No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In Re

Terrence Matthew Brown

Petitioner

PETITION FOR WRIT OF HABEAS CORPUS

Terrence M. Brown
Reg. No. 08524-031
Federal Medical Center
P.O. Box 15330
Fort Worth, Texas 76119-0330

Petitioner Pro Se

QUESTIONS PRESENTED

I. DOES PRESENT CASE DEMONSTRATE THAT SUBPRIME MORTGAGE LENDERS IN EARLY TO MID-2000'S SYSTEMATICALLY ABANDONED UNDERWRITING REGULATIONS AND ENCOURAGED LOW-LEVEL MORTGAGE BROKERS TO VICTIMIZE UNSUSPECTING HOME BUYERS BY INCORPORATING FALSE INFORMATION INTO THEIR LOAN APPLICATIONS AND OTHER LOAN DOCUMENTS EXPOSING THEM TO WRONGFUL PENAL LIABILITY FOR MORTGAGE FRAUD GIVING RISE TO EXCEPTIONAL CIRCUMSTANCES WARRANTING EXERCISE OF DISCRETIONARY POWERS OF THE COURT AND ILLUMINATING NEED FOR CONGRESSIONAL ACTION TO STOP SIMILAR CONDUCT NOW RENEWING?

II. DOES NEWLY DISCOVERED EXCULPATORY EVIDENCE, VIZ., LOAN APPLICATIONS, THAT DEFENSE COUNSEL FAILED TO INTRODUCE INTO EVIDENCE, DEMONSTRATE ACTUAL INNOCENCE GIVING RISE TO AN EXCEPTIONAL CIRCUMSTANCE WARRANTING THE COURT'S DISCRETIONARY POWERS OF LAST RESORT?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

JURISDICTION

This petition for extraordinary writ of habeas corpus is sought pursuant to 28 U.S.C. § 1651(a) as a remedy of last resort based on exceptional circumstances that warrant the discretionary powers of the Court.

Section 1651(a) states:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

A jury found Terrence Matthew Brown ("Brown") guilty on May 2, 2014, in the United States District Court for the Western District of Missouri, in Kansas City, Missouri, of conspiracy to commit wire fraud and several substantive counts of wire fraud, 18 U.S.C. §§ 1349, 1348 respectively. (Case No. 11-CR-00153-BCW). Three days hence, Brown submitted a motion in the form of a letter to the trial court moving for a new trial because perjurious testimony was knowingly elicited by the Government and diametrically at odds with evidence contained in the Government's discovery packet — evidence withheld from the jury and the trial court.

To Brown's detriment, the trial court has remained obfuscatory as it has yet to render its decision.

Brown's conviction was affirmed on direct appeal. United States v. Brown, 788 F.3d 830 (8th Cir. 2015). Brown's collateral attack under 28 U.S.C. § 2255 was denied, and on November 23, 2016, the Eighth Circuit eschewed further review, denying panel and en banc rehearing.

Coincidentally, on the three-year anniversary of Brown's conviction, Brown timely moved for a new trial predicated on newly-discovered evidence, viz., an FBI Report generated by its Kansas City field office confirming that Brown telephonically contacted the FBI in 2008 to express concern over the legality of his 2006 home purchases underlying Brown's ultimate convictions. Brown had previously been assured by trial counsel that a record

of Brown's whistleblower phone call to the FBI did not exist.

Nine months ago, Brown finally received what to him for over four years had proved unattainable: his case file. Thus, it was a first for Brown to peruse the five loan applications that had been submitted to the lenders, doctored copies of which accordingly consisted of the evidence-in-chief of the Government's case.

OVERVIEW

The subprime mortgage lenders of the early to mid-2000's abandoned their underwriting regulations, encouraging low-level mortgage brokers to victimize unsuspecting home buyers by incorporating false information into their loan applications and other loan documents exposing such innocent buyers to wrongful penal liability for mortgage fraud. This situation ultimately resulted in the selective prosecution and conviction of but a select few throughout the United States including Brown.

Brown submits that the indisputable evidence from discovery materials in this case, all hidden from Brown (by his attorney), the jury and trial court — subsequently denied into the record by expansion by the district court — supports this contention and has created an exceptional circumstance requiring review of this Court to resolve.

ARGUMENT

Brown is presently in federal prison for a wire fraud conspiracy emanating from a home-flipping program run by Garen Armstrong ("Armstrong"), one of Brown's business partners in The Softwear Group, LLC, a software venture ("TSG"). The fraud is a crime Brown insisted he would not and in fact did not commit, but which was perpetrated by Armstrong, an unindicted alleged coconspirator who used Brown as a "patsy" for his crime. Brown, through newly-discovered evidence, now is able to demonstrate his actual innocence; evidence conclusively proving that instead of being a perpetrator of fraud he is a victim of Armstrong's

fraudulent schemes. This petition for an extraordinary writ is submitted to illuminate important issues related to the 2008 collapse of the subprime mortgage industry and as a remedy of last resort based on Brown's actual, factual innocence and that the "exceptional circumstances" persisting in this case prevent adequate relief in any other form or forum. Brown relies upon procedural rule authority encompassing issuance of an extraordinary writ:

> Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court."

Rule 20, S. Ct. Rules.

I. Aid of Appellate Jurisdiction.

Brown submits that the magnitude of the first-impression issue related to the 2008 subprime mortgage industry collapse and the newly-discovered evidence and cumulative effect of errors in this case now demonstrating his innocence warrants review by this Court. The unique evidence and circumstances of this case will aid jurisdiction of this Court in terms of informing the Court's future decisions on fraud and banking, exposing the need for further lending regulations to avoid a repeat of the near meltdown of the entire U.S. economy resulting from the 2008 debacle now renewing, and providing a remedy of last resort to this wrongly imprisoned man now possessed of evidence of his

innocence.

II. Exceptional Circumstances Warrant Discretionary Powers of this Court.

Brown presents two claims reflecting exceptional circumstances in this case that warrant exercising of the Court's discretionary powers:

- To illuminate the role played in the early to mid-2000's by subprime mortgage lenders in the near collapse of the entire U.S. economy — a situation now renewing.

- To provide a remedy of last resort to Brown, in light of newly discovered evidence and of recent holdings of this Court unable to be ameliorated through any other form or forum.

A. The Lower Courts Ignored Stare Decisis Requiring a New Trial.

The Foundation.

The Anglo-American judicial system is founded on the concept of the "common law" and the doctrine of stare decisis. The term "common law" refers to the judicial decisions by English courts which were the basis of law for the states and countries originally settled and controlled by England. Thus, the term is distinguished from that body of law from other judicial systems such as Roman law, civil law, and canon law. Because American judicial decisions came from English common law, they are also referred to as the common law.

From this concept of the common law, the doctrine of stare decisis emerged. Simply stated, the court will review the facts of a particular case to determine if they are the same or substantially similar to those facts in previous cases. These earlier cases are referred to as precedent. If the facts are similar, then the same law will be applied.

The doctrine of stare decisis is fundamental to the American judicial system because of three inherent advantages. First, stare decisis promotes a sense of stability to our law. This is essential if there is to be public confidence in the judicial system. Second, stare decisis provides some predictability of the

> outcome of the case. It is important for lawyers to be able to advise their clients with confidence, and they can do so with a measure of certainty because of this doctrine. Third, stare decisis ensures fairness by the court. This means that individuals will be treated the same way given a certain set of facts.

Legal Research Guide: Patterns and Practices; 2018 Matthew Bender & Company, Inc., a member of the LexisNexis Group.

Brown asserts that the District Court, supported by the Eighth Circuit Court of Appeals, failed to follow the doctrine of stare decisis. Brown's pleadings relied upon this Court's body of jurisprudence that required his suffering of a constitutionally intolerable conviction be redressed. Brown, thus, respectfully suggests, in light of the newly-discovered evidence presented herein, the overwhelming evidence in this case now supports his actual innocence as well as a structural error that this Court should, in the interests of justice, exercise its 1651 authority to correct this manifest miscarriage of justice.

A. The precedent cases relied upon by Brown are:

Giglio v. United States.

It is familiar law that the government may not deliberately present false evidence at trial or allow it to go uncorrected. Under the due process clause, the prosecution's suppression of material evidence justifies a new trial irrespective of the prosecution's good faith or bad faith. When the reliability of a given witness may well be determinative of guilt or innocence, the prosecution's nondisclosure of evidence affecting credibility justifies a new trial. Giglio v. United States, 405 U.S. 150, 31

L. Ed. 2d 104, 92 S. Ct. 763 (1972).

Contrary to the District Court's Opinion, Brown clearly demonstrated that Garen Armstrong, Don Overstake, and Darrell Leason committed perjury when they testified Brown effectively stole some $200,000 from them as his former business partners and that the software company board did not approve Brown's salary increase to allow him to legally qualify, according to Armstrong's representations to the board, for the home loans. Moreover, the newly-discovered evidence shows: 1) Armstrong lied when he testified Brown had been sitting next to him in his office when he completed the loan applications as a willing participant in Armstrong's fraudulent acts; and 2) Brown was not aware of the false information contained in the loan applications.

Brown has also clearly demonstrated the Government vouched for Armstrong's credibility by fraudulently presenting him as a cooperating witness under agreement to testify truthfully or lose his sentence reduction, when it knew he was never to be sentenced. Brown submits that this situation is one of Giglio amplified. Not only did the Government fail to disclose its agreement to provide immunity to Armstrong, but, rather, it presented Armstrong as a person who was duty-bound to testify truthfully or face a substantially longer sentence providing Armstrong's perjured testimony an unwarranted cloak of credibility. See, e.g. Bass v. United States, 655 F.3d 758, 761 (8th Cir. 2011)(Improper vouching occurs when the government ...

implies a guarantee of truthfulness ... about the credibility of a witness); see also United States v. Brown, 702 F.3d 1060, 1065 (8th Cir. 2013)(To obtain a reversal based on prosecutorial misconduct, the defendant must show that (1) the prosecutor's remarks or conduct were improper, and (2) the remarks or conduct prejudicially affected the defendant's substantial rights so as to deprive him of a fair trial). Brown asserts that not only did the Government prosecutor make the false presentation of Armstrong as a cooperating witness, but it even tricked Armstrong into believing he was facing prison time in order to compel him to climb into the witness box and lie under oath at the Government's secreted behest.

This situation also illuminates the level of collusion involving Defense Counsel Osgood, for there is no reasonable explanation of how a seasoned former government attorney with some thirty years of prosecutorial and twenty years of defense counsel experience would not know that there was a five-year statute of limitations in Armstrong's case as Brown had insisted against Osgood's insistence. The Government went so far as to enlist the use of a court-appointed attorney for Armstrong from the sister district court in Kansas City, Kansas providing a further cloak of credibility to the fraud perpetrated upon the District Court — even providing an Information and Plea Agreement with no case number to attempt to give the fraud a patina of authenticity. Osgood's collusion leads to the next case upon which Brown relied in his § 2255 pleadings.

Strickland v. Washington.

To prevail on an ineffective assistance claim, a defendant must satisfy the two-part test laid out by the Supreme Court in Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Under Strickland, the defendant must show that, with respect to each instance of alleged ineffectiveness by counsel that counsel made an "error so serious that [he] was not functioning as the counsel guaranteed by the Sixth Amendment." United States v. Rice, 449 F.3d 887, 897 (8th Cir. 2006)(quoting Strickland, 466 U.S. at 687). In making this initial consideration, there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. (quoting Strickland, 466 U.S. at 689). Moreover, "'[s]trategic choices made after thorough investigation of law and facts relevant to plausible options are unchangeable.'" Id. (quoting Strickland, 466 U.S. at 690). But, "[i]f limiting the investigation was not reasonable, then neither was the subsequent strategic choice. '[S]trategy resulting from lack of diligence in preparation and investigation is not protected by the presumption in favor of counsel.'" Antwine v. Delo, 54 F.3d 1357, 1367 (8th Cir. 1995)(quoting Kenley v. Armontrout, 937 F.2d 1298, 1304 (8th Cir. 1991)).

Second, even assuming the defendant satisfies Strickland's first prong by showing that counsel made such serious errors, these errors will not warrant reversal unless the defendant "'show[s] that the deficient performance prejudiced the

defense.'" Steinkuehler v. Meschner, 176 F.3d 441, 445 (8th Cir. 1999)(quoting Strickland, 466 U.S. at 587)). "Prejudice is established if there is 'a reasonable probability that,' but for counsel's errors, 'the reult would have been different.'" Id. (quoting Strickland standard." Id. (citing Strickland, 466 U.S. at 697). See, United States v. Orr, 636 F.3d 944 (8th Cir. 2011); Memorandum of Law, at 16.

Again, contrary to the District Court's Opinion, Brown has demonstrated that his trial counsel's performance was so far below acceptable standards it in fact rose to criminality as Counsel Osgood was clearly colluding with the Government Prosecutor to assure Brown's conviction. There is no other possible explanation of Osgood's refusal to even attempt to introduce a single piece of the many examples of exculpatory evidence that existed within the Government's discovery packet; nor his failure to impeach any of the lies put forth by the Government witnesses; nor his failure to require the Government to produce original documents in light of Brown's insistence that he had only completed a single loan application which did not contain the falsified information that ultimately appeared in the applications submitted to lenders.

United States v. Frost.

Brown relied upon the fact that mortgage fraud, and its underlying fraud nexis, requires mens rea. United States v. Frost, 321 F.3d 738, 741 (8th Cir. 2003). Proof that Brown had adamantly refused to sign something that was not true was a vital

part of his defense. Thus, Brown argued that Trial Counsel's refusal to even attempt to admit any of the plethora of evidence from the Government's discovery that would have refuted the charges of knowingly and intentionally defrauding the lenders in this case was so deficient as to fall below an objective standard in reasonable competence and that this deficient performance prejudiced his defense. Nave v. Delo, 62 F.3d 1024, 1035 (8th Cir. 1995).

Brown argued there was a reasonable probability that the jury would have reached a different conclusion had it heard Brown repeatedly insisting he would not sign something that was not true in light of the requirement of intent in the federal wire fraud statute. Id. Memorandum of Law, at 30-44. Brown now asserts the newly-discovered loan applications further support that Armstrong knew of Brown's insistance that he would not sign something that was not true, which is why Armstrong displayed cunning craftiness in his replacement of pages of the loan application, which was replicated and replaced for each home purchase. unbeknownst to Brown who was not a willing participant in Armstrong's fraud.

United States v. Gaudin.

Materiality is an element of the federal wire fraud statute. The government must prove material misrepresentations to convict a defendant of a wire fraud count. United Stated v. Gaudin, 515 U.S. 506, 132 L. Ed. 2d 244, 115 S. Ct. 2310 (1995); Memorandum of Law, at 33.

Though the District Court's Opinion completely ignored Brown's materiality argument, Brown demonstrated that the subprime home lending industry had systematically abandoned its underwriting guidelines such that traditionally material factors were no longer material to the lending decision. Brown presented a litany of cases where the federal government had sued lenders because of this fact.

In fact, "[i]t has been said that during this time frame all one needed to qualify for a home loan was a pulse." United States v. Osmanson, 2014 U.S. Dist. LEXIS 156247 (D.Vt. 2014). Inside the Financial Fiasco, Dateline NBC (Mar. 22, 2009); If You Had a Pulse We Gave You a Loan. Brown asserted that the false information provided by Armstrong to the lenders, unbeknownst to Brown, was not material to the lending decisions.

Once again, the stare decisis required the District Court to provide the relief sought as Brown's argument that even in light of all of the Government corruption in this case there should have been no case as Armstrong's fraudulent, forged, and falsified documents were not material to the lender decisions as is required by statute. As mentioned, the District Court completely ignored this entire argument mentioning it only in passing as "without merit," which it is not under the doctrine of vertical stare decisis.

B. The Newly-Discovered Evidence.

Brown received his case-file from his sentencing and appellate counsel, albeit lacking of FBI "302" reports and trial

transcripts, in September of 2017. For the first time, Brown was provided access to the loan applications that had apparently been provided to the home mortgage lenders from which their material lending decisions allegedly emanated. What Brown asserts is the most compelling evidence of his innocence, each loan application had two to three pages containing false information, and glaringly absent from all but one of those pages (totalling some 12-15 pages) are Brown's initials. All remaining pages, those containing no false information, have Brown's initials at the bottom of the page. See Appendix H. Brown submits that it is his normal business practice, as is common-place in business, to initial the bottom of every page of any contract or other legal document to which he agrees, to memorialize his review and agreement thereof.

Impact of the New Evidence.

The absence of Brown's initials on the material pages is comparative to DNA evidence and is illuminating in several ways:

1. The New Evidence Demonstrates Government Introduction of False Evidence.

FBI Special Agent Jackson and Armstrong each testified at trial that Brown had been sitting next to Armstrong while Armstrong prepared each loan applicaiton for Brown to sign. (Trial Tr. 2-41:1-2, 2-182:1-15). Armstrong also admitted to having forged one of his employee's signatures on one of the loan applications, supporting Brown's contention that Armstrong forged Brown's signatures and entire documents as evinced by this new

evidence. (Trial Tr. 2-172:16 through 173:12).

It is long-held that introduction of false evidence by the Government is unacceptable:

> As long ago as Mooney v. Helohan, 294 U.S. 103, 112, 79 L. Ed. 791, 794, 55 S. Ct. 340, 98 ALR 406 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in Pyle v. Kansas, 317 U.S. 213, 87 L. Ed. 214, 63 S. Ct. 177 (1942). In Napue v. Illinois, 360 U.S. 264, 3 L. Ed. 2d 1217, 79 S. Ct. 1173 (1959), we said, "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Id., at 269, 3 L. Ed. 2d at 1221.

Giglio v. United States, 405 U.S. 150, 31 L. Ed. 2d 104, 108, 92 S. Ct. 763 (1972).

2. The New Evidence Supports That Brown Executed Only One Loan Application.

Brown has consistently maintained that he completed only one loan application, at the beginning of the purchase process for the first of the five properties. Brown testified that he was in his home office in Wichita, Kansas late one night, when Armstrong faxed one completed application to him from Armstrong's home office in Kansas City, Missouri. Brown reviewed that document, initialed the bottom of each page - none of which contained false information, and faxed it back to Armstrong. (Supp. Trial Tr. 4-11:10 through 4-16:5). That the application had been faxed from Wichita to Kansas City was verified by SA Jackson. (Trial Tr. 2-50:18 through 2-51:15).

This fact is important insomuch as it demonstrates that Armstrong lied about Brown having sat next to him in his office

as Armstrong completed each application. It also demonstrates the importance that not a single document of the hundreds the Government introduced into evidence was an original document - as if the Court no longer required "best evidence," many of these documents were copies of faxed documents none of which contained original signatures or sets of initials, and this in a case where the Government's star witness readily admitted to forging documents and signatures in many instances - even replacing pages of loan applications of unsuspecting buyers, as this new evidence demonstrates he did to Brown. [Brown has just now, while perfecting this petition, noticed another important fact supporting Armstrong perjured himself — on the bottom of the last page of each loan application there is a section where the person taking the application provides information on how the application was taken with four options: a) face-to-face; b) mail; c) telephone; or d) Internet. In every instance but one Armstrong checked telephone - the other he checked mail.] Moreover, the lackadaisical environment of the subprime mortgage industry in 2006 was such that these loan applications were apparently accepted by lenders to secure mortgages on half-million to near-million dollar homes, despite the indelible flaw therein, illuminating the pattern of lender complicity in such fraud.

B. Cumulative Error Doctrine Warrants Relief.

Brown submits that the cumulative effect of two or more errors merits the relief sought herein. The cumulative error

doctrine recognizes that the "cumulative prejudicial effect of many errors may be greater than the sum of the prejudice caused by each individual error." United States v. Baker, 432 F.3d 1189, 1223 (11th Cir. 2005). "In addressing a claim of cumulative error, [the Court] must examine the trial as a whole to determine whether the appellant[s] [were] afforded a fundamentally fair trial." United States v. Lopez, 590 F.3d 1238, 1258 (11th Cir. 2009).

In addition to the evidence provided above, Brown submits the following errors that cumulatively further support the relief sought herein.

1. Structural Error.

Brown eluded to an issue in his § 2255 pleadings that has recently been deemed a structural error by this Court requiring a new trial. Specifically, Brown pointed to the fact that his trial counsel told the jury in his closing arguments that Brown was "stupid" and desperate to see his software company succeed, seemingly giving an excuse for Brown's guilt in committing wire fraud and conceding guilt against the express wishes of Brown.

Prior to trial, Brown and Osgood had discussed ad nauseum Osgood's strong recommendation for Brown to plead guilty. Osgood wanted to state that Brown had been stupid and that his company was failing and needed to purchase the homes in order to use the proceeds therefrom to cover the operating expenses of the company — neither of which was true as Brown had stated in email discussions between Osgood and Brown:

> And I'm not telling you about my IQ to impress you or to suggest we say anything of the sort to the jury - but it is out there somewhere so I wanted you to know it. The fact is I was too trusting - not too stupid.
>
> I'd hate to attempt to suggest to the jury that I was just dumb when that wasn't true and then have the prosecutor throw out my IQ - they may or may not have that information. (See email to John Osgood 4/19/2014).
>
> There was conversation about whether the board wanted to approve my salary increase in order to allow me to qualify for the home purchases so that I could fund the operations or whether they wanted to continue to do capital calls. ... There was NEVER any discussion about a third option of letting the company fold. (See email to John Osgood 4/29/2014).

[Response to Motion to Withdraw as Counsel Post Trial, at 10-11, § 12 (ellipses added)].

It is also of note that Brown had alluded to his counsel's insistence leading up to trial that Brown was guilty:

> In the weeks preceding trial Mr. Brown made two different trips to Kansas City to meet with Mr. Osgood in preparation for trial. During every meeting Mr. Osgood was extremely abusive to Mr. Brown constantly shouting at him and cussing at him using the "f-word" more times than a Louis C.K. or Richard Pryor performance.
>
> > First - yes, when my defense attorney screams and cusses at me for two days trying to convince me I am guilty of something of which I am innocent I do have a STRONG negative reaction. And, no, I don't like the message. Should I? This isn't about something not going my way. It is about being innocent of something and having your "advocate" constantly insist that you are not. (See email to John Osgood 4/10/2014).

[Response, at 7-8, ¶ 9].

On May 14, 2018, this Court held:

> The Sixth Amendment guarantees a defendant the right

> to choose the objective of his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experience-based view is that confessing guilt offers the defendant the best chance to avoid [conviction].
>
> ...
>
> Thus, when a client makes it plain that the objective of "his defence" is to maintain innocence of the charged criminal acts and pursue an acquittal, his lawyer must abide by that objective and may not override it by conceding guilt.

McCoy v. Louisiana, Case No. 16-8255, (Slip op., at 5-13)(ellipses added). Moreover, the Court held that such error is a structural error under which a defendant must be accorded a new trial without any need first to show prejudice. See, id., at 11-12.

2. Fraud Upon the Court.

At trial, the Government prosecutor presented Garen Armstrong as a cooperating witness testifying under a plea agreement to do so truthfully or risk losing a sentence reduction based on his substantial assistance. This provided Armstrong's testimony an unwarranted cloak of credibility based on its false nature. The reality was the Government knew Armstrong was well beyond the statute of limitations and would never face punishment for his admitted crimes. Thus, the shroud provided Armstrong's testimony was an intricate fraud upon the Trial Court perpetrated by the Government prosecutor.

3. Subornation of Perjury.

Brown has consistently asserted that the Government

prosecutor knowingly suborned perjury from several of her witnesses including Armstrong, and two other TSG partners, Don Overstake ("Overstake"), and Darrell Leason ("Leason"). Of the many lies that these three witnesses told from the stand, two were most damaging to the outcome of this case:

a. The Lie that Brown Stole all $200,000 in Revenues from His Business Partners.

Armstrong, Overstake, and Leason, testified they had not seen a dime of the entire $200,000 in revenues of TSG. Trial Tr. 3-20:2 through 3:21:13; 3-79:6-12; 3-79:22 through 3-80:24; 2-180:24 through 2-181:8). But that testimony is unable to withstand scrutiny when reconciled against the evidence within the Government's own discovery materials in the form of a FBI 302 Report and multiple emails that directly contradict that testimony and demonstrate that all of those revenues had been wire transferred into the TSG bank account, an account to which Overstake testified he had opened and to which he had primary access and control. (Trial Tr. 3-21:6-11).

b. The Lie that Brown's Salary had Not Been Increased to Allow Him to Legally Qualify for the Home Purchases.

Armstrong, Overstake, and Leason also testified that Brown had requested a salary increase to allow him to legally, according to what Armstrong had told the TSG Board, qualify for the home purchases and that request had been denied. (Trial Tr. 3-22:25 through 3-24:14; 3-19:10-11; 2-88:18-24; 2-176:20 through 2-177:18). However, there were several pieces of evidence that

proved Brown's salary had in fact increased from $65,000 per annum to $130,000 per annum by unanimous vote of the TSG Board. Those pieces of evidence were all introduced into discovery by way of a duces tecum subpoena of Overstake's records, but all of that evidence was withheld from the jury leaving them the faulty impression Brown had lied when in fact it was these witnesses who had perjured themselves at the behest of the Government prosecutor.

Brown asserts that these errors, previously argued in his § 2255 motion, have a cumulative effect with the newly discovered evidence presented herein rising to an exceptional circumstance warranting 1651 relief by the Court.

III. Adequate Relief Not Available in Any Other Form or Forum.

Brown submits that this newly discovered evidence rises to the level of warranting relief in this case — particulary in light of the now-illuminated structural error under McCoy. Few avenues would potentially be available for such relief.

A. Rule 33, Federal Rules of Criminal Procedure.

Rule 33 provides a remedy for new trial based on evidence not known and not presented at trial. Such evidence may be presented to the trial court under motion for a new trial within three years of conviction. See Rule 33(b)(1). Brown's three-year anniversary passed over a year ago and some four months prior to his receipt of his case file, wherein he was provided access for the first time to these loan applications. Brown

submits that he has attempted to amend a timely-filed, still pending, Rule 33 motion in the trial court; however, all of his arguments couched as Rule 33 motions to that court have thus far fallen on deaf ears as that Court has refused to issue a ruling on any of those motions dating back to May 5, 2014. Thus, Brown submits that form or forum has failed to provide "adequate relief."

B. 28 U.S.C. § 2255(h)(1).

Title 28 U.S.C. § 2255(h)(1) provides a remedy for newly discovered evidence that demonstrates actual innocence and allows a successive motion under § 2255 in such cases. However, Brown submits that such form would place him before the same forum that has thus far failed to provide adequate relief on Brown's presentations of such evidence. Clearly, that Court refuses to entertain the notion of Brown's actual innocence warranting the exercise of this Court's discretionary powers herein.

C. 28 U.S.C. § 2241 - Habeas Corpus.

Title 28, U.S.C. §2241 provides an avenue for true habeas corpus relief. However, such avenue in federal criminal cases is only available by way of § 2241 through the gateway of § 2255's savings clause, which is foreclosed in this case because the saving's clause requires reliance upon a new ruling from this court retroactively applicable to cases on collateral review previously foreclosed by circuit law at the time when [it] should have been raised in Brown's trial, appeal or first § 2255 motion — see Santillana v. Upton, 846 F.3d 779, 782 (5th Cir. 2017).

While Brown asserts that such logic effectively suspends the writ of habeas corpus, under Article I, Section 9, Clause 2 of the Federal Constitution, for actual, factual innocent prisoners such as he, he submits that his reliance upon § 1651 is thus required to obtain relief. Brown's newly discovered evidence would be properly relayed to the Trial Court under § 2255(h)(1) bringing this argument full circle and back to the remedy sought herein to provide relief in this exceptional circumstance.

CONCLUSION

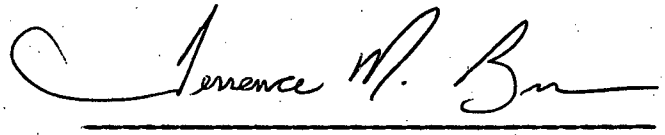
The unethical and illicit practices of the sub-prime mortgage industry during the early to mid-2000's ultimately caused the industry to collapse under its own weight, nearly taking with it the entire U.S. economy. Were those guilty of intentionally committing mortgage fraud in the early to mid-2000's actively prosecuted, Brown suggests the legions convicted of such conduct would exceed the combined capacity of every prison in America. And while that multitude of fraudsters never shall come to know a prison cell, Brown wrongfully has lived in one well over a thousand days despite his innocence — innocence he has unwaiveringly and diligently proclaimed since inception of his prosecution only to fall on deaf ears. Without the exercise of the Court's 1651 discretionary powers to correct this manifest miscarriage of justice, Brown will live yet another thousand days in prison for a crime he did not, which he refused to, commit.

In light of the above, and under these legal authorities, Brown Prays this Honorable Court will grant this petition, remand

the cause to the District Court, and order further proceedings in the form of a new trial free of the prosecutorial misconduct existing in his first trial.

Executed, subscribed, and sworn to under penalty of perjury pursuant to 28 U.S.C. § 1746 on this 13th day of June, 2018.

Respectfully submitted,



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Additional material from this filing is available in the Clerk's Office.