IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

YASSIN AREF,

Petitioner, Case No. 1:04-cr-402

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO VACATE HIS CONVICTIONS
PURSUANT TO 28 U.S.C. §2255

PRELIMINARY STATEMENT

This memorandum is respectfully submitted in support of Petitioner Yassin Aref's motion to vacate pursuant to 28 U.S.C. §2255. Mr. Aref is incarcerated pursuant to a Judgment of this Court dated March 17, 2007, convicting him of Counts1; 10-11; 12; 18-19; 20; 26-27 and 30 of the superceding indictment and sentencing him to a term of imprisonment of fifteen years. The judgment was affirmed on direct appeal. *United States v. Aref*, 285 Fed. Appx 784, 792-793 (2nd Cir. 2008)

STATEMENT OF FACTS

The facts and procedural history of the case have been set forth in the accompanying §2255 Petition. Only the facts relevant to the claims raised in this Petition are incorporated into the argument *infra*.

ARGUMENT

The Standard under 28 U.S.C. §2255.

28 U.S.C. §2255 permits a person held in federal custody to petition the sentencing court to vacate, set aside, or correct a sentence. A defendant is entitled to relief under 28 U.S.C. §2255 if he establishes, *inter alia*, that the sentence was imposed in violation of the Constitution or laws of the United States. *Hill v. United States*, 368 U.S. 424, 428 (1962).

The Instant Petition should not be Considered a "Second or Successive" Motion

While since the passage of the Anti-Terrorism and Effective Death Penalty Act (AEDPA), a petitioner must obtain approval from the appellate court before filing a "second or successive" motion under 28 USC 2255, not every such petition is considered "second or successive." *Scott v. United States*, 761 F. Supp.2d 320 (EDNY 2011); *Panetti v. Quarterman*, 551 US 930, 943-44 (2007).

When, as in the instant case, the facts upon which the new motion is predicated could not have been known by petitioner at the time of the previous motion, the new motion will *not* be considered "second or successive." *Scott v. United States*, supra, at 325; *United States v. Grant*, 493 F.3d 464, 468 n. 3 (5th Cir. 2007). In *Scott*, supra, the court determined that the motion in question was not deemed "second or successive" for that reason, stating:

> "Here. Petitioner's instant section 2255 motion is grounded in the arrest, prosecution, and sentencing of corrupt law enforcement personnel in the wake of Operation Tarnished Badge. Neither the public nor Petitioner had knowledge of the existence and extent of this corruption until well after Petitioner had filed his initial section 2255 petition... Petitioner's motion is not 'second or successive,' and, accordingly, Respondent's Motion to Dismiss is denied." *Scott*, supra, at 325.

As in *Scott*, the main facts upon which the instant Petition is predicated – the new evidence that the government thought Petitioner was an Al Qaeda agent named Mohammed Yasin (evidence which Petitioner submits was provided to this Court and to the Second Circuit in some form) and the new evidence of the perjury committed by Shahed Hussain– were not known by Petitioner at the time he filed his previous 2255 motion[1]. Therefore, this Court should hold that the instant Petition is *not* a "second or successive" motion.

The Standard for Obtaining a Hearing

28 USC 2255 provides that a hearing *must* be granted unless the record shows conclusively that relief is not warranted, stating:

> "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings or fact and conclusions of law with respect thereto."

As discussed in the Petition and below, it is submitted that Petitioner *is* entitled to a hearing with respect to the issues raised herein.

POINT I

THE GOVERNMENT SUPPLIED FALSE *EX PARTE* INFORMATION TO THE COURTS WHICH MISIDENTIFIED PETITIONER AS MOHAMMED YASIN OR AS AN AL QAEDA AGENT

The Supreme Court has long held that the "deliberate deception of the court" by the presentation of false evidence is a denial of due process. *Mooney v. Holohan*, 294 US

[1] That previous motion, filed on March 8, 2010, and subsequently denied, was filed *pro se* and alleged ineffective assistance of counsel. The Newburgh trial took place in the fall of 2010, and the new FOIA evidence was not received by Petitioner until the end of 2011.

103, 112 (1935); *Napue v. Illinois*, 360 US 264 (1959); *Harris v. Gov't of the Virgin Islands*, 2011 WL 4357336 (D.C. App. 2011).

In *Napue*, supra, the Supreme Court held that a due process violation occurs "when the State, although not soliciting false evidence, *allows it to go uncorrected* when it appears.' *Napue*, supra, at 269, emphasis supplied.

In addition to the new evidence regarding Shahed Hussain, it is submitted that the government herein provided false classified evidence to this Court and to the Second Circuit, and that this false evidence – that Petitioner was associated with Al Qaeda – permeated the whole case and had a direct effect on the verdict, the sentence, and the appeal.

As discussed in more detail in the Petition, it is submitted that the Government knew or should have known by the time of the trial in September, 2006, that Yassin Aref was *not* Mohammed Yasin, who was killed in 2010, and was *not* associated with Al Qaeda. As discussed in the Petition at 13-15, by July, 2005, it was being reported that Mohammed Yassin had been training Mohammed Siddique Khan, the lead attacker in the July 7, 2005 London bombings. Clearly Mohammed Yassin could not have been Yassin Aref, who was under indictment in Albany, New York at that time, and who had been in Albany since late 1999.

In *Harris*, supra, the 1996 conviction was vacated, under a plain error standard, in 2011 based on new evidence that false evidence – regarding an identification - had been presented to the court. The court found that the prosecutor should have realized sooner that the evidence was false, and that there was a resulting due process violation, stating:

> "By proceeding throughout the trial and for more than a year afterward as if Sorhaindo's testimony was the bedrock of certainty, [prosecutor] Davis

> behaved recklessly and irresponsibly when the single identification evolved into two.. His choices can only be fairly viewed as either deliberate and intentional or willfully blind. ...
> ***
> Courts have long recognized the special role played by the American prosecutor in the search for truth in criminal trials. *Strickler v. Greene*, 527 US 263, 281 (1999). The prosecutor is 'the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.' *Berger v. United States*, 295 US 78, 99 (1935). ...
> ...In pursuing a conviction, David trampled upon the due process guarantees of fair process embedded in our Constitution. We find that a plain error occurred and remand for a new trial on this basis." *Harris*, supra, at 14.

As in *Harris*, it is submitted that the prosecution presented false evidence to the Court herein (and to the Second Circuit) and that the prosecution knew or should have known, by the time of the trial, that this evidence was false. See also *Hayes v. Brown*, 399 F.3d 972 (9th Cir. 2005) (reversed because prosecutor presented false evidence and failed to later correct the record).

In *United States v. Freeman*, 650 F.3d 673 (7th Cir. 2011), the court granted a new trial where the government had made representations to the trial court which it should have known were false, stating:

> "The government's duty to assure the accuracy of its representations has been well stated, many times before. *Berger v. United States*, 295 US 78, 88. ... *This means that when the government learns that part of its case may be inaccurate, it must investigate*. ... Here, the government abdicated its responsibility by failing to investigate and determine whether Wilbourn could have been at the penthouse as Williams claimed he was." *Freeman*, at 680, emphasis supplied.

Therefore, Petitioner should receive a new trial or, in the alternative, a hearing must be held to examine this issue. *United States v. Humphrey*, 888 F.2d 1546 (11th Cir. 1989) (hearing ordered when it was claimed that false evidence had been presented to the court).

Even if the prosecution (including the Department of Justice Counterterrorism Section in Washington, which was also involved in this case) was somehow unaware of the falsity of the evidence at the time of trial, as the Supreme Court stated in *Napue*, supra, the prosecutor had a duty to inform the Court as soon as it was learned that the evidence was false. It is submitted that this was never done. See also *United States v. Pedin*, 861 F.2d 1522, 1529-1530 (11th Cir. 1988)

POINT II

THE FALSE EVIDENCE SECRETLY GIVEN TO THE COURT (THAT PETITIONER WAS AN AL-QAEDA AGENT) LED THE COURT TO TELL THE JURY THAT THERE WERE "GOOD AND VALID" REASONS FOR TARGETING PETITIONER, AND, GIVEN THE WEAKNESS OF THE CASE, IT IS LIKELY PETITIONER WOULD HAVE BEEN ACQUITTED IN THE ABSENCE OF THAT TARGETING INSTRUCTION

When false evidence is knowingly or recklessly presented to a court, the conviction should be reversed if the false evidence "could ... in any reasonable likelihood have affected the judgment of the jury." *Giglio v. United States*, 405 US 150, 154 (quoting *Napue*, 360 US at 271). See also *United States v. Agurs*, 427 US 97 (1976).

An erroneous jury instruction can be the basis for post-conviction relief where it "so infected the entire trial that the resulting conviction violates due process..." *Williams v. United States*, 98 F.3d 1052 (8th Cir. 1996).

It is submitted that the evidence herein falsely linking Petitioner Aref to Al Qaeda compelled this Court to tell the jury that there were "good and valid reasons" for targeting him. As discussed in depth in the Petition, given that Petitioner was acquitted of all of the sting counts arising from conversations prior to June 10, 2004, and given that he was not provided with any new information on that date (and was never told of the meaning of the crucial code word "chaudry,") it is highly likely that he would have been

completely acquitted were it not for the extremely prejudicial and unprecedented targeting instruction.

There was a somewhat analogous situation in *United States v. Sellers*, 574 F. Supp. 767 (WD NC 1983) where the trial court stated, wrongly as it turned out, in front of the jury, that the government wouldn't conceal anything from the defense. After an evidentiary hearing, the court reversed the conviction, stating:

> "The fairness of the proceedings was ... damaged by the gratuitous assertion of the trial judge in the presence of the jury (and at a time when the government was withholding information from defendant) that 'The government does not conceal anything from the defense. '
>
> The trial judge's comment that 'The government does not conceal anything from the defense' was, I am afraid, not only a *prejudicial piece of character testimony, but also* (to the extent that the court appeared to state an unvarying practice) *contrary to fact. ...*
>
> The above circumstances are outlined in considerably more detail in Magistrate Delaney's lengthy, factual memorandum. Even as briefly described in this opinion, they add up to a trial lacking in constitutional fairness. They are especially prejudicial because, despite petitioner's track record as a 'big league' criminal, there is at least a reasonable likelihood that he did not commit this particular offense." *Sellers*, supra, at 770, emphasis supplied.

As in *Sellers*, this Court's targeting instruction, which was not only stated in the presence of the jury, but which was *directed at them*, was an incredibly prejudicial piece of evidence as to Petitioner's claimed bad character, and, as in *Sellers*, it was predicated on false evidence. The convictions should be reversed as a result or a hearing should be held, as occurred in *United States v. Humphrey*, supra.

POINT III

THE PROSECUTION WITHHELD BRADY MATERIAL, INCLUDING EVIDENCE WHICH WOULD HAVE PROVED PETITIONER WAS NOT TOLD THE MEANING OF THE CODE WORD ON FEBRUARY 12, 2004

In *Brady v. Maryland*, 373 US 83 (1963) the Supreme Court held that it is a due process violation for the prosecution to fail to disclose material evidence which is

favorable to the defense. Evidence is considered "material" in this context when "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 US 667, 682 (1985).

As discussed in the Petition, at 9-11 and 20-22, it is submitted that, based on a January 16, 2006 New York Times article showing Petitioner was subjected to warrantless wiretapping by the NSA, as well as sidebar evidence at trial showing that he was subject to 24 hour electronic surveillance during the sting operation, Petitioner has strong reason to believe that there exists a recording of the crucial February 12, 2004 meeting at his house. With the new evidence showing that the FBI believed Petitioner was associated with Al Qaeda, and the fact that this case was a priority in Washington, there is even stronger reason to believe that this recording exists.

Lead FBI case agent Tim Coll told the jury that it was at this meeting (which was suspiciously not recorded by Shahed Hussain, who claimed the recording device "fell off" his body on that key occasion) that Yassin Aref was told of the code word "chaudry" for the missile. While Coll was later forced to recant this claim, the prosecution continued to advance it in their appellate brief. Thus if there were a recording of that meeting after all, it would, Petitioner submits, show conclusively that he was *not* told of the meaning of the word "chaudry" on that date.

The significance of this cannot be overstated, given that Petitioner's only sting convictions were based on the June 10, 2004 conversation, which Agent Coll conceded would "not stand for much" if Aref did not know the meaning of the code word.

There are a many cases where convictions have been reversed based on Brady violations. See, i.e., *Smith v. Cain* 132 S.Ct. 627 (2012; *Cone v. Bell*, 129 S.Ct. 1769 (2009); *U.S. v. Mahaffy*, 693 F.3d 113 (2nd Cir. 2012); *LaCaze v. Leger*, 645 F.3d 728 (5th Cir. 2011); *Lambert v. Beard*, 633 F.3d 126 (3rd Cir. 2011); *Drake v. Portuondo*, 553 F.3d 230 (2d Cir. 2009).

The fact that the *Brady* evidence sought by the defense may have been classified should not matter. Under the Classified Information Procedure Act (CIPA), the defendant's rights to exculpatory information and discovery cannot be abridged by classifying the material; if the government is unwilling to declassify the material, Petitioner is entitled to a substitute that will leave him in no worse a position than if he had been given the material. *United States v. Moussaoui*, 382 F.3d 453 (4th Cir. 2004) In this case the violation was even more egregious because defense counsel *had obtained a security clearance precisely to be able to review this material.* .The *Moussaoui* court stated:

> "...In all cases of this type - cases falling into 'what might loosely be called the area of constitutionally guaranteed access to evidence,' *Arizona v. Youngblood*, 488 US 51, 55, 102 L. Ed. 2d 281, 109 S. Ct. 333 (1988) - the Supreme Court has held that the defendant's right to a trial that comports with the Fifth and Sixth Amendments prevails over the governmental privilege. Ultimately, as these cases make clear, the appropriate procedure is for the district court to order production of the evidence or witness and leave to the Government the choice of whether to comply with that order. If the government refuses to produce the information at issue - as it may properly do - the result is ordinarily dismissal.
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> ***
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> In addition to the pronouncements of the Supreme Court in this area, we are also mindful of Congress' judgment, expressed in CIPA, that the Executive's interest in protecting classified information does not overcome a defendant's right to present his case. Under CIPA, once the district court determines that an item of classified information is relevant and material, that item must be admitted unless the government provides an adequate substitution. *See* 18 USCA App. 3, Section 6(c)(1) ... If no adequate substitution can be found, the government must decide

> whether it will prohibit the disclosure of the classified information; if it does so, the district court must impose a sanction, which is presumptively dismissal of the indictment." *Moussaoui*, at 474-476, some citations deleted, and emphasis in original.

As discussed in the Petition, at 10-11, the Inspectors General of the Justice Department and five other agencies wrote a report in 2009 which found that because there was no mechanism to locate *Brady* material in classified evidence, there was a need to review prior classified evidence cases to see if there had been *Brady* violations. In this case, the defense has identified *specific* evidence which we believe to be exculpatory, and which has not been provided. This includes the NSA recording of the crucial February 12, 2004 meeting at Petitioner's house, as well as the evidence sought with regard to the "14 calls," which Exhibit "N" shows was requested on many occasions.

This Court should reverse Petitioner's convictions based on the above *Brady* violations or, in the alternative, hold a hearing to examine this issue.

POINT IV

THE NEW EVIDENCE FROM THE NEWBURGH TRIAL SHOWS THAT THE PROSECUTION FAILED TO DISCLOSE SIGNIFICANT IMPEACHMENT MATERIAL REGARDING SHAHED HUSSAIN, WHO COMMITTED PERJURY IN BOTH TRIALS

The new evidence from the Newburgh 4 trial, where Shahed Hussain lied so much on the witness stand that the judge wrote a letter to his Bankruptcy judge in this District to say that it appeared he had committed perjury in that proceeding as well, also provides compelling grounds for reversal of the convictions herein. As discussed in the Petition, the prosecution knew or should have known about many of Hussain's false statements at the time of the trial herein.

Moreover, the defense learned from the Newburgh trial of some very significant impeachment material regarding Hussain – including the fact that he faced murder charges in Pakistan, and the fact that he had a pending larceny charge at the time of trial. This was evidence which the prosecution was in position to know about at the time of the trial herein, yet failed to disclose.

While the prosecution has claimed that Hussain's credibility was not important because the case depended on recordings, the fact is that, as described in detail in the Petition, Aref's sting convictions hinged on the June 10, 2004 conversation, which would have been meaningless unless Aref had been told the meaning of the code word "chaudry." And Agent Coll admitted that he relied on Hussain for that claim, thus making Hussain's credibility highly material.

There are many cases where convictions were overturned or hearings were granted based on *Brady* violations regarding nondisclosure of impeachment material and evidence that a prosecution witness had testified falsely. *Drake v. Portuondo*, 553 F.3d 230 (2d Cir. 2009) (murder conviction vacated because of due process violation where prosecutor knew witness was testifying falsely); *Banks v. Dretke*, 540 US 668 (2004), *Moore v. Sec'ty of Pennsylvania Dep't of Corrections*, 457 Fed. Appx 170 (3rd Cir. 2012) (hearing granted where petition alleged prosecution failed to disclose material impeachment evidence); *Lambert v. Beard*, 633 F.3d 126 (3rd Cir. 2011) (habeas petition granted in murder case where prosecution failed to disclose material impeachment evidence); *United States v. Freeman*, 650 F.3d 673 (7th Cir. 2011)(grant of new trial upheld based on government's use of false testimony); *United States v. Biberfeld*, 957 F.2d 98 (3rd Cir. 1992) (hearing granted where defense alleged key witness had

committed perjury); *United States v. Pedin*, 861 F.2d 1522 (11th Cir. 1988) (conviction reversed where government failed to disclose exculpatory evidence and failed to correct witness' false statement).

In *Lambert v. Beard*, supra, the court reversed the conviction based on the nondisclosure of certain impeachment material even though the witness in question, like Shahed Hussain, had been thoroughly impeached on other grounds, stating:

> "...Jackson ... came burdened with a wealth of impeachment material... Predictably, he was savaged at trial. One wonders how the Commonwealth could have based this case of first-degree murder on a Bernard Jackson.
>
> ***
>
> The Supreme Court of Pennsylvania ruled that [the new evidence] was immaterial because Jackson was so thoroughly impeached that, ipso facto, additional evidence could not have made a difference. ...
>
> Yet it is patently unreasonable to presume – without explanation – that whenever a witness is impeached in one matter, any other impeachment becomes immaterial. ...
>
> ...In *Banks v. Dretke*, 540 US 668 (2004), the Supreme Court rejected the state's argument that no *Brady* violation had occurred because the witness 'was heavily impeached at trial'...
>
> ***
>
> ...Here, the prosecution's closing argument emphasized Lambert's consistency in naming Lambert and Reese as the perpetrators. No more, in our view, need be said to make clear that finding that Lambert had not met the requirements of *Brady* was an unreasonable application of clearly established Supreme Court precedent. ..." *Lambert v. Beard*, at 131, 133-135.

As in *Lambert*, supra, the fact that Hussain was impeached at trial by his prior fraud conviction, a host of civil judgments relating to fraud, and other material, does not mean that the undisclosed material would have made no difference. For example, if the jury had known Hussain faced murder charges in Pakistan, they would have realized how desperate he may have been to try to please the government in order to avoid deportation. Moreover, the evidence that Hussain had lied to the Bankruptcy court would have shown the jury that he had no compunction about lying under oath.

In sum, as described in the Petition, the Newburgh evidence shows that Hussain is a pathological liar who consistently committed perjury, and who could not be relied upon for anything. If the prosecution had properly disclosed the evidence in question, the jury herein would have been more aware of Hussain's dishonest nature, and would have been less likely to accept any of his claims, including the key claim that Aref had been told the meaning of the code word.

POINT V

PETITIONER IS ACTUALLY INNOCENT

As discussed in depth in the Petition, there is very compelling evidence that Yassin Aref is completely innocent, and that he never had any inkling that he was involving himself in anything illegal. While it is not clear whether actual innocence is an independent ground upon which habeas relief may be based, the Supreme Court very recently clarified that a sufficient claim of actual innocence will defeat any procedural bar or statute of limitations which may stand in the way of a determination of the issues raised by the petitioner. *McQuiggin v. Perkins*, 133 S. Ct. 1924 (2013). In *McQuiggin*, the Supreme Court stated, at 1928, "[w]e hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar ... or ..expiration of the statute of limitations. ..."

Thus if the Court finds that there are any procedural bars or time limitations with respect to any of the issues raised in the Petition, it is submitted that a hearing should be held on the actual innocence claim, as occurred in *United States v. LaTorre*, 193 F.3d 1035 (8th Cir. 1999).

POINT VI

PETITIONER WAS PREEMPTIVELY PROSECUTED

As discussed in the Petition, at 31-35, it is submitted that Yassin Aref was targeted in a sting operation and prosecuted not for anything he had done, but based on suspicions of what he *might* do in the future. This type of "preemptive prosecution" has become increasingly common since 9/11, and the prosecutor stated at the post-conviction press conference (excerpts of which are attached to the Petition at Exhibit "O" at 4-6) that Aref was prosecuted in the sting because of his ideology, and "in order to preempt anything further."

While there does not appear to be any case law discussing the phenomenon of preemptive (or preventive) prosecution, as the Petition describes, the concept has been examined in a December, 2011 Congressional Research Service Report by Jerome P. Bjelopera entitled "*The Federal Bureau of Investigation and Terrorism Investigations,"* in a scholarly book by John Mueller ("*Terrorism Since 911: The American Cases,"* and in several law review articles and other articles. See, i.e., David Cole and Jules Lobel, "Less Safe, Less Free" 26-28, 102 (2007); and Robert M. Chesney, "*Beyond Conspiracy? Anticipatory Prosecution and the Threat of Unaffiliated Terrorism*," 80 S. Cal. L. Rev. 425, 430 (2006). In "*The Terrorist Informant*," a 2010 article in Washington Law Review, Wadie Said states:

> "The period after 9/11 has witnessed the government's efforts to engage in so-called preventive prosecution of terrorists – arrests and prosecutions that occur before any dangerous plot can come to fruition. Preventive prosecution contrasts with terrorist prosecutions pre-9/11, which focused mainly on punishing those individuals implicated in cases involving violent attacks that had already occurred. ..." Wadie Said, "*The Terrorist Informant*," Washington Law Review, Vol. 85: 687, at 715.

Although it is submitted that the policy of targeting people for sting operations based only on their perceived beliefs is in itself very problematic, in this case the suspicion - that Yassin Aref was associated with Al Qaeda and generally inclined to support terrorism – was false, and, unlike many other cases, the recorded conversations did *not* reveal any desire on the part of Petitioner to support terrorism. As noted in the Petition, this was emphasized by John Mueller in his book, where he stated, "Unlike other cases where entrapment has been alleged, the defendants in this case never expressed any intent of engaging in terrorist activities. On multiple occasions, Aref and Hossain criticized involvement with terrorist groups and in terrorist plots..... It is not clear whether this is actually a terrorism case at all. ..." ("*Terrorism Since 911: The American Cases,*" *http://politicalscience.osu.edu/faculty/jmueller/SINCE.pdf* at 117-118)

POINT V11

TIMELINESS OF THE PETITION

As discussed in the Petition, Yassin Aref did not learn of the new evidence - that the FBI believed he was associated with Al Qaeda and that the government must have secretly presented this material to the courts – until the end of 2011, and he then unsuccessfully tried to appeal administratively to get more of the FOIA material unredacted. Defense counsel herein did not learn until April, 2013 that Petitioner had inadvertently failed to properly file his administrative appeal. Under these circumstances the Court should find that Petitioner and his attorneys have shown due diligence with respect to the timing of the instant Petition. See *United States v. Biberfeld*, 957 F.2d 98, 104 (3rd Cir. 1992); *Scott v. United States*, 761 F. Supp.2d 320, 325 (ED NC 2011). In the

alternative, as discussed in Point V herein, Petitioner's claim of actual innocence serves to remove any time bar or procedural bar to the Petition.

CONCLUSION

WHEREFORE, for all the foregoing reasons, this Court should issue an order: vacating the judgment of conviction and ordering a new trial and granting such other and further relief as this Court deems just and proper.

Dated: July 12, 2013

Respectfully submitted,

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