

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal No. 00-cr-0157 (RCL)
	:	
KEVIN L. GRAY,	:	
	:	
Defendant.	:	

**MOTION TO VACATE, SET ASIDE OR
OTHERWISE CORRECT SENTENCE**

Comes now KEVIN L. GRAY, through counsel and moves pursuant to 28 USC 2255 to vacate, set aside or otherwise correct his sentence for reasons more fully set forth below.

Procedural Posture

Mr. Gray was found guilty of several counts including conspiracy to distribute controlled substances, murder and racketeering. He was sentenced on March 9th, 2005. The Judgment and Commitment Order was filed on May 11th, 2005 and his Notice of Appeal was timely filed on March 17th, 2005. On July 29th, 2011 the United States Court of Appeals denied relief and the United States Supreme Court declined to grant cert on June 18th, 2012. This motion, with the attached AO243 is filed on June 14th, 2013.

Reasons for Request

Mr. Gray avers that circumstance and events that took place on and off the record before, during and after his trial denied him a fair hearing as contemplated under the 5th and 6th Amendments to the United States Constitution. More specifically he avers, at a

minimum, the following violations led to his conviction, rendering it constitutionally infirm and otherwise subject to collateral attack..

1. **Perjured testimony** – The government deliberately housed cooperating witnesses together before and during their testimony, knowing or otherwise engaging in willful ignorance as to their collusion to fabricate and dovetail testimony. Petitioner has been in contact with co-defendants, who are now released, who have advised him of the collusion that resulted in false testimony on several points, resulting in a denial of petitioner’s constitutional right to a fair trial.
2. **Failure to Sequester** – The court failed to enforce its *Rule on Witnesses*; contributing to the denial of a fair trial as contemplated under the 6th Amendment of the United States Constitution.
3. **Government Misconduct** – Government agents deposited money in the commissary accounts of at least one cooperating witness, purchased clothes items for another and paid a 1,300 cell phone bill for the girlfriend of a third. Petitioner seeks authorization of funds to investigate the nature and extent of these payments which may constitute subornation of perjury and denial of petitioner’s constitutional right to a fair trial.
4. **Prosecutorial Misconduct** – Government Trial Counsel is believed to have known about or authorized the payments to cooperating witnesses and associate(s).

Relief Requested

- A. That the court issue an order permitting Mr. Gray to expand the record by submitting affidavits, transcript excerpts, documents and exhibits at a later date.
- B. That the court issue an order permitting Mr. Gray to conduct discovery by propounding interrogatories and/or conducting depositions upon the filing of a Motion for Authorization of Funds under the Criminal Justice Act to include a copy of the proposed interrogatories and areas to be explored in a deposition..
- C. That upon the completion of discovery a scheduling order be issued for the government to file a response and defendant's time to reply.
- D. That an Evidentiary Hearing be held before a final determination is made by the court.
- E. That the Judgment and Commitment Order be vacated and Defendant granted a new trial.

Respectfully submitted,

By: */S/ Anthony D. Martin*

Anthony D. Martin, 362-537
7501 Greenway Center Drive, Ste 460
Greenbelt, MD 20770
(301) 220-3700; (301) 220-0791

Counsel for Kevin L. Gray

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing motion was sent electronically to the Office of the United States Attorney for the District of Columbia and all counsel representing parties in this matter.

/s/ Anthony D. Martin

Anthony D. Martin, 362-537

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal No. 00-cr-0157 (RCL)
	:	
KEVIN L. GRAY,	:	
	:	
Defendant.	:	

ORDER

This matter is before the court on a Motion filed by KEVIN L. GRAY, through his court appointed counsel. He has moved, pursuant to 28 USC 2255 to vacate, set aside or otherwise correct his sentence. After having reviewed the motion, the record as a whole and the evidentiary hearing conducted after the filing of the application, **IT APPEARS TO THE COURT** that **GOOD CAUSE** has been shown for the relief requested.

WHEREFORE, IT IS ORDERED this ___ day of _____, 201__ that the Judgment and Commitment Order filed on May 11th, 2005, be and is hereby vacated. **IT IS FURTHER ORDERED** that the Defendant is granted a new trial.

JUDGE

Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. **If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.**
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for the District of Columbia
Address 333 Constitution Avenue, NW
City, State Zip Code 20001
9. **CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**
10. **CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District of Columbia
Name (under which you were convicted): Kevin L. Gray	Docket or Case No.: 00-0157-RCL
Place of Confinement: USP ATWATER P.O. BOX 019001 ATWATER, CA 9530	Prisoner No.: 28479-037
UNITED STATES OF AMERICA	Movant (include name under which you were convicted)
v.	Kevin L. Gray

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

(b) Criminal docket or case number (if you know): 00-0157-RCL

2. (a) Date of the judgment of conviction (if you know): 5/11/2005

(b) Date of sentencing: 3/9/2005

3. Length of sentence: Life

4. Nature of crime (all counts):

Conspiracy to Distribute Controlled Substances (21 USC 846); Continuing Crim Enterprise (21 USC 848 (a)(b)(e)(1)(A)); Racketeer Influenced Corrupt Organization (18 USC 1962); Murder First Degree (22 DCC 2401, 3202, 105); Assault With Intent to Commit Carnal Knowledge (22 DC 503, 3202,105); Conspiracy - First Degree Felony Murder, (22 DCC 2101, 2401, 3202, 105);Robbery(22 DCC 2901,2401,3202,105); Racketeering Activity-Murder and Kidnapping(18 USC 1959); Witness Tampering (18 USC 1512(a)); Use of Firearm (18 USC 924(c); Use of Comm Facility 21 USC 843(b)

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgment of conviction? Yes No
9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the District of Columbia

(b) Docket or case number (if you know): 05-3050

(c) Result: Denied

(d) Date of result (if you know): 7/29/2011

(e) Citation to the case (if you know): U.S. v. Moore, 651 F.3d 30, 397 U.S.App.D.C. 148 (D.C. Cir.,

(f) Grounds raised:

Whether the trial court erred by: 1) Ordering petitioner to wear stun belts b/r the jury; 2) empaneling an anonymous jury; 3) concluding that the gov't did not purposefully exclude black jurors; 4) condoning prosecutorial conduct; 5) admitting evidence related to the formation and goals of the drug conspiracy; 6) finding that the conspiracies occurred within the limitations period; 7) finding that the DC Murder Charges were properly joined; 8) by admitting expert hearsay evidence; 9) not reviewing in camera FBI reports to determine if there was any Jenck's material; 10) overruling motions to strike testimony; 11) finding that the government's loss of evidence was not done in bad faith; 12) giving conflicting language regarding multiple conspiracies; inter alia

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): 11-8978

(2) Result:

Cert was denied

(3) Date of result (if you know): 6/18/2012

(4) Citation to the case (if you know):

(5) Grounds raised:

1. Batson Issue; Dist2. Whether the District Court Abused its Discretion by Ordering Appellants to Wear Stun Belts; 3. Whether the District Court Abused its Discretion by Empaneling an Anonymous Jury; 4. Whether the Impermissible Conduct of Government Trial Counsel Denied Petitioner His Right to a Fair Trial; 5. Whether the District Court Abused its Discretion in Admitting Evidence; 6. Whether there was a violation of the Brady Rule; 7. Whether there was Sufficient Evidence to Support the Conspiracy Occurred Within the Limitations Period; 8. Whether the District of Columbia Counts Were Properly Joined in the Indictment; 9. Whether there Was the Confrontation Clause Violation During Hearsay Expert Testimony, inte alia

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Perjured testimony - The government deliberately housed cooperating witnesses together before and during their testimony before the court. Petitioner has been in contact with co-defendants who have advised him of the collusion that resulted in false testimony on several points, resulting in a denial of due process and petitioner's constitutional right to a fair trial as contemplated by the 5th and 6th Amendments.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Failure to Sequester - The court failed to enforce the Rule on Witnesses; contributing to the denial of a fair trial as contemplated under the 5th and 6th Amendments of the United States Constitution.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Government Misconduct - Government agents deposited money in the commissary accounts of at least one cooperating witness, purchased clothes items for another and paid a 1,300 cell phone bill for the girlfriend of a third. Petitioner seeks authorization of funds to investigate the nature and extent of these payments which may constitute subornation of perjury and denial of petitioners constitutional right to a fair trial.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prosecutorial Misconduct - Government Trial Counsel is believed to have known about or authorized the payments to cooperating witnesses and associate(s).

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

None of these issues have been presented before because they either do not appear on the record or have not been investigated by petitioner's trial or appellate defense counsels.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Maria Carlotta Mendoza, 717 D Street, NW, Ste 230 Wash, DC 20004

(b) At arraignment and plea:

Maria Carlotta Mendoza, 717 D Street, NW, Ste 230 Wash, DC 20004

(c) At trial:

Francis Darron Carter, 101 S Street, N.W, Washington, DC 20001-1129

(d) At sentencing:

Francis Darron Carter, 101 S Street, N.W, Washington, DC 20001-1129

(e) On appeal:

Stephen C. Leckar, 1850 M Street NW, Suite 240, Washington , DC 20036

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate Sentence and remand to the District Court for a New Trial.

or any other relief to which movant may be entitled.

/S/ Anthony D. Martin

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on _____ (date).

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Counsel is appointed pursuant to the Criminal Justice Act. Movant is currently housed in a Federal Penitentiary in California and was sent a copy of this form electronically on Wednesday, June 12th, 2013. During a brief conversation with his case manager on Thursday June 13th, 2013, counsel was made to understand that Mr. Gray was "unavailable". Counsel does not know if the facility is in lockdown status or whether Mr. Gray has been placed in isolation.