Ridge, they never made any motions and instead ended up stipulating to the Bronx District Attorney dismissing it as well as to the testimony of the chemist who performed the second round of testing on the cocaine alleged to have been recovered from Green during that incident. (Tr.2883,2885 GX 1012,1014). When Ms. Geller was reminded

by the District Court about them previously stating they wanted to look into the cases regarding the cross-examination of Sisco and the Traffic Stop, Ms. Geller stated, "I may have lost track of this issue[.]" (Tr.1162). She forgot!

Trial Counsel waited until Sisco's direct examination to make an objection to the Government's use of the Traffic Stop when the Government attempted to elicit from Ofc. Sisco that Evans ("Puff"), who was also a passenger in the same car as Green (who allegedly had cocaine on him), had $2,000 on him. When objecting, Counsel said it was prejudicial against Green; and this itself was not indicative of narcotics trafficking. (Id.). Counsel went on to immediately raise another objection, stating that he felt there was "a 403 issue as well." (Tr.2847,2848),

> "MR. BRESLIN: This question, the question this witness is here to talk about Green's possession of narcotics, straight, simple. I thought we talked about simple, simple, simple. What other people in the courtyard were doing, there's no evidence that even if Puff was selling drugs that he was selling drugs at that particular moment in time, he hadn't been selling them with somebody else, that he hadn't gotten the proceeds from another source of illegal conduct. This is not a linear examination. They're looking now to tag Green with some sort of unspecified, unknown, and at that point unknowable conduct by Mr. Evans, and it's not fair.

The District Court disagreed and overruled the objection, (Tr.2848-49). Green argues Counsel was ineffective for not challenging the Government's obtaining and use of the Traffic Stop, and the sealed records associated with such, prior to trial. For example, in a motion for limine, he contends they should have moved the District

Court, in advance of trial, to preclude the Government's use of the Traffic Stop because the state case associated with such was dismissed in his favor, the records sealed, and Green fully restored his rights. Green argues that Trial Counsel should have moved to preclude the Government from using the Traffic Stop, and the sealed records associated with such, because the Government illegally or otherwise improperly obtained such. In addition to the Government's illegally obtaining the sealed records associated with such, Green argues that there was no nexus to the Traffic Stop to the crimes he was charged with. There was no evidence any of the vehicle's occupants, including Green, were members of the Gang at the time of the stop; 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 that the District Court denied Trial 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. Objecting for the first time at a trial is seldom effective. Trial objections are less likely to affect the prosecution's presentation and enjoy the least judicial confidence. A well-worn defense adage is that judges commence granting defense objections only after they are certain of guilt. True or not, spontaneous evidentiary objections virtually never work.").

Cf. Vol 1A Cipes, Bernstein & Hall, Criminal Defense Techniques Sec. 23A.01[2] (Matthew Bender, Rev. Ed.) (2022). Green argues that had Counsel moved to challenge the Government's obtaining and use of the Traffic Stop prior to trial, there's a reasonable probability that the District Court would have excluded the Government from using it or limited its use. Had this been done they would have been able to better defend against this evidence. In either scenario, there's a reasonable probability that the result of the proceedings would have been different because the Government wouldn't have been able to use the Traffic Stop and the evidence associated with it (the only physical drug evidence at trial offered against Green), or because the court would have limited prejudicial affect.

E. Failure to Challenge Venue

Green argues that Trial Counsel was ineffective for not challenging the District Court as being the improper venue or jurisdiction for the guns and other evidence alleged to have been found during the search of his residence in the District of CT; and or for any alleged criminal wrongdoing that the Government claimed Green committed within that district. (Also See Counsel's Brief). Had they done so, the Government would not have been able to utilize the guns and other evidence, nor the crimes they alleged Green committed in that district. Cf. Cornell v. Kirkpatrick, 665 F.3d 369,380-81 (2d Cir. 2011).

F. Failure to Object or Defend Against Government Misconduct

Green argues that his attorneys were ineffective for failing to object to the many instances of Government misconduct that occurred in this case. Cf. Washington v. Hofbauer, 228 F.3d 689,695-97 (6th Cir. 2000) (trial counsel was ineffective when he failed to object to prosecutorial misconduct). Green argues that his case was loaded with Government misconduct and Trial Counsel's failure to object to it only made things worse for him by not holding them accountable. Had his lawyers objected to this, there's a reasonable probability Green would have received a more favorable outcome. Had his attorneys moved to dismiss the indictment for Government misconduct, among other things, he never would have had to go to trial because all the issues complained of herein would have been exposed, and the indictment (at least the charges against him) would have been dismissed. Had his lawyers objected to this prior to or during trial, then Green submits that he would have been freed from this injustice. With so much Government misconduct in this case, his lawyers should have better defended against this. Their failure to do so cannot be excused.

G. Witness Credibility

Green argues that 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 . . . set forth in", (quoting Counsel's Brief), and herein. 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). They failed to mention nearly all the incredible aspects of the CW testimony and in their Rules 29 and 33 motions. Green argues that had they done these things there is a reasonable probability that the result of the proceedings would have been different; either because the jury would have acquitted him on some or all counts, or because the District Court could have granted him a new trial, or a judgment of acquittal.

H. Heroin Trafficking and the 924(c) Count

Green argues in Trial Counsel’s post-trial motions it "sa[id] nothing in [their] brief about the evidence concerning his involvement in heroin trafficking." (Quoting Johnson II, n. 38). They also failed 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 District 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 also ineffective for not obtaining a gang expert to testify at trial; specifically, an expert on the bloods gang. See 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). He argues that had they done so the expert could have helped support his claims that the Government CWs were lying and there is a reasonable probability this expert testimony could have significantly swayed the jury in his favor. The jury did not credit the CWs, especially CW Adams. The expert could have shown, among other things, that Adams was lying about Green's alleged leadership positions and gang involvement. For example, CW Adams testified that he was introduced to Green by Johnson (the alleged undisputed godfather of the Gang); at this time CW Adams claimed Green was the acting godfather. However, the only time there is an acting godfather is if the actual godfather is incarcerated or incapacitated. The expert could have explained this, as well as the fact that simply because someone knows members of a gang does not mean that they are a member. This would have further undermined the Government's already weak, who the jury already didn’t believe.

J. Failure to Call Eric Swinney

Trial Counsel failed to call Eric Swinney as a witness. Green contends that he informed Counsel that Swinney would testify that the guns found in his residence in Bridgeport, CT, were Mr. Swinney's. This would have refuted the Government's claims and further cast doubt on the rest of their case against him. Therefore, 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); Matthews v. Abramajitys, 319 F.3d 780,789-90 (6th Cir. 2003)(trial counsel ineffective when he failed to present defense witness); and, Hodgson v. Warren, 622 F.3d 591,600-01 (6th Cir. 2010)(counsel was ineffective for failing to call a witness who would have provided exculpatory evidence). Green submits that his Counsel did speak to Swinney before trial, and that he told them that the guns were his. Unfortunately, Swinney was killed after Green's trial, so he can no longer be called.

K. Autonomy

Green argues that there exist other reasons why his Trial Counsel was ineffective, and for his argument prejudice should be presumed. Green contends despite his repeatedly informing Counsel he did not possess any cocaine when he was searched by Ofc. Sisco, and that the case stemming from that arrest was dismisses and sealed, they didn't challenge the Government's obtaining and use of

the sealed records, instead stipulated to the case being dismissed and to the testimony of the chemist who performed the second round of testing on these alleged drugs. Green submits that Counsel didn't move to suppress the cocaine. He argues that their failures to challenge the Government's obtaining and use of these sealed records, the evidence associated with it, and their failure to defend against his claims that Ofc. Sisco planted the drugs on him to cover up his and the other officers' wrongdoings; constituted an admission of guilt over his objection. 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 his 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, and 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 many errors of Green's attorneys deprived him of a fundamentally fair trial and he argues that this Court should consider these errors in aggregate. See 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); also see, 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).

Green contends that his "Trial Counsel committed numerous unprofessional errors that require a new trial on all counts." (Quoting Counsel's Brief). These many errors were noted by Green herein, and in Counsel's Brief. Although any one of these errors on their own may not be significant enough to warrant a new trial, Green argues that 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. Also see, 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 submits that he was constructively denied his right to the effective assistance of counsel due to Trial Counsels' total or near-total dereliction in representation. And even though Counsel filed some pretrial motions, half-measures are known to avail nothing.

Quoted by Green's appellate Counsel, "Trial Counsel[s'] ineffectiveness is apparent from the record in countless ways." And there's plenty of issues with their performance that are not apparent from the record. Green argues that he was not only prejudiced by the cumulative impact of these many errors of Trial Counsel, 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, evidenced by their many unprofessional errors. If Green needed to show prejudice, he argues that he and appellate Counsel have done so throughout their briefs. Nevertheless, if any or all of Green's convictions are not otherwise vacated or reversed due to the other arguments presented by him and his appellate Counsel, then they should be because of this, and he should be discharged or given a new trial. Additionally, 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 factfinding proceedings.

M. Actual Denial of Counsel and Right to Self-Representation

Green contends that he was also denied his Sixth Amendment right to Assistance of Counsel and to represent himself. Arguing that he repeatedly voiced his concerns to the District Court that he wasn't satisfied with the performance of several of his attorneys. Because of this he relieved four sets of lawyers, before eventually proceeding pro se, with the assistance of stand-by counsel. And the District Court assured Green that if he wasn't satisfied with stand-by counsel he could represent himself, but when Green requested to do so the District Court didn't honor his request or stand-by counsel's requests to withdraw (at least not until the day of sentencing). (See Pro Se Brief). Consequently, Green was deprived of his

right to the effective assistance of counsel, and to represent himself; and because of this his judgment of conviction should be vacated, and his case remanded back to the District Court so that he can be afforded an opportunity to be heard regarding his ineffective assistance of counsel and other post-convictions claims; that is if his convictions are not otherwise vacated/reversed due to the issues raised by him and his appellate Counsel in their briefs. See Hernandez v. United States, 202 F.3d 486 (2d Cir. 2000) (There are some situations where a defendant need not affirmatively establish prejudice, as actual or constructive denial of assistance of counsel altogether is legally presumed to result in prejudice.).

V. 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). Also see, 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). Also see, United States v. Campbell, 850 Fed. Appx. 102 (2d Cir. 2021) (In general, appellate courts review a district court's denial of a motion for new trial for abuse of discretion, but insofar as a defendant failed to object to certain instances of the government's alleged misconduct at trial, the plain error standard applies.); and, United States v. Dukes, 727 F.2d 34 (2d Cir. 1984) (Absent a motion for mistrial for alleged prosecutorial misconduct, the allegedly prejudicial conduct may be reviewed only for plain error).

Analysis of Law and Facts

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). Also see Black's Law Dictionary (Deluxe Eighth Ed.), “A prosecutor's improper or illegal act (or failure to act), esp. involving an attempt to avoid required disclosure or to persuade the jury to wrongfully convict a defendant or assess an

unjustified punishment.). 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 argues his case, especially his trial, was loaded with Government misconduct. The Government indicted and tried Green and his co-defendants 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. But they did it because they had no case at all and that's 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. Green argues this is because the Government didn't have a case against him, so they made one. 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, encouraged, coerced, and or compelled those CWs to manipulate the truth and lie. One such example of this would be CW Adams' false allegations that Green partook in a plot to murder David Cherry (a/k/a "Showtime"). Another example would be the Government's allegations, mentioned in Agent Snead

and Serotta arrest affidavits, (see Evans' attorney's motion to suppress (Doc.133), that Johnson ordered Green to supply drugs to BHB members. There was absolutely no evidence offered at Green's trial to support this and it wasn't corroborated by any of the Government's witnesses and the Government should have known this wasn't true. Their investigation, including the information they used to secure search and arrest warrants, and the indictment, was based off lies. The illegal tactics used by the Government here are nothing new. The federal government is known to do whatever it takes to secure a conviction, even it if means manipulating 302s, and coercing individuals to take plea deals and cooperate, or to be charged with crimes they didn't commit.[15]

D. The Trial

Green's trial was loaded with fabricated evidence including perjury. The testimony was highly untrustworthy and unbelievable. The Government's narrative came from their CWs who had incentives to testify untruthfully, but the Government

[15] See https://www.criminallegalnews.org/news/2020/oct/15/fifth-circuit-reverses-conviction-based-prejudicial-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 (see United States v. Beaulieu, 2020 U.S. App. LEXIS 27749 (5th Cir. 2020)); also https://www.washingtonexaminer.com/opinion/michael-flynn-judge-emmet-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;

also managed to use their law enforcement witnesses to suborn perjured testimony and fabricate evidence.

At Green's trial, the Government was trying to portray to the jury he was a member of BHB, held leadership positions, supplied guns to members of the Gang, and that he was a primary supplier of drugs for the Gang, especially heroin for the Gang's drug operations in Elmira, and elsewhere in upstate New York. (See Johnson II at 37-45 (citations omitted)). The Government claimed Green lived at and operated out of the Honeywell Complexes. (Id.). They relied primarily on the testimony of their CWs to support this and most of the false testimony came from CW Adams.

The Government relied on Adams attempt to make it appear as if Green lived at the Honeywell Complexes and supplied drugs and guns to members of the Gang there. (Id.). However, Adams was a liar, and couldn't keep up with all his own lies. For instance, although Adams claimed to have met Green at the Honeywell Complexes, to have received a gun and drugs from him there, and to have done third-party drug transactions with him there, when asked by the Government to identify exactly where it was that Green lived at the Honeywell Complexes, he couldn't. (Tr.362-63). 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, when the District Court asked CW Adams how much a brick (kilo) of

cocaine weighed, his response was that "he's not too good with drugs." (Tr.343). Adams also testified to getting drugs from “Wheezy" (Tr.345), but then later testified that he never dealt with Wheezy before. (Tr.367-68). Clearly, his testimony was all over the place. Let’s forget the fabricated murder plot and the furnishing Adams a gun, even the jury didn't believe those lies.

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"). The Government failed in a prior attempt to indict Green and his co-defendants, so 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. (See Doc.27 (S1 Indictment, Count 1 RICO Conspiracy, Overt Acts) ("From at least on or about 2011 up to and including at least in or about 2012, BRANDON GREEN . . .. and MICHEAL EVANS . . . conspired to murder DAVID CHERRY . . . to advance within the BHB."). The Government, to include investigator SA Stefano "Steve" Barcanni, under form U.S. Attorney Preet Bharara, fed these lies to Green's grand jury, as well as to his trial jury. However, there were several problems with the Government's claims, which were based entirely on the lies of CW Adams, who lied to seek a 5k1.1 sentencing reduction. It

was clearly established CW Adams lied about this and the Government still rewarded him, and the rest of the CWs' who testified untruthfully. See http://innercitypress.com/sdny2bubacarrcamaraicp121119.html (discussing Adams' murder of an innocent shopkeeper, stating, inter alia, that,

> "The court docket is left with an indictment, under then US Attorney Preet Bharara, that did not even name the victim and decedent, Bubacarr Camara, and got the address of his place of work and place of death wrong"; and, "[w]hile the US Sentencing Guidelines in this case for murder called for a life sentence - plus 15 years - Judge Gardephe imposed a sentence of seven years, which minus the 52 months [CW Adams] has already served while cooperating with the government comes to 32 additional months, or two years and eight months.".

Green submits that he can demonstrate the alleged murder conspiracy never took place and the "beef" Johnson allegedly had with Cherry was not Gang related. All of which the Government lied about to meet the elements of their false charges. Green contends it was obvious that CW Adams was lying, as he claimed he and Evans had to call Johnson, and enlist the help of Green, because he and Evans didn't know what Cherry looked like. However, it was established by the witness who testified directly after CW Adams that this was a lie, and evem by Cherry himself 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; that the murder plot was to "advance within the BHB". However, it was over a woman. (Tr.229 (Q. Did you at any point you learned why La Brim made showtime a plate?

A. It was something over a female or something to do with a baby. Adams was not the only one to say this. CW Morton (a/k/a/ "Ten Thousand") similarly demonstrated that the Government was complicit in framing Green.

> (Tr.1275) Q. Do you remember telling the Government that the only thing that changed after Mr. Johnson and Mr. Cherry had their disagreement was Showtime was not representing BHB anymore? A. Yes I did. Q. Ok, so that was the only thing that changed? A. Yeah. Showtime was just as powerful as La was, you know. He was still doing his thing and, you know, but you still have people that didn't mess with him, you know. That's what it was you had people that messed with him, you had people that didn't mess with him. 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."); (Tr.819) Q. During that time that you were a member was "Showtime" the GF? A. Yes, the whole time.); (Tr.852, GX 14) Q. Mr. Morton, please remind us, who is this? A. That's Puff. Q. Who is Puff? A. He is a Hound. Q. How did you know that? A. I met him through Showtime.); (Tr. 1281,1272) Q. But does that refresh your recollection that sometimes you told the government that you met Puff in 2007 or 2008? A. Yes, I did say that. Q. And so, that meeting was done in person correct? A. Yes.); (Tr. 1274) Q. But Showtime and Puff knew each other in person? A. Yeah they knew each other. Q. And even as the disagreement with Mr. Johnson was going on, I think you testified that there was a lot of hounds that were still on good terms with Showtime? A. Yes. Q. And, one of those Hounds that was on good terms with Showtime was Puff? A. Yes.).

It wasn't only CW Adams who falsely testified against Green. (Referring to, for example, CW'S Jones, Moore, Rosario and Ofc. Sisco). At times these witnesses appeared to freely testify falsely and there were times when the Government

suborned the perjured and false testimony. The Government suborned perjured testimony from Sisco regarding the location of the Traffic Stop. Ofc. Sisco then committed perjury by knowingly testifying to the incorrect arrest location. The Government again used Sisco to present more false evidence, this time a false statement in the form of a map (GX 236), to again mislead the jury into believing that the stop occurred at the Honeywell Complexes. This case was loaded with false and perjured testimony and at times the testimony of the Government's witnesses contradicted the Government's claims. For example, CW Daly testified that the supplier of heroin for the Gang's operations in Elmira was a "Dominican" guy (not Green), and CW Jones testified that he (not Green) supplied guns to the Gang, and that his supplier was a sanitation worker.

Normally, 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 argues his case is unique and this Court should therefore take a different approach.

Green contends his case did not just have one or two instances of perjury, but loaded with perjury, some of which was disclosed, some of which wasn't, and some of which the Government knew or should have known about. In some instances, it was the Government who was behind the perjured or otherwise false testimony. Green submits it's not just the perjury, but the Government misconduct and the extent and pattern of the misconduct that requires reversal here; and the lack of corrective measures taken, coupled with 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 not only used perjured testimony, but 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 CW Adams' perjury, and tries to argue that such did not warrant reversal); and Counsel's Brief (also discussing the problems with CW Adams' testimony, esp. concerning the fabricated murder plot). There were also the Western Union Summary Charts made by the Government's paralegal, Hannah Harney[16]; as well as the map (GX 236), which the Government used, along with Sisco to have him falsely indicate on the map by drawing a circle for the jury, that 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). It was

[16] None of these charts reflect the name "Brandon Green" sending and or receiving money from any of the CWs and or sending to or receiving money from any persons that the CWs allegedly sent money to. CW Rosario testified that O-Dog sent a $2,000 Western Union wire to purchase heroin from Lite. However, there is not a single wire transfer found even broken down into amounts under $999.99. In fact, there isn't a wire transaction being sent from Elmira/Horseheads or Syracuse to the Bronx or Harlem, or any other areas in the Tri-State, on a single day, in or around Christmas of 2012. (Tr.2631,2633).

fabricated evidence used by the Government, along with perjured testimony they suborned from Ofc. Sisco, done to intentionally mislead Greens' jury to try and wrongfully convict him. This was a pattern of misconduct and Green's trial was loaded with similar unethical and illegal Government practices. For instance, the Government repeatedly asked leading questions and questioned their CWs without laying a proper foundation, to control the narrative, and to more 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 District 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." (Paraphrasing the District Court).

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)); also see, 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).

Green was subjected to fabricated evidence presented by the Government through its law enforcement and cooperating witnesses: e.g., Ofc. Sisco, the perjured testimony and map(s), CW Adams, and the fabricated murder plot. And that's just a few of the more glaring examples.

Again, Green argues that this isn't the average case. This is not a case with one or two instances of perjury, or a single piece of fabricated or false evidence. This wasn't a criminal trial; it was a farce and loaded with problems. The Government lied repeatedly throughout the entire proceedings. They lied to the grand jury, the District Court, and to Green's trial jury. In addition to the fabricated murder plot, the Government also tried to present another false theory, in their motion in limine (MIL), that Green had allegedly met a drug connection in federal prison and rose in ranks in the Gang while in federal custody. In their MIL they claimed that Green was in federal custody "from the beginning of the charged conspiracy through October 21, 2006[.]" (Doc.469). However, this wasn't true. Green was in federal custody from 2004 until 2010. And the District Court rejected their theory, stating that there wasn't any evidence to support it. See Johnson I. It may have helped Green had the jury heard he was in federal custody all those years, and nowhere around the other members when the Gang allegedly formed in New York State prison.

Green's case was full of Government misconduct, and these unethical and illegal tactics used by them were nothing new. (See A46-56, “Feinstein’s penchant for relying on testimonies of cops with murky histories even included a case where one may have been a flat out racist. Her prosecution of Donque Tyrell....relied partly on testimony from a police officer David Sammarco. Sammarco has had at least 35 allegations of misconduct, has been named in at least six federal lawsuits and was accused by one of Donnell's co-defendants of stopping and spitting on him.") Green argues that the many instances of egregious Government misconduct that occurred throughout his case is 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 that, "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-hidden-evidence-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[17]); and https://theappeal.org/nypd-detective-with-a-shady-past-helped-lock-up-a-pot-dealer-for-federal-conspiracy (Discussing how authorities, led by Preet Bharara, charged 120 people with a federal conspiracy. most of whom were poor, black, and Latin men who had green 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); also see, 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

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

prosecutors for delaying production of start of the trial). Therefore, with the systemic and pervasive Government misconduct that has occurred in the U.S. Attorney's Office for the SDNY, and especially in Green's case, it raises a substantial and serious question about the fundamental fairness of the process. Accordingly, this Court should vacate/reverse his convictions. Cd. Percoco, supra (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.).

There have been cases in which misconduct of the prosecuting attorney was pronounced and persistent, with probably cumulative effect upon the jury, which required reversal. See, e.g., Berger at 89 (finding that the prosecutor's "improper suggestions, insinuations, and especially assertions of personal knowledge" made the misconduct more than slight or confined to a single instance, but pronounced and persistent); also see, United States v. Forlorma, 94 F.3d 91 (2d Cir. 1996) (finding that the prosecutor's unsupported arguments caused substantial prejudice to the defendant and was grounds for reversal). Green contends that this is one of those cases where reversal is required due to the pronounced and persistent pattern of

misconduct of the Government. The District Court proceedings, to include Green's trial, did not comply with constitutional standards. The persistent pattern of prejudicial Government misconduct here clearly so infected the proceedings as to deprive Green of his Constitutional rights to due process, and it was more damaging because the Government's case against him wasn't strong. All counts should be reversed or vacated, and Green given a new trial, and or his entire case, to include 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 tactics used by the Government in Green's case raise serious questions about the fundamental fairness of the process that resulted in his indictment, conviction, and sentence. It's also clear that the grand jury and trial jury misled and

misinformed. Accordingly, this Court should vacate/reverse Green's convictions, dismiss his indictment with prejudice, and order his immediate release because Green argues that he cannot receive a fair trial now or at any time in the future, due to the Government's misconduct, and 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 trial, and or released.

VI. 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); also see, 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). Also see, 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 District Court, or his own attorneys, both standing idle while injustice unfolded. His lawyers were ineffective, the Government engaged in misconduct, and the District Court didn't hold either of them accountable. He also experienced problems with the District 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 arguments resulted in a complete breakdown in the adversarial process, and or amounted to plain error, plain-structural error, structural

error, and or resulted in a denial of due process, and or caused to so 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.

From the moment Green was arrested he maintained to his attorneys that he was innocent. In response Green was told that he was collateral damage in the Government's attempts to indict, try, convict, and imprison Johnson, and other alleged high-ranking members of the Gang, and anyone who they felt could be of use to them in their efforts to do so. Instead of fighting against the Government misconduct, and their "case" against Green, his lawyers tried to get him to take a plea deal and cooperate by testifying against Johnson and the others, regardless of the truth of that testimony. This wasn't a criminal prosecution; it was a witch-hunt. Because Green wouldn't play ball, the Government did whatever it took to make sure he suffered the consequences. They tried and convicted him using fabricated and illegally obtained and inadmissible evidence (physical and testimonial), as well as perjured testimony, some of which they suborned. It wasn't only Green's trial that was loaded with problems. The investigation into this case and his indictment was well based upon these lies and Government misconduct.

Green vehemently tried to get his attorneys, especially his Trial Counsel, to fight this case and challenge the search and arrest warrants, the indictment, the

inadmissible and illegally obtained evidence, and fight the Government misconduct. They were extremely deficient in their performance, and this severely prejudiced his right to a fair trial. They stipulated to nearly everything, failed to move to suppress the cocaine from the Traffic Stop, didn't challenge the District Court as being the improper venue for the guns allegedly found during the search of his residence in CT, and for any 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 for himself. He hoped that if voicing his concerns to the District Court, it would step in and correct the injustice. Therefore, in addition to speaking up in protest during several conferences and filing several pro se submissions raising the issues he was having with the proceedings, the Government, his attorneys, and his court submissions, Green also eventually chose to represent himself. Green's efforts appeared to work, as the District Court postponed his original sentencing to address his grievance raised in his Sentencing Memorandum. However, the District Court never addressed Green's complaints prior to imposing his sentence, and instead appeared to frustrate or otherwise control his attempts to do so. It also didn't relieve his stand-by counsel or honor his requests to represent himself. (See Pro Se Brief).

C. The District Court Should Have Ordered a New Trial in The Interest of Justice

Green contends that the District Court should have ordered a new trial. (See Pro Se Brief at 61-68, Counsel's Brief). When a criminal trial contains a series of factual and legal errors such that the criminal defendant's Constitutional right to a fair trial has been violated, a court has the authority to overturn the jury's verdict and to order a new trial with a different jury. Motions under Rule 33 demand a new trial in the interest of justice. Rule 33 provides that a "court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). The Rule confers broad discretion upon a trial court to "set aside a jury verdict and order a new trial to avert a perceived miscarriage of justice." See United States v. Sanchez, 969 F.2d 1409, 1413 (2d Cir. 1992). In exercising its discretion, however, the court must be careful not to wholly usurp the role of the jury and should defer to the jury's assessment of witnesses and resolution of conflicting evidence unless "exceptional circumstances can be demonstrated." Id. at 1414. Ultimately, the court must decide "whether letting a guilty verdict stand would be a manifest injustice." See U.S. v. Ferguson, 246 F.3d 129, 134 (2d Cir. 2001). The court should "examine the entire case, take into account all the facts and circumstances, and make an objective evaluation." id. After doing so, "[t]here must be a real concern that an innocent person may have been convicted" to grant the motion. Sanchez, 969 F.2d

1414. The court's Rule 33 authority should be used "sparingly" and only "in the most extraordinary of circumstances." Ferguson, 246 F.3d at 134. Such is the case here, for the reasons discussed within Green's and his Counsel's Briefs: e.g., ineffective assistance of counsel, government misconduct, pervasive government misconduct, and a pattern of government misconduct, as well as due to the incredible and inherently unbelievable witness testimony, all of which resulted in Green, who is innocent, being wrongfully convicted. Cf., e.g., United States v. Narciso, 446 F. Supp. 252,282 (E.D. Mich. 1997) ("It is a well-accepted general proposition of law that a verdict cannot be based on evidence which cannot possibly be true, is inherently unbelievable, or is opposed to natural laws." (internal citations and quotations omitted)); Tibbs v. Florida, 457 U.S. 31, 38, n.11 (1982)(When determining whether to grant a new trial, "[t]he district court need not view the evidence in the light most favorable to the verdict; it may weigh the evidence and in so doing evaluate for itself the credibility of the witnesses."); United States v. Kuzniar, 881 F.2d 466, 470 (7th Cir. 1989)("Where a witness' testimony is such that reasonable men could not have believed the testimony, then exceptional circumstances are present, and the district court may take the testimony away from the jury."); Hamilton v. State, 677 So. 2d 1254 (Ala. Crim. App. 1995)(A new trial was ordered where the State's principle witness perjured himself. State withheld evidence, and there was prosecutorial misconduct and ineffective assistance of

counsel); but see, United States v. Ellison, 2020 U.S. Dist. LEXIS 428, at *26 (S.D.N.Y. Jan. 10, 2020) (denying defendant Ellison's post-trial motions for new trial and judgment of acquittal, stating that: "Ellison's trial was fair in all respects. He had the benefit of being represented by able, experienced, and energetic defense counsel. He received fulsome discovery from the Government, had an opportunity to filed both legal motions and motions in limine, obtained early access to 3500 materials, and, at trial, availed himself of the opportunity to cross examine the Government's witnesses. He also had the opportunity to call witnesses on his own behalf.").

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

1. *Great Public Concern and Interests of Substantial Justice*

Green further argues 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 many errors that occurred in the District Court. Green argues that the District Court proceedings were loaded with plain, plain-structural, structural, and Constitutional and other errors. Although he raised these issues in the District Court, (A8-15, A16-20, A28-45, A81-99, and Doc. 1048), he argues that regardless of this, 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).

Green argues the District Court didn't just err by failing to order a new trial, but also stood idle while knowing the Government was fabricating evidence and suborning perjured false testimony and evidence during his trial. Green submits the District 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. Referring to Sisco, and how the Government used him to suborn perjured testimony, and falsely indicate on the map (GX 236) by drawing a circle and placing a dot to mislead the jury into believing the Traffic Stop occurred at the Honey Complexes.

Green was subjected to severe Government misconduct and grossly deficient legal representation. He argues the many 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 was reliable. There were too many problems here.

Green submits this case is indicative of the problems plaguing our country's justice system and undermining public confidence the same. 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, "[s]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 which 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.[18]

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[18] See, e.g., https://www.pewresearch.org/politics/2020/09/14/americans-views-of-government-low-trust-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.").

2. *Cumulative Errors and a Complete Breakdown*

Green argues this Court should vacate all his convictions due to the cumulative effect of the many errors discussed throughout his and his Counsel's briefs. The "cumulative unfairness" doctrine is firmly embedded in these Circuits precedents. See, e.g., United States v. Gugliemini, 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."); see also United States v. Yousef, 327 F.3d 56,172 (2d Cir. 2003)(per curium). All of Green's convictions should be vacated under the "cumulative unfairness" doctrine.

Green submits his entire case was loaded with significant errors from several instances of ineffective assistance of counsel, to pervasive prejudicial Government misconduct, judicial bias, and partiality, and even problems with his court submissions not being timely or otherwise filed in his docket. His trial was loaded with issues, such as perjured and false testimony, fabricated, inadmissible, and illegally obtained evidence, which was largely because of these issues (i.e., Government misconduct, and IAC). The District Court didn't respect Green's requests to discharge his Stand-by Counsel and represent himself. Green argues the

many errors also serve to give credence to his claims that there was a complete breakdown in the adversarial process. Cf. Cronic, 466 U.S. at 662.

The District Court knew or should have known from its review of the 3500 materials that the Government was suborning and presenting perjured, false, and fabricated evidence to Green's jury, and that its witness, Ofc. Sisco was lying. The District Court neglected to address this and other concerns once Green raised them post-trial in a series of pro se submissions. (A8-15, A28-45, A81-99). Green also complained about how he repeatedly asked his Trial Counsel to move to suppress the cocaine allegedly recovered from him during the Traffic Stop. However, the District Court didn't address this either. Review of the record indicates that Green's Trial Counsel, the District Court, and the Government all knew that there was Fourth Amendment and other serious issues surrounding the Traffic Stop, but all still allowed this to be used against him at trial. For instance, prior to trial Green's Counsel kept stating that they were having trouble locating the records from the Traffic Stop and the reasons underlying the dismissal, but review of the record reveals that everyone had quite a lot of information on that state case, to include the disposition, among other things. (A63, email between Trial Counsel and the Government, with attachments of, inter alia, the Disposition, and civil depositions of Sisco); and A100-01, A102-04, and A105-06, ltrs. from Trial Counsel to the District Court showing that they had an abundance of information regarding the

Traffic Stop)). And although the District Court claimed needing to know more about the reasons underlying the dismissal, it never further inquired into this, even though it acknowledged that there were potential Fourth Amendment issues with that case. (Tr.25)

The District Court neglected to respect Green's explicit requests to relieve his Stand-by Counsel and represent himself and this was a structural error. See McKaskler v. Wiggins, 465 U.S. 168 (1984). And failing to recuse or assign the case to a different judge after Green's request was also a structural error. See Garrow v. Superintendent, 2021 U.S. Dist. LEXIS 77151 (2d Cir. 2021). This District Court also filibustered Green's attempts to bring to light and redress, among other issues, his complaints against his former lawyers and the Government. (See Pro Se Brief).

VII. 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 and Sec. 846 Convictions*

The Government's RICO and Sec. 846 counts were based on a single alleged possession of cocaine and the unreliable and 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. There was no nexus. And it was never shown when or that Green ever actually joined the Gang or had any real status. Green was never shown to have a tracking number (Tr.423). Green has several records supporting his contentions that he has never been a member of this or any gang. (A1-5)

As it relates to the Elmira drug conspiracy it should be noted that the evidence showed that Green had nothing to do with this and it was an operation of the "Greyhound" pedigree in Harlem. (Tr.2985, showing that Saeed Kaid (a/k/a "O-dog" found the town of Elmira from Marques Cannon and that it was a Greyhound operation)). There wasn't sufficient evidence to attribute Green as the primary supplier of narcotics for this Elmira drug conspiracy and the testimony of those CWs demonstrated that they received their narcotics from a variety of sources. (Tr.345,367-68,873,2639,2655,2606-07,2991,3005; and 2991-3002 (CW Rosario testifying that all the cocaine he was selling in Elmira came from a Greyhound member in Harlem, named Wheezy.)). CW Morton testified that he supplied heroin to O-dog. (Tr. 1016). CW Rosario also testified that all the marijuana that he was selling in Elmira came from a person in the Bronx, who he was introduced to by another Greyhound member, named Mace. (Tr.3005). The only witness to testify that Green provided cocaine for the Elmira operation was CW Adams. (Tr.342,343,361).

The CWs who claimed to have been involved in the Elmira operation also contradicted each other on several occasions and jumbled important details.[19] Several of the CWs who claimed to have been substantially involved in the operation

[19] Both CW Rosario and Morton testified that the alleged heroin they brought was already cut, however CW Daly testified that cut was used to dilute the drugs (Tr.856,2665,2665).

could not correctly identify the trailer that they claimed to operate out of. Adams also tried to make it appear as if he was more involved than he was; however, it was shown that he was only in Elmira for at most likely a few weeks and lied about his reasons for going there in the first place. (Tr.351). Adams' claimed to have purchased several kilos of cocaine while in Elmira during this very short period, but when asked by the District Court to explain how much those kilos of cocaine weighed, he couldn't, claiming that he was "not too good with drugs." (Tr.339-40). This contradicted CW Adams' claims that the drugs they purchased were stored on their person.[20] (Tr.340). Also, several of the CWs claimed to have been the ones who drove to New York City to purchase the drugs; however, they contradicted each other regarding who the drugs came from, and what those drugs were. For example, CW Rosario testified that it was him and O-dog who made most of the trips to the city to purchase the drugs. (Tr.343-45,2592,2628,3002-03). And Rosario's testimony contradicted Adams' testimony, when he testified to Adams never coming along. (Tr.3091). Additionally, CW Rosario testified that he participated in the Elmira

[20] CW Adams testified that he would allegedly obtain resupplies of a kilogram of cocaine (from Light or Weezy) in NYC for the Elmira drug operation, but never stated each time who provided these kilograms. (Tr.343-45). His reasons for going to Elmira because Biggs attacked Ms. Ingram, it wasn't to sell drugs. (Tr. 331). Both CW's Adams and Rosario testified to going up to Elmira after this alleged shooting, however neither CW mentions the other being along for the ride, and/or in Elmira when the other got there. (Tr.331 2985). He moved to the trailer because there were too many customers going in and out of the Washington Ave. house, but claims he was doing the same things in the trailer (Tr. 351). His story about when he was arrested in Elmira made no sense, claiming that he was arrested with three people who went by the same name "Top Dolla." (Tr.354).

operation from around November 2012 to January 2013; however, CW Daly testified that Rosario only stayed in the house for 2-3 weeks. (Tr.2771-72). Daly also testified that the heroin resupplies came from a Dominican guy, and the Gang (in Elmira) did not like to get cocaine. This also contradicted the testimony of the other CWs, to include Adams. Daly additionally 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) and once with Bezo, to Harlem; never mentioning CW Adams or CW Rosario as being involved.[21] (Tr.2606-07,2814,2624-25).

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); see also 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

[21] Daly testified allegedly when G ("O-dog") was arrested, his go-to supplier became a Bronx Greyhound member Mace (Tr.2655); that Adams did not spend no more than a couple of days in his house, and they got a trailer. (Tr.2814). Daly testified he observed predominately crack cocaine being brought into his house once or twice a week, and powder cocaine occasionally. It wasn't until the AUSA asked Daly the leading questions, before he testified to heroin being brought into his home, but not that often. (Tr.2606-07); Daly never watched the hounds weigh the cocaine that was coming into Elmira, and he also never kept count of the amount of crack cocaine that he sold. (Tr.2518-19 2592,2606-09,2628,2660-61); he manufactured and sold drugs in Elmira with David Drake. (Tr.2639); He made sure that all the firearms in his apartment that belonged to this group of people were unloaded. (Tr.2628).

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); see also 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 that 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. To the contrary, 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. And the evidence was not sufficient 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 of 2010. But it was not shown that Green or any of the other vehicles 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, and that testimony does not pass the test. If anything, it serves to corroborate Green's claims that he is innocent of these charged offenses, and that the evidence 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."); and 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 Green argues that 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, and 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 directed 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.

SWORN DECLARATION

I, Brandon Green, DO HEREBY declare under penalty of perjury, under 28 U.S.C. Sec. 1746, that the information contained in this Supplemental Brief is true and correct.

SWORN to and EXECUTED on this 26 day of December 2022.

Respectfully Submitted,

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Brandon Green # 56400-054

Pro Se, Appellant