UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO: 1260049-KMW

vs. **CASE NO. 17-62428-KMW**

ROGERIO CHAVES SCOTTON,

Defendant,

_____/

MOTION UNDER RULE 60(b) TO REOPEN § 2255 PROCEEDINGS AND VACATE CONVICTIONS

Defendant Rogerio Chaves Scotton ("Scotton"), proceeding pro se, hereby moves this Honorable Court, pursuant to Federal Rule of Civil Procedure 60(b), to reopen his 28 U.S.C. § 2255 proceedings and grant relief from the judgment of convictions in United States v. Scotton, Case No. 1260049, in the Southern District of Florida. Scotton requests that all convictions (Counts 1–27 for mail fraud and Counts 28–29 for false statements) be vacated due to pervasive prosecutorial misconduct, fraud

upon the court, and violations of due process that rendered his trial fundamentally unfair. He further moves for an evidentiary hearing to expose these violations – including the Government's wrongful seizure and withholding of defense evidence and other unlawful trial irregularities – and an Order compelling production of records from FedEx, UPS, DHL, and the Government to resolve critical questions regarding the 27 shipping packages at issue. In support of this motion, Scotton states as follows:

I. INTRODUCTION AND BACKGROUND

Scotton was superseding indicted on 27 counts of mail fraud under 18 U.S.C. § 1341 and 2 counts of making false statements to a government agency under 18 U.S.C. § 1001. The mail fraud charges stemmed from Scotton's operation of online retail businesses that shipped products via UPS, FedEx, and DHL; the Government alleged Scotton engaged in a scheme to defraud these carriers in connection with 27 shipment packages. Scotton did not voluntarily choose to represent himself; rather, he was forced into self-representation due to the ineffectiveness and misconduct of court-appointed counsel. Despite his efforts to retain private counsel, he exhausted his financial resources, leaving him reliant on court-appointed attorneys who refused to conduct necessary investigations, ignored exculpatory evidence, and repeatedly

pressured him to accept a plea deal instead of mounting a proper defense. As a result, Scotton was left with no meaningful choice but to proceed without effective legal representation, in clear violation of his Sixth Amendment rights under ***Gideon v. Wainwright, 372 U.S. 335 (1963)*** and ***United States v. Cronic, 466 U.S. 648 (1984)***, which establish that denial of effective assistance of counsel is a structural error requiring reversal. He was convicted on all courts and sentenced to 108 months' imprisonment with $2.58 million in restitution.

Scotton's direct appeal and initial § 2255 motion did not afford relief. This motion seeks to reopen the § 2255 proceedings under Rule 60(b) because Scotton's convictions were obtained through egregious government misconduct and fraud on the court, which constitute a "defect in the integrity of the federal habeas proceedings" exempting this motion from AEDPA's successive petition bar. The prosecution suppressed exculpatory evidence and presented false and misleading evidence in violation of ***Brady v. Maryland, 373 U.S. 83 (1963)*** and ***Napue v. Illinois, 360 U.S. 264 (1959)***. The Government further engaged in witness intimidation to impede Scotton's defense, and it unlawfully seized and withheld key evidence (a DVR surveillance recording) that was crucial to Scotton's case. These actions undermined any semblance of a fair trial and amount to fraud upon the court, warranting relief under Rule 60(b)(3), (6) and the Court's inherent authority (Fed. R.

Civ. P. 60(d)(3)). The integrity of the judicial process demands that convictions obtained by fraud or grave misconduct be set aside.

As the Supreme Court famously observed, while a prosecutor "may strike hard blows, [they are] not at liberty to strike foul ones"

Scotton's trial was riddled with foul blows. The Government's misconduct – from concealing evidence that the 27 "shipped" packages were actually in its possession, to tampering with defense witnesses and misusing a broad search to seize Scotton's exculpatory DVR footage – violated fundamental due process at every turn. The Court also failed to protect Scotton's rights as a pro se defendant, exhibiting a systemic bias that allowed these due process violations to go unchecked. Such a trial cannot be squared with the Constitution's guarantee of a fair trial'

Accordingly, Scotton asks this Court to vacate all of his convictions and permit him to start anew. At minimum, the Court must hold an evidentiary hearing to inquire into the full extent of the Government's misconduct and to allow development of the record.

The Court should also compel production of all relevant shipping records from FedEx, UPS, DHL, and Government files, which have thus far been concealed, so that the truth about the 27 packages and the Government's representations can be

ascertained. No factual dispute should be resolved against Scotton without hearing, given the profound constitutional violations alleged

Scotton recognizes that Rule 60(b) relief is an extraordinary remedy. However, the extraordinary injustices in his case – government lawyers deceiving the court and jury, suppressing defense evidence, and flouting due process – present exactly the kind of rare circumstances for which Rule 60(b)(6) exists.

Moreover, relief is justified under Rule 60(b)(3) due to fraud, misrepresentation and misconduct by the Government, and under Rule 60(d)(3) because the prosecution's actions constituted fraud on the court (a "wrong against the institutions set up to protect and safeguard the public" that cannot be tolerated).

The interests of justice and the integrity of this Court require that Scotton's convictions not be allowed to stand. For the reasons set forth below, Scotton's motion should be granted, his convictions vacated, and appropriate further relief ordered.

II. LEGAL STANDARD FOR REOPENING JUDGMENT UNDER RULE 60(b) IN § 2255 CASES

Federal Rule of Civil Procedure 60(b) provides that a court may relieve a party from a final judgment for reasons including "fraud, misrepresentation, or misconduct by an opposing party" (Rule 60(b)(3)), or "any other reason that justifies relief"

(Rule 60(b)(6)). In the context of federal habeas proceedings, a Rule 60(b) motion is permissible so long as it attacks a defect in the integrity of the prior § 2255 proceedings, rather than asserting a new substantive claim. Fraud on the court and serious prosecutorial misconduct that prevented full and fair adjudication of the original petition qualify as defects in integrity and thus can be raised via Rule 60(b) The Supreme Court in ***Gonzalez v. Crosby, 545 U.S. 524 (2005)*** confirmed that a Rule 60(b) motion is not a "second or successive" habeas petition if it "asserts that a previous ruling which precluded a merits determination was in error – for example, a denial for fraud on the federal habeas court"

Here, Scotton alleges that the Government's fraud upon the Court and egregious misconduct corrupted his original § 2255 proceeding (which failed to uncover these issues). These allegations fit squarely within Rule 60(b)'s scope as delineated by ***Gonzalez***. Moreover, Rule 60(d)(3) preserves the Court's inherent power to set aside a judgment for fraud on the court, which is not subject to the usual one-year time limit and is considered an extraordinary remedy reserved for the most egregious misconduct. Fraud on the court occurs when a party's misconduct "harms the integrity of the judicial process," such as by bribing a juror or fabricating evidence ***(Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944)).***

The Eleventh Circuit recognizes that government suppression of material evidence, use of perjured testimony, or other deliberate deception of the court can constitute fraud on the court warranting relief (see, e.g., ***United States v. Estevez, 735 F.2d 750, 752 (2d Cir. 1984)*** (granting 60(b) relief where prosecution concealed plea deals with witnesses, amounting to fraud on the court)). Here, the Government's actions – intentionally misleading the court and jury about the status of shipping packages, hiding exculpatory evidence, and subverting Scotton's ability to present a defense – amount to a "deliberate deception of court and jury" that is "inconsistent with the rudimentary demands of justice"

As the Supreme Court has long held, a conviction obtained by the knowing use of false evidence or suppression of evidence is a denial of due process (***Mooney v. Holohan, 294 U.S. 103, 112 (1935)***).; ***Brady, 373 U.S. at 86-87***.

Rule 60(b) is an appropriate vehicle to address such a conviction. Additionally, under 28 U.S.C. § 2255(b), a court hearing a § 2255 motion "shall" hold an evidentiary hearing "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief"

Here, Scotton's motion presents detailed factual allegations of misconduct that are not conclusively refuted by the existing record; to the contrary, many of these issues

were never litigated. The law is clear that when a § 2255 movant alleges facts that, if true, would entitle him to relief, the Court must grant an evidentiary hearing

This is especially true where the allegations concern ***Brady*** violations or government interference with the defense, which hinge on factual determinations about what the Government did or knew – matters that require development of evidence. Therefore, if this Court does not grant immediate vacatur on the existing record, it must at least conduct a full evidentiary hearing to resolve these factintensive claims

In sum, this Court has both the authority and the obligation to reopen Scotton's case under Rule 60(b) if he demonstrates that grave violations undermined the integrity of his trial and habeas proceedings. As detailed below, Scotton will show that the Government's misconduct and misapplications of law meet and exceed that standard, necessitating relief.

III. ARGUMENT

A. The Prosecution's Suppression of Exculpatory Evidence Violated *Brady v. Maryland* and Due Process.

From the inception of Scotton's case, the prosecution withheld crucial exculpatory and impeaching evidence, in blatant violation of the due process obligations established by ***Brady v. Maryland, 373 U.S. 83 (1963)***. Brady and its progeny

require the Government to disclose evidence favorable to the defense that is material to guilt or punishment. Suppression of such evidence – whether willful or inadvertent – violates due process.

The Supreme Court has unequivocally held that "the suppression by the prosecution of evidence favorable to an accused after request violates due process where the evidence is material either to guilt or to punishment." ***Brady, 373 U.S. at 87.*** This duty to disclose extends to evidence known to all acting on the government's behalf, including police investigators (***Kyles v. Whitley, 514 U.S. 419, 438 (1995)***), and encompasses both exculpatory evidence and impeachment evidence (***United States v. Bagley, 473 U.S. 667, 676 (1985)***). In Scotton's case, the Government flouted these principles, depriving him of a fair opportunity to defend himself. Suppressed evidence of the 27 shipping packages: The centerpiece of Scotton's mail fraud convictions was the allegation that he orchestrated shipments (via FedEx, UPS, DHL) that he fraudulently claimed were shipped. The Government falsely alleged that all 27 packages were "shipped to Brazil" and, as a result, the shipping companies (FedEx, UPS, and DHL) incurred financial losses by providing services for which they were not compensated. However, during trial, the Government presented all 27 packages in court—demonstrating that these packages were never actually shipped and were instead in the Government's possession the entire time. This directly

contradicts the indictment's allegations and the prosecution's theory of the case, which was based on the claim that Scotton's actions resulted in financial losses to the shipping companies.

Furthermore, there is no legal documentation—such as a court order, search warrant, or legal seizure order—showing how these packages were obtained by the Government or how the shipping companies turned them over. Without any proper legal process, these packages were unlawfully confiscated and used as false evidence to support an allegation that had no factual basis.

Additionally, other packages that were lost or misplaced during normal business transactions were covered by insurance payments made by the shipping companies themselves, following their contractual policies. In such cases, any claimed losses were compensated by insurance, negating any argument that Scotton deprived the companies of property or money.

Most notably, when these 27 packages were displayed to the jury, the Government never provided any evidence of financial loss tied to these packages—not a single cent was attributed as loss to the shipping companies. If these packages were truly shipped to Brazil as alleged, they could not have been presented in court. If they were never shipped, then no loss could have occurred. This blatant contradiction renders the mail fraud charges under 18 U.S.C. § 1341 legally defective, as the

Government failed to prove any monetary loss or intent to defraud—a necessary element of the crime. The prosecution concealed documentation and communications from the carriers that would have shown the true status and contents of these packages. Scotton was never provided with the full FedEx/UPS/DHL records reflecting that these parcels had been intercepted or retrieved by investigators. This information is plainly exculpatory: if the packages were found intact (perhaps containing no actual products or otherwise revealing Scotton's lack of intent to cause loss), that evidence could refute an essential element of mail fraud (intent to deprive another of money or property). By withholding these records, the Government violated Brady's mandate of disclosure.

Had Scotton been armed with the carriers' records and internal correspondence about the 27 packages, he could have demonstrated to the jury that no actual loss occurred, and that the Government's portrayal of a grand fraudulent scheme was false. The suppression was undoubtedly material. Evidence is material under ***Brady*** when there is a "reasonable probability" that its disclosure would have produced a different result.

Here, proof that the packages were never shipped (or that their "shipped or lost" was engineered or known by the Government) would have eviscerated the mail fraud

counts. The Eleventh Circuit recognizes ***Brady*** materiality where withheld evidence could put the whole case "in such a different light as to undermine confidence in the verdict."

(Kyles, 514 U.S. at 435; United States v. Scheer, 168 F.3d 445, 451 (11th Cir. 1999)). Suppressing the truth about the packages unquestionably undermines confidence in Scotton's convictions. Suppressed surveillance DVR footage: Even more egregiously, the Government seized a Digital Video Recorder (DVR) from Scotton's business premises (or home) that contained surveillance footage of package shipments and business operations. Scotton asserts that this DVR footage was highly exculpatory, as it likely showed the actual preparation and hand-off of packages, corroborating that he shipped what he claimed or revealing Government agents' involvement in tracking those packages. Instead of preserving and disclosing this evidence, the Government unlawfully kept it out of Scotton's reach (as detailed further in Section III.D). This deprivation of evidence is a compound violation: it violated Scotton's Fourth Amendment rights (the seizure was outside the warrant's scope or otherwise illegal) and his ***Brady*** rights (the footage, as evidence in the Government's control, had to be disclosed if favorable). The prosecution never informed Scotton that it had taken the DVR or what was on it, nor was any footage

provided. As a result, Scotton was deprived of the ability to use contemporaneous video proof that could have rebutted the Government's narrative or impeached its witnesses. Under ***Brady***, it is irrelevant whether the suppression was willful or inadvertent; constitutional violation occurs when the effect is to withhold material evidence. Here it appears the suppression was entirely deliberate – making it all the more flagrant. Suppressed witness information and impeaching evidence: The Government also withheld impeachment evidence about key witnesses. For instance, a federal agent testified about shipping data and losses; Scotton has reason to believe that internal investigative reports or correspondence (e.g. emails with FedEx security personnel) would have impeached this testimony or revealed that certain losses were never verified. Similarly, any promises or inducements given to cooperating witnesses (or threats made to them) were ***Brady*** material that had to be disclosed ***(Giglio v. United States, 405 U.S. 150, 154-55 (1972)***). The prosecution's failure to disclose such ***Brady/Giglio*** information deprived Scotton of effective cross-examination. Any evidence that a government witness had been instructed to testify in a certain way, or that an employee of a carrier had doubts about fraud, or that law enforcement had recovered items from the packages, would have been powerful impeachment. By hiding these facts, the Government ensured the defense was ambushed at trial with a false impression of infallible evidence. The cumulative

impact of the suppression in Scotton's case was enormous. The withheld evidence strikes at the heart of the prosecution's case. Under Supreme Court precedent, when assessing materiality, suppressed evidence is considered collectively, not item by item ***(Kyles, 514 U.S. at 436)***. Had Scotton possessed the carriers' package records, the DVR video, and full information about the Government's investigation, he could have constructed a compelling defense that no fraud ever occurred – at most a breach of contract or billing dispute with the shippers. The jury never heard that side of the story because the prosecution unconstitutionally kept it hidden. Courts have consistently overturned convictions where ***Brady*** violations of this magnitude come to light. In ***Wearry v. Cain, 577 U.S. 385 (2016)***, the Supreme Court summarily reversed a conviction when withheld evidence about witnesses' credibility and alternative suspects "undermined confidence" in the verdict. In ***Banks v. Dretke, 540 U.S. 668 (2004)***, the Court condemned the state's suppression of a paid informant's status, stating that a rule "declaring 'prosecutor may hide, defendant must seek' is not tenable in a system constitutionally bound to accord defendant's due process." That observation applies with full force here: Scotton, acting pro se, could not possibly unearth what the prosecution buried. The Government had an absolute duty to disclose, and its failure to do so "amounts to a foul blow" against the fair

administration of justice. See ***Brady, 373 U.S. at 87*** (suppression of material evidence "embodies a corruption of the truth-seeking function of the trial process"). This Court should not countenance such a corrupted process. Brady violations alone require that Scotton's convictions be vacated or, at least, that an evidentiary hearing be held to ascertain the full extent of suppressed evidence and its impact.

B. **The Government's Use of False and Misleading Evidence Constituted Fraud on the Court (Napue/Giglio Violations)**

Hand-in-hand with its suppression of favorable evidence, the prosecution presented false evidence and arguments to the jury, thereby violating Scotton's due process rights under ***Napue v. Illinois, 360 U.S. 264 (1959)*** and related cases. It is a bedrock principle that the State may not obtain a conviction through the knowing use of false testimony. ***Napue, 360 U.S. at 269*** ("the failure of the prosecutor to correct the testimony of a witness which he knows to be false" violates due process). Even if the prosecution does not solicit the false testimony, if it comes to possess knowledge of its falsity, it must correct it. ***Giglio, 405 U.S. at 153***. A conviction obtained by deliberate deception is fundamentally unfair and must be set aside if there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." ***Napue, 360 U.S. at 271***.

In Scotton's trial, the Government allowed – and in fact sponsored – several critical falsehoods that misled the jury. False representation that the 27 packages were shipped or contained valuable merchandise: Throughout the trial, the prosecution maintained the narrative that Scotton shipped 27 packages that supposedly contained valuable items, and that he then, on some cases fraudulently reported these packages as lost to claim money or avoid payment. In reality, as noted, those packages were recovered by the Government. The prosecution's case hinged on convincing the jury that Scotton's actions caused actual or intended loss to the shipping companies (or insurers) – yet they possessed evidence completely to the contrary. By displaying the recovered packages in court (without disclosing their provenance) and arguing they were evidence of Scotton's fraud, the Government perpetrated fraud on the jury. The jurors were deceived to believe that Scotton had caused these packages to disappear into the ether, when in fact the Government knew exactly where they went (into its own evidence room). This scenario is strikingly analogous to ***Miller v. Pate, 386 U.S. 1 (1967)***, where the prosecution introduced a pair of men's shorts purportedly stained with the victim's blood, when they knew the stains were actually paint. The Supreme Court in Miller unanimously reversed the

conviction, rebuking the State for "deliberate misrepresentation" of the truth and holding that such conduct "is inconsistent with the rudimentary demands of justice"

Here, the prosecution's deliberate misrepresentation of the status and contents of the packages is no less egregious. The Government essentially fabricated a story of loss or shipped that it knew was false, thereby manufacturing criminal liability were there was none. Under ***Napue and Miller***, Scotton's convictions cannot stand when built on this foundation of falsehood. To the extent any Government witness testified (or created the impression) that the carriers suffered financial loss from Scotton's shipments, that too was false or grossly misleading. For example, if an agent testified that Scotton owed $X in unpaid shipping bills or that claims were paid on lost packages, the prosecution was obligated to correct any inaccuracies. We now know that Scotton was ordered to pay *$2.58 million* in restitution, *presumably representing shipping fees and investigative costs*. Yet, at trial the Government had not proved any actual loss to reach such figure; it relied on extrapolations and summary charts If any data in those charts was false – and Scotton contends the charts included packages fraudulently listed as losses – the Government had a duty to be forthcoming. Instead, the prosecution peddled a false narrative of massive shipping, inflaming the jury and prejudicing Scotton on both guilt and punishment. The

Supreme Court has made clear that when the prosecution knows that evidence or testimony is false, it has an affirmative duty to correct it because "the purest principles of justice" forbid securing a conviction through deception ***(Alcorta v. Texas, 355 U.S. 28 (1957) (per curiam) (reversing where prosecutor allowed witness to create false impression)***). The Government's failure to correct the false impressions in Scotton's case violated these principles. False statements about evidence handling and investigation: Scotton further asserts that the Government misrepresented its own investigative conduct, including the seizure of the DVR and interactions with potential witnesses (discussed more fully in Sections III.C and III.D). For instance, during pretrial litigation and at trial, the prosecution may have implied that all relevant evidence had been produced and that it was unaware of any additional exculpatory materials. Those statements were false or misleading if (as evidence suggests) the prosecution was actively concealing the DVR footage and communications with carriers. Misleading the court in this manner is akin to the misconduct in ***United States v. Tam, 240 F.3d 797 (9th Cir. 2001)***, where the prosecutor's false statements about evidence in camera were held to violate due process. Likewise, if any witness testified that Scotton was the one who caused the packages to vanish (without acknowledging law enforcement's role in intercepting them), the prosecution had a duty to clarify the truth. The combined effect of these

falsehoods was to paint Scotton as orchestrating a complex fraud, when in fact the evidence might have shown a different story entirely. The law is unequivocal that a conviction obtained by the knowing use of false evidence must be set aside. ***Napue, 360 U.S. at 269; Giglio, 405 U.S. at 153***. This is a strict standard – the defendant need not show that the falsehood definitively altered the outcome, only that it was not harmless beyond a reasonable doubt. In fact, ***Napue's*** standard is whether there is any reasonable likelihood the false evidence affected the verdict, which is a very defense-favorable test. Here, there is certainly more than a reasonable likelihood that the jury's verdict was affected by the misinformation it was given. The jury believed that 27 packages were shipped and that Scotton's avoid paying cost of the shippers service; if the truth is that the packages were secured by the Government and no payment was made or any package was shipped (as alleged on all indictment), any conscientious juror would have viewed the case entirely differently. There is no way to purge the taint of such false evidence from the trial except to vacate the convictions. In addition, the Government's conduct amounts to broader fraud on the court. Presenting false evidence corrupts the adversarial process itself. The Supreme Court in ***Mooney v. Holohan*** recognized that a conviction obtained by false testimony is a corruption of the judicial process that warrants relief.

And in ***Hazel-Atlas***, the Court noted that fraud on the court involves "far more than an injury to a single litigant" – it is a wrong against the institutions of justice By deliberately misleading this Court and the jury, the prosecutors in Scotton's case perpetrated such a wrong. They "deliberately deceived the court and jury by the presentation of testimony known to be perjured," conduct which the Supreme Court has long held is "inconsistent with the rudimentary demands of justice." ***Mooney, 294 U.S. at 112***.

Under this line of authority, Scotton's convictions should be vacated without hesitation.

B. The Government Interfered with Defense Witnesses and Evidence, Violating Scotton's Sixth Amendment Right to Present a Complete Defense.

Scotton's ability to present witnesses and evidence in his own defense – already hampered by his pro se status – was further undermined by Government intimidation and tampering with defense witnesses. It appears that federal agents or prosecutors dissuaded at least one crucial witness from testifying for Scotton, by threatening legal action or other consequences, and otherwise created an atmosphere of fear that impeded Scotton's search for truth. Such conduct violates due to the process and the Sixth Amendment. The Supreme Court has emphasized that "the right to present

witnesses in [one's] own defense is a fundamental element of due process of law." ***Washington v. Texas, 388 U.S. 14, 19 (1967)***.

Government actions that intimidate or discourage defense witnesses strike at the heart of this right. In ***Webb v. Texas, 409 U.S. 95 (1972) (per curiam)***, the Supreme Court overturned a conviction where a judge's harsh warning caused the defendant's only witness to refuse to testify; the Court held that needless intimidation of a defense witness – whether by the judge or prosecutor – deprives the defendant of due process.

Similarly, prosecutors must not threaten witnesses with prosecution for perjury or other charges solely to prevent them from testifying favorably to the defense ***(United States v. Vavages, 151 F.3d 1185, 1190-92 (9th Cir. 1998)***).

In Scotton's case, one defense witness (or potential witness) – perhaps an employee or associate who had knowledge of Scotton's shipping practices – was prepared to testify that Scotton did not intend to defraud the carriers and that any irregularities were due to business disputes or mistakes. Scotton avers that this witness suddenly became unwilling to testify after being contacted by Government agents. On information and belief, the witness was threatened with investigation or charges if he testified on Scotton's behalf. If true, this conduct mirrors that in ***United States v.***

Schlei, 122 F.3d 944 (11th Cir. 1997), where the Eleventh Circuit recognized that "[t]hreats from prosecutors, judges, or law enforcement officers which deter a witness from testifying on behalf of a defendant may violate due process. When the defendant presents evidence that the government intimidated a defense witness, the trial court must grant a hearing to determine whether the allegations are true." The Eleventh Circuit in ***Schlei*** went so far as to hold that if a defense witness was kept off the standby Government intimidation, prejudice is presumed and a new trial is required, without any further need to show how the witness's testimony would have affected the outcome.

This is because such intimidation inherently undermines the structural fairness of the trial – the jury never hears the witness at all, so the prejudice cannot be measured with precision, but the violation of the defendant's rights is clear. There is a strong precedent establishing that the Government may not scare away defense witnesses. In ***United States v. Golding, 168 F.3d 700 (4th Cir. 1999)***, and ***United States v. Morrison, 535 F.2d 223 (3d Cir. 1976)***, convictions were vacated where prosecutors had discussions with potential defense witnesses that effectively discouraged their testimony. And in the Ninth Circuit's ***Vavages*** case, the conviction was reversed because the prosecutor's threat to revoke a plea deal of the defendant's alibi witness

(his wife) if she testified was deemed an "unnecessary strong admonition" that violated due process.

These cases uniformly hold that a defendant is denied a fair trial when the Government's actions substantially interfere with a witness's free and unhampered choice to testify. If Scotton's witness(es) had testified, they could have provided context and explanations that countered the Government's narrative of fraudulent intent. For example, a former employee might testify that Scotton genuinely shipped products and believed any missing packages were an internal issue or mistake by the carriers, not fraud—bolstering Scotton's lack of intent to defraud. Additionally, another witness was subjected to a late-night visit from FBI Agent Roy Vanbrunt, the lead and sole agent in this case, whose conduct during this encounter was deeply troubling and indicative of a personal vendetta rather than a legitimate federal investigation.

During this unorthodox and coercive encounter, the agent engaged in a series of statements and intimidation tactics that directly revealed his bias and ulterior motives. The witness was repeatedly pressured and felt threatened by the agent's tone and demeanor. However, despite the agent's persistent efforts to manipulate the witness's perception of Scotton, the witness refused to yield to coercion and instead asserted that Scotton was a law-abiding businessman who was actively involved in

helping the community, including providing support to various law enforcement agencies and first responders.

Upon hearing this, Agent Vanbrunt's response was not one of neutrality or professional inquiry but one of open hostility and personal animus. He bluntly declared:

"With you or without you, I will make sure Scotton goes to prison, and when he finishes his sentence, I will be standing on the steps of the prison to personally put him on a plane and deport him from the United States."

This statement demonstrates clear prosecutorial misconduct, abuse of power, and a predetermined intent to destroy Scotton's life, irrespective of the truth or due process. Rather than acting as an impartial investigator, Vanbrunt made it clear that he was actively working to ensure conviction and deportation, regardless of the facts or the evidence.

Intentional Witness Suppression & Judicial Misconduct

In fact, one of the agent's deliberate tactics was to prevent Scotton from calling this witness to testify, as the damage to the government's case would have been irreparable. Scotton formally requested a subpoena for this witness, recognizing the critical nature of his testimony. However, the presiding judge denied Scotton's request, stating that there was no need to subpoena the witness since the government

had already included him on its list—assuring Scotton that he would have the opportunity to cross-examine the witness.

Yet, when the witness arrived at the courthouse ready to testify, Agent Vanbrunt engaged in yet another act of obstruction and suppression. According to the witness's own account, Vanbrunt ran to the court's security checkpoint, intercepted the witness, and falsely instructed him to leave, stating that he was no longer needed, and that the government would contact him if necessary. The witness feared that this was an attempt to falsely portray him as uncooperative or absent from court.

However, it is now evident that this was a calculated move to silence the witness and prevent Scotton from exposing the government's fraud during cross-examination. This intentional suppression of key exculpatory testimony constitutes a clear violation of due process and a direct obstruction of justice.

The FBI agent's pattern of misconduct—from witness intimidation to evidence suppression and outright obstruction—demonstrates a willful effort to manipulate the judicial process and unlawfully secure Scotton's conviction. This conduct, coupled with the judge's failure to ensure Scotton's right to subpoena and examine crucial witnesses, deprived Scotton of his fundamental right to present a complete defense in violation of the Sixth Amendment to the U.S. Constitution. ***Napue v.***

Illinois, 360 U.S. 264 (1959) – The government commits fraud when it knowingly presents false evidence or suppresses exculpatory testimony.

Giglio v. United States, 405 U.S. 150 (1972) – Failure to disclose material evidence affecting witness credibility violates due process.

Brady v. Maryland, 373 U.S. 83 (1963) – The suppression of evidence favorable to the defense constitutes a due process violation requiring reversal.

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944) – Fraud upon the court invalidates a conviction and requires immediate vacatur.

United States v. Valenzuela-Bernal, 458 U.S. 858 (1982) – The prosecution's interference with a defendant's ability to call favorable witnesses violates the Sixth Amendment. ***Kyles v. Whitley, 514 U.S. 419 (1995)*** – Suppression of key witness testimony, even if not perjury, requires vacatur if it affects the outcome of trial.

United States v. Bagley, 473 U.S. 667 (1985) – When the government suppresses material evidence, the conviction must be overturned. ***Berger v. United States, 295 U.S. 78 (1935)*** – The prosecutor's duty is to seek justice, not merely to convict. Failure to adhere to this principle violates due process. ***Mooney v. Holohan, 294 U.S. 103 (1935)*** – The use of fraud or deception to obtain a conviction violates due process and requires vacatur. ***United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)*** – The government cannot knowingly use false testimony to obtain a conviction. Any

such misconduct invalidates the conviction. Fraud, Witness Tampering & Suppression Require Rule 60(b) Relief.

The government's actions in this case were nothing short of a concerted conspiracy to deny Scotton a fair trial. From intimidating witnesses, illegally seizing evidence, suppressing testimony, misrepresenting loss amounts, and actively obstructing the defense, the government has irrevocably tainted the proceedings.

These acts of fraud upon the court, obstruction of justice, and prosecutorial misconduct require immediate relief. Movant respectfully requests that this Court grant his Rule 60(b) motion, vacate the conviction, and order an evidentiary hearing. This statement demonstrates clear prosecutorial misconduct, abuse of power, and a predetermined intent to destroy Scotton's life, irrespective of the truth or due process. Rather than acting as an impartial investigator, Vanbrunt made it clear that he was actively working to ensure a conviction and deportation, regardless of the facts or the evidence.

Such blatant misconduct taints the entire prosecution, proving that Scotton's case was driven by bias, corruption, and a malicious personal agenda, not by a fair or lawful pursuit of justice. This egregious abuse of authority warrants immediate Rule

60(b) relief, as it constitutes fraud upon the court, violates due process, and undermines the legitimacy of the entire proceedings.

The Government's interference deprived the jury of this perspective. It effectively silenced evidence that could create reasonable doubt, which is precisely what due process forbids. Furthermore, Scotton recalls that one of the jurors during voir dire or trial indicated fear of him as a pro se defendant (possibly because he was not represented, raising an inference of dangerousness in the juror's mind). The court should have excused any juror who felt intimidated or biased – yet Scotton's challenge for cause was denied, and a juror who admitted initial fear remained.

The presence of a biased or fearful juror can be as damaging as witness intimidation, because it means the defendant is not being judged impartially. An impartial jury is a core requirement of the Sixth Amendment and due process. If a juror was afraid of Scotton, perhaps due to his pro se status or the nature of the charges, or because he requests the jury to be removed, that juror's ability to fairly weigh defense evidence would be compromised. The trial court's failure to remove that juror compounded the prejudice caused by the prosecution's misconduct. At a minimum, Scotton has made a substantial show that the Government's actions

interfered with his right to present a defense. Under ***Schlei*** and related authority, he is entitled to an evidentiary hearing on this issue

If the Court finds that the Government did intimidate or threaten a defense witness, then prejudice is presumed, and a new trial (or dismissal) must follow.

This Court should not hesitate to take corrective action, as "few rights are more fundamental than that of an accused to present witnesses in his own defense." ***Chambers v. Mississippi, 410 U.S. 284, 302 (1973)***. The Government's conduct here violated that fundamental right and thus mandates relief.

C. The Unlawful Search and Seizure of Scotton's Exculpatory DVR Footage Violated the Fourth Amendment and Due Process

One of the most shocking aspects of this case is the Government's seizure – and apparent spoliation or withholding – of a DVR containing surveillance footage from Scotton's business that held exculpatory evidence. This action implicates both Fourth Amendment protections against unreasonable searches and seizures and the due process principles requiring preservation of evidence. In essence, the Government took away Scotton's ability to use critical evidence in his favor, either by conducting an illegal seizure or by failing to maintain and disclose the evidence afterward. Such

conduct offends the Constitution in multiple ways. Fourth Amendment violation: If the DVR was seized pursuant to a search warrant, it was outside the scope of any probable cause related to mail fraud or false statements (since the DVR likely recorded routine business surveillance, not contraband or evidence of fraud). The Fourth Amendment requires that warrants particularly describe the items to be seized, and seizing items beyond that scope is unconstitutional ***(Marron v. United States, 275 U.S. 192, 196 (1927))***. If no warrant authorized the DVR's seizure (or if it was seized under a general "any electronic devices" clause without specific probable cause for its evidentiary value in a fraud), then the seizure was plainly unreasonable. The appropriate remedy for a Fourth amendment violation is usually suppression of the improperly obtained evidence ***(Mapp v. Ohio, 367 U.S. 643 (1961))***. But here, ironically, the evidence seized was exculpatory to Scotton – so the effect of the illegal seizure was not that the Government used tainted evidence against Scotton, but rather that it prevented Scotton from using the evidence for him. This flips the usual script and makes the violation a due process issue as well. It is as if the Government entered Scotton's mother stored apartment, stole his alibi evidence, and kept it from the jury. The courts have long condemned outrageous investigatory tactics that "shock the conscience" or offend the sense of justice

(Rochin v. California, 342 U.S. 165, 172 (1952)). Indeed, forcibly removing evidence from a defendant in a manner that deprives him of its use has been held to violate due process ***(see Rochin, 342 U.S. at 173-74***, where stomach-pumping to retrieve, capsules was deemed conduct that "shocks the conscience" and violated due process). While the facts here are different, the principle applies: the Government's investigatory conduct should not make a trial fundamentally unfair. Due process violation in failing to preserve/disclose evidence: The Supreme Court's decisions in ***California v. Trombetta, 467 U.S. 479 (1984)*** and ***Arizona v. Youngblood, 488 U.S. 51 (1988)*** address the Government's duty to preserve evidence. Under ***Trombetta***, the State violates due process if it destroys evidence that had apparent exculpatory value and which the defendant cannot obtain by other means. Under ***Youngblood***, if evidence is only potentially useful (not clearly exculpatory), the defendant must show the police acted in bad faith in failing to preserve it. Here, the DVR footage was manifestly exculpatory – it likely showed that Scotton was engaged in ordinary business, and that his marriage was consumed not fraud, and could possibly identify who handled the packages. Even if its exculpatory value wasn't certain until reviewed, the manner in which the Government handled it reeks of bad faith. The device was apparently seized and never logged as evidence or disclosed; by the time Scotton learned of it, it may have

been lost or erased. There is no benign explanation for this misconduct. If the DVR footage had truly incriminated Scotton, the prosecution would have used it in court. The fact that they instead hid or destroyed it strongly suggests that the footage did not incriminate him—on the contrary, it likely contained exculpatory evidence proving his innocence.

While the prosecutor and FBI Agent Roy VanBrunt denied knowledge of the DVR at trial, official government records contradict this denial. A document created by the agent establishes that he entered the gated complex where Scotton's mother resided, took the elevator to the second floor, opened the laundry room door, walked to the storage room located at the end of the hallway, and then broke into storage unit #204, which belonged to Scotton's mother. The agent then unlawfully removed the DVR along with other personal and business items that had been stored there after Scotton's incarceration.

During trial, transcripts clearly show that when Scotton cross-examined Agent VanBrunt, the agent admitted to entering the complex but falsely suggested he was only there to see that Storage Room 204 had a lock on it. However, this does not explain how the Government later came into possession of Scotton's property, nor

does it justify why a federal agent was trespassing in a private, community complex without a warrant.

This entire episode constitutes egregious misconduct, including:

Illegal Search and Seizure in violation of the Fourth Amendment, as there was no search warrant authorizing entry into Scotton's mother's storage unit.

Suppression of Exculpatory Evidence in violation of ***Brady v. Maryland, 373 U.S. 83 (1963)***, as the Government knowingly concealed potentially exonerating video footage. Tampering with Evidence, since the agent unlawfully removed and withheld critical material that Scotton had the right to present in his defense.

Obstruction of Justice, as the prosecution and the agent engaged in deceptive conduct by falsely denying knowledge of the DVR during trial.

This misconduct alone warrants immediate vacatur of Scotton's conviction or, at a minimum, an evidentiary hearing to examine the extent of the Government's wrongdoing and determine the whereabouts of the unlawfully seized evidence.. Thus, either prong of the due process test is satisfied: the evidence had obvious value to the defense, and the Government's failure to preserve or disclose it was in bad faith. Under ***Youngblood***, "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process." ***488 U.S. at 58.***

Conversely, if bad faith is shown, it does violate due process. The circumstances here – Government agents taking the DVR and never returning or revealing it – indicate bad faith interference with evidence, not a mere negligent loss. Consequently, Scotton's due process rights were violated.

Prejudice to Scotton: The prejudice from this misconduct is profound yet hard to quantify, precisely because the evidence never saw the light of day. The DVR likely contained hours of footage.

For example, it might have shown FedEx or UPS drivers picking up packages from Scotton's business (showing normal transactions), or it might have captured Scotton discussing missing packages with a carrier representative (indicating he was trying in good faith to locate them). And have footage of Scotton's wife engaging in sex and normal couple behavior. It could even have recorded the moment when law enforcement agents executed a search and seized items – context that could allow the jury to assess whether the investigation itself was standard or overzealous. All of this is speculative now, because Scotton was deprived of the chance to use the evidence. But under due process jurisprudence, the Court must not reward the Government for successfully concealing evidence. Instead, the focus is on the Government's conduct. If the Government hindered the defense by an illegal seizure

or destruction of evidence, the appropriate remedy is to eliminate any resulting prejudice to the defendant. This can include dismissal of affected charges if the prejudice is severe and irremediable (see ***United States v. Chapman, 524 F.3d 1073, 1087-88 (9th Cir. 2008)***, noting that while retrial is usual ***Brady*** remedy, dismissal may be appropriate where prosecution's misconduct is flagrant, and denial of due process cannot be otherwise cured). Given that the DVR footage could have been a game-changer for Scotton, its seizure and suppression by the Government is an issue that independently justifies reopening his case. At the very least, an evidentiary hearing is needed to determine what happened to the DVR, who had it, and what was on it. The defense never had that opportunity because these events were hidden. On a full record, the Court might conclude that the only fair course is to vacate the convictions. No criminal judgment can rest on evidence handling that offends the Fourth Amendment and the due process clause simultaneously. The Constitution is not a mere formality; it guarantees that a defendant will have the evidence needed to defend himself and that law enforcement will not sabotage his case through unlawful acts. Scotton's trial breached those guarantees.

D. The Mail Fraud Convictions (Counts 1–27) Must Be Vacated Because the Government Failed to Prove a Deprivation of "Money or Property" as Required by 18 U.S.C. § 1341

Even setting aside the Government's misconduct, Scotton's convictions on Counts 1–27 suffer from a fundamental legal defect: the facts alleged and proven do not constitute mail fraud under 18 U.S.C. § 1341 because the object of the alleged scheme was not "money or property" within the meaning of the statute. Section 1341 criminalizes schemes to defraud or to obtain "money or property" by means of false pretenses, executed through use of the mail (or private carriers, per the broadened interpretation). The Supreme Court has repeatedly emphasized that the statute is "limited in scope to the protection of money or property rights" and does not extend to mere deceit or intangible interests. In ***McNally v. United States, 483 U.S. 350 (1987)***, the Court struck down a mail fraud conviction that was predicated on depriving citizens of the "intangible right to honest government," holding that such an interest is not "property" under § 1341. Congress responded by enacting 18 U.S.C. § 1346 (honest services fraud) for certain intangible-right schemes, but importantly, Scotton was not charged with honest services fraud, nor could he be

(his case involves private companies, not a breach of fiduciary duty). Therefore, the ***McNally*** principle stands: to convict for mail fraud, the Government had to prove Scotton schemed to obtain *money or property* from the victim. Here, the purported "victims" of Scotton's scheme were the shipping companies (UPS, FedEx, DHL). Yet what property did Scotton aim to take from them? The indictment essentially claimed Scotton wanted to receive shipping services without paying – but shipping services themselves are not ***tangible "property,"*** and any unpaid fees would be at most a debt, not a fraudulently obtained object. The Supreme Court's decision in ***Cleveland v. United States, 531 U.S. 12 (2000)***, is instructive. In ***Cleveland,*** defendants lied on applications for state video poker licenses; the Court held that the licenses (before issuance) were not "property" in the State's hands, so even though the defendants obtained something of value (a license enabling them to make money), it wasn't property of the victim. Analogously, a company's agreement to ship packages (a service) is not a transferable *property interest of the company; it is more akin to a license or contractual performance*. The shipping company's expectation of payment is a right to money, but if Scotton didn't pay his bills, that is breach of contract – not fraud – unless at the time of using the service he never intended to pay (which still would be obtaining services by deceit). However, even if considered as obtaining services, courts have noted that schemes that induce a

party to enter a transaction it would otherwise avoid, without aiming to obtain something tangible, may not meet the ***"money or property"*** requirement. For example, the Eleventh Circuit in ***United States v. Takhalov, 827 F.3d 1307 (11th Cir. 2016)***, explained that "if there is no intent to harm the victim (i.e., no intent to obtain the victim's money or property through deceit), then there is no scheme to defraud – only a scheme to deceive," which is not a crime under the mail/wire fraud statutes. Deception must go to the nature of the bargain such that the victim's property interest is at stake. In Scotton's case, if he misrepresented certain details, such as the identity of his business or the creditworthiness needed to open an account, but ultimately the service was provided and the only issue was unpaid fees, then the case more closely resembles a breach of contract or credit default rather than criminal fraud. The shipping companies received the service they contracted for—Scotton's packages were shipped—and there was no deprivation of tangible property.

Importantly, the government's own unverified and highly inaccurate spreadsheets—used as evidence against Scotton—claimed that many of the shipping accounts in question were, in fact, under Scotton's own name or his company's name. If this were true, it reinforces the notion that this was merely a contract dispute between

Scotton and the carriers over payment terms, rather than a fraudulent scheme to deprive them of property.

Moreover, in August 2011, FedEx, DHL, and even the U.S. Postal Service officially licensed Scotton as an authorized shipping representative when he opened his own shipping and package store. This fact completely undermines the government's theory that Scotton had been defrauding these same companies since 2006. If these companies truly believed he had been engaged in a multi-year scheme to defraud them, it is inconceivable that they would have later issued him an official license to act as their authorized agent.

The legal distinction between fraud and contract disputes is crucial. Not every breach of contract or unpaid debt constitutes fraud. To sustain a mail fraud conviction, the Government was required to prove that Scotton engaged in intentional deceit to obtain a property interest from the shipping companies. If Scotton intended to pay at the time of shipment but later defaulted, there was no fraudulent intent at inception. Even if he intended to switch accounts to avoid prior balances, the property obtained was merely the delivery of packages, an ***intangible service that does not meet the legal definition of "property" under federal fraud statutes***.

Delivery services are intangible and transient; by the time of trial, there was no outstanding "property" that Scotton held which belonged to the shippers. Compare this to a classic fraud case, where a defendant lies to an insurance company to obtain a $10,000 payout—in that case, money leaves the victim's possession, making it a clear deprivation of property. But here, did *money or property* ever leave FedEx's possession? Not according to the evidence. If anything, FedEx and other companies merely lost anticipated revenue loss of potential income, which courts have ruled is not "property" under federal law.

The loss of anticipated revenue or the provision of services on credit has been found not to be "property" in certain contexts, as seen in: ***United States v. Lew, 875 F.2d 219 (9th Cir. 1989)*** – A government visa was not considered "property" under mail fraud laws. ***United States v. Bruchhausen, 977 F.2d 464 (9th Cir. 1992)*** – Defrauding sellers into delivering goods overseas did not constitute obtaining "property" from the sellers because they were paid and did not lose a tangible property interest. ***Cleveland v. United States, 531 U.S. 12 (2000)*** – The Supreme Court ruled that regulatory licenses are not property for purposes of the federal fraud statute. While the Eleventh Circuit has not directly addressed whether "free services" qualify as property, the reasoning in ***Cleveland and McNally v. United States, 483***

U.S. 350 (1987) suggests that the mail fraud statute was stretched too far in Scotton's case. Furthermore, the Government never provided clear evidence of actual monetary loss suffered by the shipping carriers. Restitution was ordered, but restitution (compensating for investigation costs and uncollected debts) is not itself proof that a property crime occurred; it is merely a post-conviction remedy. The trial record shows that Scotton objected to summary charts of shipping invoices, indicating that the Government's "proof" relied on voluminous bills rather than clear evidence of fraudulent intent or the unlawful acquisition of money.

Crucially, the Government failed to prove that Scotton obtained an insurance payout, cash, or any goods belonging to another party through fraud. As part of normal business operations, Scotton shipped thousands of packages to clients in Brazil. Like any shipping business, some packages were lost, stolen, or damaged due to negligence or misconduct by FedEx, UPS, and DHL employees. In such cases, these companies conducted their own investigations and, when they determined that the loss was legitimate, they issued insurance payouts to compensate for the value of the lost merchandise. Additionally, in cases where the shipping service was not fulfilled, the companies credited the shipping charges back to the same accounts used to ship the packages—a routine contractual practice.

Despite these standard business transactions, the Government never disclosed this critical exculpatory evidence during the case. The prosecution intentionally omitted the fact that many shipping charges were refunded to Scotton's accounts, and/or to the other accounts used, proving that Scotton was often the actual victim of financial losses due to the companies' own failures. These losses were not caused by fraud, but rather by the carriers' own employees, misconduct, and negligence—a well-documented issue, as seen in thousands of videos and reports exposing package theft by delivery service workers.

At best, the Government's case argued with an intent to cause financial harm, but a scheme to deceive that does not actually seek to take property is not federal fraud. In ***Kelly v. United States, 140 S. Ct. 1565 (2020)***, the Supreme Court reaffirmed that deception alone does not constitute federal fraud unless it aims to obtain "money or property". Here, Scotton neither stole property nor unlawfully obtained money—he merely sought reimbursement for legitimate business losses, making the Government's mail fraud charges fundamentally flawed. In ***Kelly v. United States, 140 S. Ct. 1565 (2020)***, the Supreme Court unanimously overturned the "Bridgegate" convictions, reinforcing the principle that "not every corrupt act is a federal crime," and that a scheme altering a regulatory decision (e.g., allocating

bridge lanes) was not aimed at obtaining money or property. Similarly, in Scotton's case, even if there was some form of contractual deceit, the Government failed to show that he took ***"property"*** as defined by federal law.

The indictment alleged financial losses that never existed—the Government presented no evidence that *money or property* was taken from the carriers. The government's own spreadsheets showed many accounts were legitimately under Scotton's name, proving a contractual dispute rather than fraud.

FedEx, DHL, and the USPS licensed Scotton in 2011, despite the government's claim that he had been defrauding them for years—undermining the entire prosecution theory. The loss of anticipated revenue is not considered ***"property"*** under federal fraud statutes, making Scotton's conviction legally unsound.

Thus, Scotton's conviction under 18 U.S.C. § 1341 must be vacated as the mail fraud statute does not encompass this alleged conduct.

The Court emphasized the requirement that the fraudulent scheme must aim to obtain the victim's property. In ***Kelly***, even though the scheme costs the Port Authority money (in traffic study costs and employee time), those costs were incidental byproducts, not the object of the scheme.

By analogy, any costs FedEx or UPS incurred investigating Scotton or delivering empty boxes were incidental; Scotton's intent (if the Government's theory is believed) was to avoid payment or to make false loss claims – but if those claims never resulted in payment to him, then he did not obtain property. It appears that Scotton never fraudulently obtained any insurance payouts for lost packages. In cases where FedEx, UPS, or DHL confirmed through their own investigations that a package was lost, stolen, or damaged due to their negligence, Scotton—like any other customer—submitted the required claim forms along with proof of purchase, including original sales receipts and credit card statements. Only after the shipping companies independently verified the losses did they issue insurance payouts to compensate for the value of the lost merchandise—not for any fraudulent claim.

Additionally, shipping charges for lost or undelivered packages were credited back to the same shipping accounts used for the transaction, per the companies' own policies. This was not an illicit financial gain but rather a standard business practice of refunding charges when a service was not rendered.

The Government intentionally failed to disclose this exculpatory evidence to the jury, misleading them into believing that Scotton engaged in fraud when, in reality, he was the party suffering financial losses due to the shipping companies' own failures.

The mail fraud statute (18 U.S.C. § 1341) requires an intent to deprive another party of property—but Scotton neither unlawfully obtained money nor deprived the carriers of tangible property. Instead, he was rightfully compensated for verifiable losses caused by the carriers themselves, making the Government's entire case legally defective. The scheme alleged is essentially a credit scam – using services without paying, then moving to a new account. If that is criminal fraud, then any individual who runs up a bill and doesn't pay could face federal prosecution, which is not what the statute is for. Federal fraud statutes ***are not debt-collection devices***; they target schemes where deception is used to wrongfully obtain someone's property at the time of the scheme. The legislative history of § 1341 confirms it was meant to protect traditional property rights.

In sum, counts 1–27 should be vacated because the Government failed to satisfy the "money or property" element of mail fraud. The jury instructions likely did not properly convey this requirement, given the prevailing misunderstanding. If the jury convicted without finding that Scotton intended to deprive the carriers of money or tangible property, then the convictions are legally invalid (see ***McNally, 483 U.S. at 359-60***). This Court, in its independent review, can and should recognize that the statute was misapplied. This is not a mere technicality but a reflection that Scotton's

conduct, even taken at face value, did not constitute the federal crime of mail fraud. As Justice Kagan succinctly put it in ***Kelly***, "because the scheme did not aim to obtain money or property," the defendants "could not have violated the federal program fraud or wire fraud laws."

Likewise, here, Scotton could not have violated § 1341 because any deceit was not directed at obtaining money or property from the carriers. Therefore, vacatur of the mail fraud convictions is required as a matter of law. At a minimum, Scotton is entitled to amend or reopen his § 2255 to include this argument, as failing to raise it earlier (when ***Kelly*** and other clarifications were not decided or were unknown to a pro se defendant) should not bar relief on a fundamentally meritorious claim. This is an issue of actual innocence of the crime as charged, since if the facts don't fit § 1341, Scotton stands convicted of acts that are not criminal. The Court's duty to prevent a miscarriage of justice permits granting relief on this basis as well.

F. Systemic Bias Against Scotton as a Pro Se Litigant Deprived Him of a Level Playing Field and a Fair Trial.

Finally, Scotton's case is a disturbing example of how systemic bias against a pro se defendant can infect a trial, leading to lax enforcement of his rights and a cascade of due process violations. While the court force Scotton to knowingly waived his right

to counsel (Faretta, 422 U.S. at 835), that did not waive his right to a fair proceeding. Every defendant, represented or not, is entitled to due process, a neutral judge, and an impartial jury. Yet, in practice, pro se defendants often face skepticism, impatience, or prejudice from court and counsel, and such bias can manifest in subtle ways that undermine the fairness of the trial. In Scotton's trial, the Court and prosecution at times treated him less favorably than a representative party, failing to ensure he had equal access to information and latitude to present his case. One glaring incident was the court's handling of a juror who expressed fear of Scotton early in the trial. The juror stated she was "afraid" of Scotton – perhaps merely because he was defending himself and had vigorous demeanor. Rather than appreciating how prejudicial such a sentiment is, the Court simply questioned her and accepted her later assurances of fairness.

A reasonable court, however, would recognize that once a juror has admitted fear of a defendant, the risk of bias is intolerable. "A fair trial in a fair tribunal is a basic requirement of due process", and "[f]airness requires an absence of actual bias". The Supreme Court has noted that even the appearance of bias can fatally infect a trial (In re ***Murchison, 349 U.S. 133, 136 (1955)***). By keeping that juror, the court tilted the scales – Scotton effectively had a juror predisposed against him, a structural error that no amount of evidence can cure. If Scotton had counsel, perhaps counsel's

objections would have been heeded. As a pro se, his concerns may not have carried the same weight. Thes reflects a systemic bias: the court perhaps doubted Scotton's legal judgment and overruled a valid challenge for cause, whereas had a defense attorney raised it, it might have been granted. The result is a juror whose impartiality is questionable deciding Scotton's fate, violating the Sixth Amendment. Additionally, throughout the trial, Scotton was constrained by his lack of legal training, and the court did not always accommodate that. While a pro se defendant must follow the rules of procedure and evidence, the court also has a duty to ensure that the defendant's rights are not steamrolled. The Eleventh Circuit has acknowledged that filings by pro se litigants are to be liberally construed and that courts should safeguard their rights (see e.g., ***United States v. Taylor, 569 F.2d 448, 451 (7th Cir. 1978)***, noting the trial judge's responsibility to assist pro se defendants within limits). In Scotton's case, complex issues like ***Brady*** disclosures and evidentiary objections were at play, yet the court did not appoint standby counsel or other mechanisms to level the field. The appellate opinion even liberally construed Scotton's prose objection to summary charts as a Rule 1006 objection, implying that at trial Scotton's legal phrasing was imperfect. While the Eleventh Circuit thankfully gave his objection a broad reading, the trial court might not have been so

generous, which could have allowed the Government more leeway than a represented defendant would. This exemplifies how procedural complexities can disadvantage a pro se defendant, effectively denying him the benefit of important rights (like discovery or motion practice). There is also an inherent power imbalance when a defendant faces off pro se against seasoned federal prosecutors. The prosecution in Scotton's trial appears to have taken advantage of this. They inundated him with thousands of pages of records, introduced summary exhibits, and made legal arguments that Scotton struggled to counter. The court permitted the trial to span 29 days – an extraordinarily lengthy trial for a one-person defense to navigate. The sheer length and complexity may have overwhelmed Scotton, but the court did not intervene to streamline or ensure comprehension. In contrast, had Scotton been represented, counsel could have narrowed issues or stipulations. Pro se bias here is not the overt hostility, but the failure of the system to adjust for the known disadvantages of self-representation. The judge may have held Scotton to the standard of an attorney, without providing the slack or guidance often given to pro se litigants in civil contexts. For instance, ***Haines v. Kerner, 404 U.S. 519 (1972)***, mandates liberal construction of pro se pleadings; while a criminal trial is different, the underlying principle is that courts should take special care that a pro

se's lack of legal knowledge does not translate into an unjust result. Finally, Scotton's status as a foreign national (Brazilian) and an outsider to the legal system might have contributed to bias. The juror's fear might have been partially rooted in seeing a nonnative English speaker defending himself on serious charges, which could unconsciously signal to jurors that he is dangerous or untrustworthy. The court should have been vigilant to ensure no such bias tainted the proceedings – yet by leaving that fearful juror in place, one cannot be confident that the verdict was based solely on evidence, rather than prejudice or misunderstanding. The presumption of innocence is a cornerstone of a fair trial, yet subtle cues (like a juror's fear or the judge's corrections of the pro se) can erode that presumption. The Supreme Court has called the presumption of innocence "a basic component of a fair trial" and cautioned against any indication that might prejudice the jury (***Estelle v. Williams, 425 U.S. 501, 503 (1976)***). Scotton, appearing without a lawyer, perhaps dressed in jail attire or not – we don't know – could have been prejudiced in the jurors' eyes. It's saying that the juror explicitly voiced fear, an extraordinarily prejudicial notion, and yet remained. This strongly suggests the court undervalued Scotton's right to an unbiased jury, perhaps not wanting to disrupt proceedings or give Scotton what might be perceived as an advantage. That is systemic bias – treating a pro se defendant's valid concerns as inconveniences. In summary, the

cumulative effect of these factors is that Scotton did not receive the same quality of due process that a represented defendant would. The court's and prosecution's approach – whether intentionally or subconsciously – placed Scotton at a significant disadvantage, beyond the expected challenges of self-representation. This bias facilitated the other errors discussed: it made it easier for the Government to get away with ***Brady*** violations (because Scotton wasn't equipped to spot them all), it resulted in less sympathy or patience for Scotton's requests (like compelling DHL, FedEx and UPS records or striking jurors), and it possibly influenced the jury viewing Scotton with suspicion. When combined with the prosecutorial misconduct, the pro se bias magnified the unfairness. Our judicial system is founded on the principle that all defendants stand equal before the law, and that the trial's outcome should depend on evidence and law, not on whether one side has more sophistication. Scotton's trial deviated from that principle. As the Fifth Amendment and Supreme Court instruct, the due process of law is violated by procedures that are fundamentally unfair (***see Estelle, 425 U.S. at 503***). This Court must guard against the miscarriage of justice that occurred. The appropriate remedy to cure these accumulated errors and biases is to vacate the convictions and allow for a new, fair proceeding, should the Government choose to retry Scotton with full

disclosure and proper respect for his rights. Short of that, at least an evidentiary hearing and reexamination of the evidence (with Scotton perhaps now having counsel) is warranted to ensure that the outcome was not the product of these constitutional violations.

Judicial Bias and Denial of the Right to Effective Assistance of Counsel

The bias of the court against Scotton was evident throughout the proceedings, particularly in the way his constitutional right to effective assistance of counsel was obstructed. Before trial, Scotton learned that he was entitled to a *standby attorney*, which was granted. However, during the entire five weeks of trial, the judge deliberately ordered Scotton's standby attorney to ***sit in the last row of the court gallery***, rather than beside him at the defense table where legal counsel is typically seated. The judge openly stated that ***she did not want the jury to believe that Scotton was represented by an attorney***.

This decision was not only unlawful but fundamentally prejudicial, as it deprived Scotton of any meaningful opportunity to consult with his standby attorney regarding trial procedures, legal objections, and government misconduct. A standby

attorney's role is not merely symbolic but is meant to ensure that a pro se defendant can understand proceedings, properly object to improper prosecution tactics, and effectively present a defense.

By isolating Scotton's standby attorney in the court gallery, the judge prevented Scotton from obtaining critical legal guidance during trial, including during cross examinations and objections to government misconduct. As a result, Scotton was unable to properly object to the prosecution's questioning, examine legal procedures, or request necessary legal clarifications—something his standby attorney could have easily assisted with had he been seated at the defense table, as required by law. This unlawful restriction of Scotton's legal assistance violated his constitutional right to a fair trial under the Sixth Amendment. Courts have repeatedly held that standby counsel must be available to provide meaningful assistance, and depriving a defendant of such access is a structural error requiring reversal. ***McKaskle v. Wiggins, 465 U.S. 168 (1984)*** – A defendant representing himself must be allowed meaningful access to standby counsel when needed for assistance.

Faretta v. California, 422 U.S. 806 (1975) – A pro se defendant has the right to legal assistance, even if choosing to represent himself. ***United States v. Morrison, 449***

U.S. 361 (1981) – Denial of legal assistance violates the Sixth Amendment, requiring dismissal or reversal of conviction. ***Geders v. United States, 425 U.S. 80 (1976)*** – Preventing a defendant from consulting an attorney violates the right to a fair trial. ***Brooks v. Tennessee, 406 U.S. 605 (1972)*** – A restriction on a defendant's ability to consult counsel during trial is unconstitutional. ***Chandler v. Fretag, 348 U.S. 3 (1954)*** – Denial of assistance of counsel at a critical stage is reversible error. ***United States v. Cronic, 466 U.S. 648 (1984)*** – A trial is constitutionally unfair when the defendant is denied legal support at a crucial stage. ***Holloway v. Arkansas, 435 U.S. 475 (1978)*** – The mere presence of an attorney is not enough; legal assistance must be meaningful. ***Strickland v. Washington, 466 U.S. 668 (1984)*** – Failure to provide meaningful assistance of counsel violates due process. ***Powell v. Alabama, 287 U.S. 45 (1932)*** – Deprivation of the right to consult with counsel violates fundamental fairness in a trial.

Further Misconduct by Scotton's Sentencing Attorney & Evidence Manipulation

The misconduct surrounding Scotton's legal representation did not end at trial. During sentencing, Scotton's ***standby attorney*** was suddenly appointed as his official court-appointed attorney. However, when Scotton disputed the government's *unverified and inaccurate* spreadsheets, his sentencing attorney openly admitted to

the judge ***that he had not reviewed the discovery at all because the judge had told him that he would not be compensated for preparation***, as his role during trial was only as standby counsel. (See sentence transcript).

This egregious failure to review discovery meant that Scotton's own court-appointed attorney had no basis to challenge the fraudulent spreadsheets used by the government. Worse still, despite claiming in open court that he never reviewed discovery, the attorney later billed the court for 40 hours of discovery review under the Criminal Justice Act (CJA) voucher system—an act of fraud.

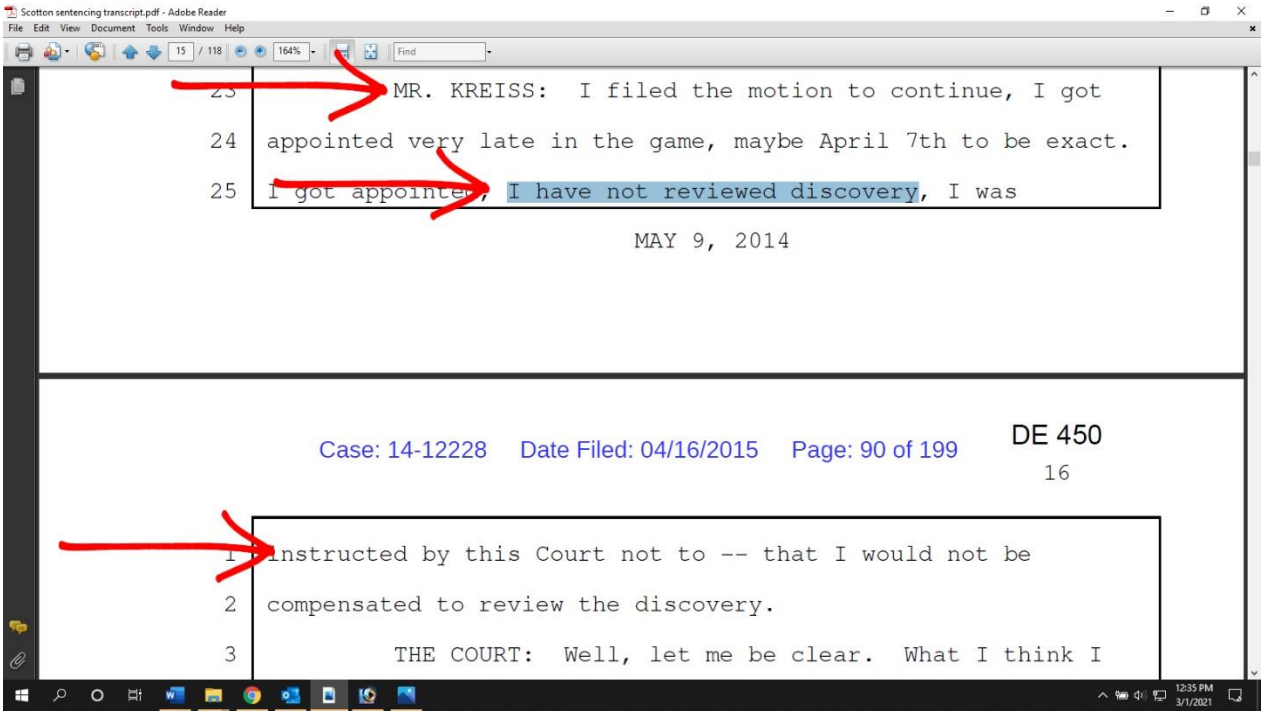
RECEIVED CJA SEP - 5 2013

	CATEGORIES (Attach itemization of services with dates)	HOURS CLAIMED	AMOUNT CLAIMED	ADJUSTED HOURS	ADJUSTED AMOUNT	ADDITIONAL REVIEW
15. In Court	a. Arraignment and/or Plea					
	b. Bail and Detention Hearings					
	c. Motion Hearings	3.6 ✓				
	d. Trial					
	e. Sentencing Hearings					
	f. Revocation Hearings					
	g. Appeals Court					
	h. Other (Specify on additional sheets)	17 ✓				
	(Rate per hour = $ 125) TOTALS:	4.3 ✓	537.50		537.50 ✓	
16. Out of Court	a. Interviews and Conferences	21.6 ✓				
	b. Obtaining and reviewing records	38.3 ✓				
	c. Legal research and brief writing	13.4 ✓				
	d. Travel time	4.0 ✓				
	e. Investigative and Other work (Specify on additional sheets)					
	(Rate per hour = $ 125) TOTALS:	71.6	8950 -	67.3 ✓	8,412.50	✓
17.	Travel Expenses (lodging, parking, meals, mileage, etc.)		20 -		20.00	✓
18.	Other Expenses (other than expert, transcripts, etc.)					
	GRAND TOTALS (CLAIMED AND ADJUSTED)		8970 -		8,970.00	✓

19. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE
FROM 1/4/13 TO 7/30/13

20. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION
Confirmed

21. CASE DISPOSITION
OPEN



Scotton sentencing transcript.pdf - Adobe Reader

MR. KREISS: I filed the motion to continue, I got appointed very late in the game, maybe April 7th to be exact. I got appointed, I have not reviewed discovery, I was

MAY 9, 2014

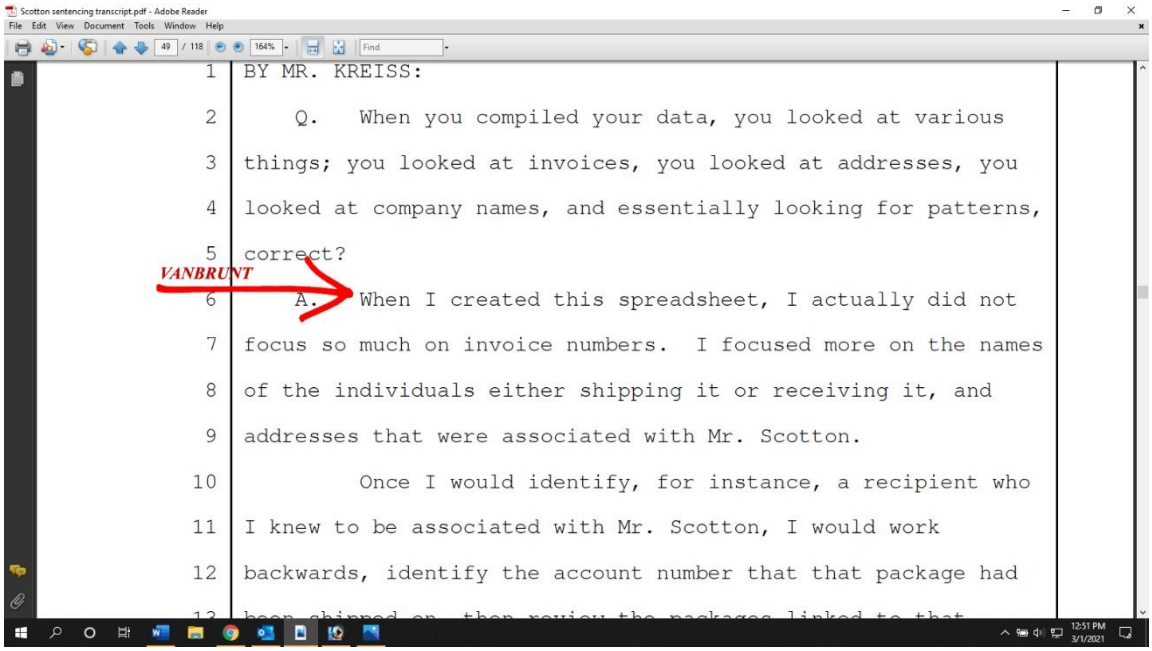
Case: 14-12228 Date Filed: 04/16/2015 Page: 90 of 199 DE 450

16

instructed by this Court not to -- that I would not be compensated to review the discovery.

THE COURT: Well, let me be clear. What I think I

This misconduct is exacerbated by the government's admission that the primary "evidence" used against Scotton—the spreadsheets—were not actual company records but were created by FBI Agent Roy Vanbrunt. During cross-examination, Vanbrunt admitted that he personally compiled the spreadsheets, rather than obtaining them from FedEx, UPS, or DHL. Some government witnesses falsely testified that these spreadsheets came directly from the shipping companies, but when confronted with cross-examination, they admitted that they had merely been called to testify about the contents of the spreadsheets, not their creation or verification.



This means:

The spreadsheets were not verified business records.

They were created by the FBI, not FedEx, UPS, or DHL.

The prosecution knowingly used false and unreliable evidence against Scotton. ***Giglio v. United States, 405 U.S. 150 (1972)*** – The prosecution's use of false or misleading evidence violates due process. ***Napue v. Illinois, 360 U.S. 264 (1959)*** – Convictions obtained through false testimony must be overturned.

Brady v. Maryland, 373 U.S. 83 (1963) – Suppression of material evidence, including fabrication of evidence, is unconstitutional. ***Kyles v. Whitley, 514 U.S. 419 (1995)*** – The prosecution must disclose false evidence to the defense; failure requires reversal. ***United States v. Bagley, 473 U.S. 667 (1985)*** – Using unreliable evidence to secure a conviction violates due process. ***Mooney v. Holohan, 294 U.S. 103***

(1935) – Deliberate deception of a court through false evidence is unconstitutional. ***United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)*** – If a prosecutor knows evidence is false but allows it anyway, the conviction must be set aside. ***Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944)*** – Fraud upon the court invalidates a conviction. ***United States v. Sipe, 388 F.3d 471 (5th Cir. 2004)*** – False testimony and suppression of evidence require a new trial. ***United States v. Agurs, 427 U.S. 97 (1976)*** – Convictions based on misrepresented evidence violate fundamental fairness.

The cumulative effect of these violations—judicial bias, the improper restriction of standby counsel, ineffective assistance of sentencing counsel, and the government's fabrication of evidence—renders Scotton's conviction invalid and unconstitutional. Accordingly, Scotton requests that this Court grant Rule 60(b) relief, vacate the conviction, and order an evidentiary hearing. This case is not about a legitimate judicial proceeding but rather an abuse of government power driven by a personally motivated FBI agent who sought to manufacture a criminal case against Scotton despite the lack of any formal fraud complaint from the alleged victims—FedEx, UPS, and DHL.

Trial records clearly establish that when government witnesses—current and former employees of the shipping companies—were cross-examined, they unequivocally testified that their companies never accused Scotton of fraud, never filed a police report, and never contacted the FBI. Instead, it was Agent Roy VanBrunt who reached out to them first, informing them of an alleged "scheme" and initiating the entire investigation. This means that the government did not uncover an actual crime but rather invented a theory and spent years manipulating judicial resources to build a false case against Scotton.

This sequence of events is the very definition of a malicious prosecution—a targeted effort where a law enforcement officer pursued an individual without probable cause, manipulated evidence, concealed exculpatory materials, and engaged in outright prosecutorial misconduct. Given these egregious due process violations, the only just remedy is the immediate vacatur of Scotton’s conviction or, at a minimum, a full evidentiary hearing to expose the government’s fraud upon the court.

IV. AN EVIDENTIARY HEARING IS REQUIRED, AND THE COURT SHOULD ORDER DISCLOSURE OF THE WITHHELD EVIDENCE AND RECORDS

Under 28 U.S.C. § 2255 and well-established precedent, Scotton is entitled to an evidentiary hearing on the claims presented, unless the record "conclusively" shows he is not entitled to relief. The current record is far from conclusively against him – in fact, much of the critical information (Brady material, witness testimony, DVR footage, etc.) is outside the record precisely because it was suppressed or not developed. Scotton has proffered detailed allegations, backed by specific examples and references, which, if proven true, establish that his trial was marred by constitutional violations. No paper record can refute Scotton's claims without a factual hearing, because the truth of these matters (e.g., what the Government told witness X, what happened to the DVR, what the carriers' data actually showed) has never been adjudicated. Therefore, evidentiary hearing is not just appropriate but necessary. At that hearing, Scotton should be allowed to call witnesses including the federal agents and prosecutors involved, representatives of FedEx, UPS, and DHL who handled the relevant shipments or claims, any defense witness who felt intimidated, and the juror(s) who expressed bias (if permissible). Through this, the

Court can make credibility determinations and find the facts. The Ninth Circuit in ***Earp v. Ornoski, 431 F.3d 1158 (9th Cir. 2005)***, in a habeas context, held that an evidentiary hearing was required where a petitioner alleged witness intimidation with an affidavit, because if true, it would entitle him to relief. Similarly, here, Scotton's allegations cannot be brushed aside; they go to the core of the conviction's validity. Importantly, this Court should exercise its authority to compel the production of the long-withheld evidence so that the hearing (and any potential retrial) can be fair. Specifically, Scotton moves the Court to order the Government to produce:

All records and communications from FedEx, UPS, and DHL relating to the 27 packages in question, including internal tracking information, claims files, emails with law enforcement, and any recovery of those packages. These should definitively show whether the packages were reported lost shipped, if claims were made or paid, and how they ended up in court. This evidence is crucial to resolving the **Brady** and **Napue** issues; if the Government had these records and did not disclose them, that is **Brady suppression**, and if the records contradict the Government's trial story, that proves the false evidence claim.

The DVR or any copies of the surveillance footage, or if it's destroyed, an affidavit or testimony explaining its chain of custody and contents. If the DVR still exists, it must be disclosed as **Brady** evidence now (better late than never). If it was destroyed, the circumstances must be revealed to evaluate bad faith.

All FBI/USPIS/DOJ notes, reports, and emails concerning interactions with potential defense witnesses or any instructions given to witnesses (including warnings about perjury or discussions of the consequences of testimony). This will illuminate whether witness intimidation occurred and whether any witnesses were coached to testify in a misleading way.

All ***Brady/Giglio*** material that was not previously disclosed, including impeachment information on Government witnesses (such as any benefits, considerations, or contradictions in their statements). The prosecution's file should be unsealed to the extent it contains ***Brady*** info that Scotton, as a § 2255 movant, is now entitled to. It is worth noting that the duty to disclose is ongoing, and any favorable evidence known now (even if not known at trial) should be turned over (see ***Dennis v. Sec'y, Pa. Dep't of Corr., 834 F.3d 263, 290 (3d Cir. 2016) (en banc)*** – Brady obligations continue post-trial when relevant to a challenge).

Scotton also asks the Court to consider using its subpoena power (Rule 6 of the Rules Governing § 2255 Proceedings) to gather evidence from the shipping companies directly if the Government cannot or will not produce full records. Good cause exists for such discovery given the substantial indications of prosecutorial lapses. The truth about the 27 packages lies in those corporate records and shipping databases – obtaining them is critical to determine if Scotton's conviction was predicated on a false premise. The Innocence Project and various courts have noted that postconviction discovery may be warranted to unearth Brady violations, as Brady suppression often only becomes evident after trial when defendants doggedly pursue hidden files (as Scotton is doing now). By compelling this evidence and holding a hearing, this Court will ensure that Scotton's claims are rigorously tested. If the Government's actions were as improper as alleged, it is far better for the integrity of the justice system to confront and remedy them now, rather than allow a possibly innocent or over-punished man to remain convicted due to procedural blind spots. Conversely, if the Government can somehow justify its actions (or show the misconduct was harmless beyond a reasonable doubt, an exceedingly high bar given the structural nature of these violations), a hearing is the forum to make that case. What cannot be allowed is for the Government to simply deny these allegations with

generalities or hide behind the presumption of regularity. The Supreme Court in ***Banks*** noted that a defendant is entitled to assume prosecutors will honor their constitutional obligations, not hide evidence.

Scotton assumed that at trial; he was betrayed in that trust. Now, the Court should demand full transparency. Sunlight is the best disinfectant: by ordering all relevant evidence into the open, the Court can restore confidence that the result in Scotton's case – whatever it ultimately is – is just and based on a complete record, not one skewed by secrecy or bias. Finally, Scotton requests that the Court permit him to be represented by counsel at the evidentiary hearing (he can seek appointed counsel given his incarceration and complexity of the case). The issues are legally and factually intricate, spanning ***Brady***, ***Napue***, Fourth Amendment, and substantive mail fraud law, and a skilled attorney can help ensure the hearing truly ferrets out the truth. The Court has discretion to appoint counsel in § 2255 proceedings when the interests of justice so require, especially if a hearing is granted (18 U.S.C. § 3006A). Here, the interests of justice strongly favor appointing counsel for Scotton for the hearing and any further proceedings.

Prosecutorial Misconduct and Witness Credibility:

Key Precedents and Examples False or Perjured Testimony by Prosecution Witnesses

Courts have long held that a conviction obtained through false testimony violates due process – especially if prosecutors knew or should have known the testimony was false. Such convictions are routinely overturned or retried. Key precedents include ***Mooney v. Holohan (1935)***: Established that a conviction procured solely by perjured testimony known to the prosecution is a violation of the Fourteenth Amendment's due process clause. The Supreme Court stated that "the dignity of the United States government will not permit the conviction of any person on tainted testimony". ***Napue v. Illinois (1959)***: A leading case where the Supreme Court reversed a murder conviction after a government witness falsely denied receiving a deal, and the prosecutor failed to correct the lie. The Court held that a State may not knowingly use false testimony to obtain a conviction, even if the falsehood goes only to the witness's credibility. ***Alcorta v. Texas (1957)***: The Court set aside a murder conviction because the prosecutor allowed a witness to give a misleading account (downplaying his affair with the defendant's wife), which was deemed "false

testimony" by omission. This violated due process since the truth would have revealed a motive to lie. ***Giglio v. United States (1972)***: The Supreme Court ordered a new trial after prosecutors failed to disclose a promise of leniency made to their key witness. Even though the trial prosecutor was unaware of the promise, the Court ruled that the government's duty to present all material evidence was breached and any assurance given to a witness that could influence testimony must be disclosed. This case extended the Brady rule (requiring disclosure of exculpatory evidence) to impeachment evidence, recognizing that deals or inducements to witnesses are material to credibility. ***United States v. Wallach (2nd Cir. 1991)***: A federal appeals court reversed convictions after a star government witness was revealed post-trial to have committed perjury. The court found that, at minimum, the prosecution "should have known" the witness was lying (the witness had a history of compulsive gambling and lied on the stand about it), especially since the government had bolstered the witness's truthfulness in closing arguments. Allowing the jury to be misled by this false testimony undermined the verdict. ***Perkins v. LeFevre (2nd Cir. 1982)***: Habeas corpus was granted to a defendant when it emerged that a prosecution witness lied about his criminal history. During trial the witness denied having any prior convictions, but prosecutors possessed his rap sheet and did not correct the

falsehood. The federal court ruled this non-disclosure of the witness's record – which directly contradicted his testimony – violated due process, warranting relief.

Under these cases (often called ***Napue*** or ***Mooney*** violations), a prosecutor's knowing use of false testimony – or silence in the face of it – requires the conviction to be overturned if the testimony was material. Even if the falsehood concerns only credibility (not direct evidence of guilt), it is considered "tainted" justice. Courts emphasize that it's the government's duty to correct false evidence to ensure fair trial.

Promises of Leniency or Immigration Benefits in Exchange for Testimony

Offering government benefits to a witness (such as leniency, cash, or immigration relief) in return for testimony is highly relevant to that witness's credibility. If such arrangements are not disclosed to the defense and jury, it can amount to prosecutorial misconduct. Courts have set aside convictions for these failures, recognizing the jury's right to know a witness's potential biases or motives. Notable examples:

Brady v. Maryland (1963): Established the broad rule that prosecutors must disclose exculpatory evidence to the defense. This obligation encompasses any impeachment

evidence that could cast doubt on a government witness's reliability. Failing to divulge a deal or benefit offered to a witness falls under this rule. ***United States v. Boyd (7th Cir. 1995)***: The Seventh Circuit explicitly held that the Constitution requires prosecutors to disclose any agreement with a witness to provide benefits in exchange for testimony. In Boyd, drug-case witnesses had received various benefits (cash, relocation, reduced charges); the court noted that revealing these known benefits was necessary to "undermine the credibility of key witnesses" as required by ***Brady***. Impeachment evidence is no less important than direct exonerating evidence. ***United States v. Sipe (5th Cir. 2004)***: A Border Patrol agent's conviction was reversed because the prosecution failed to disclose that its eyewitnesses – who were undocumented immigrants – had been given immigration benefits and other assistance. The Fifth Circuit ruled that the government was obligated to divulge such benefits, since the aliens' testimony formed the heart of the case and knowledge of special treatment would have impeached their credibility. ***United States v. Blanco (9th Cir. 2004)***: The Ninth Circuit similarly found a ***Brady/Giglio*** violation where prosecutors did not reveal that a cooperating witness had received "special immigration treatment" from INS/DEA. This information was obviously relevant to bias – any competent defense lawyer could use the witness's deferred deportation or

visa benefits to question his motives. Suppressing, it denied the defendant a fair chance to impeach the witness. ***People v. Roman (Ill. App. 2016)***: Although the defendant's claim was ultimately rejected on other grounds, the Illinois Appellate Court acknowledged that if the State promised to assist a witness with immigration or other benefits in exchange for testimony, it "could have been the subject of impeachment on cross-examination," satisfying the first step of a Brady violation. In other words, such a deal would be favorable impeachment evidence that must be disclosed. (The court found no credible evidence of an undisclosed deal in that case but reaffirmed the principle.) ***Wearry v. Cain (2016)***: In this recent Supreme Court case, prosecutors failed to reveal several pieces of evidence undermining their star witnesses, including indications one witness sought a reward and another had his own credibility issues. The Court (in a per curiam decision) granted a new trial to the death-row inmate, underscoring that withheld evidence affecting a witness's credibility – such as promises of reward or leniency – warranted reversal because it could have "compromised the credibility of [the] star witnesses". This reinforces that non-disclosure of inducements or biases is fatal to a conviction when the witness is pivotal. Note: It is generally unethical and illegal to outright bribe a witness for testimony. Federal law (18 U.S.C. § 201(c)(2)) makes it

a crime to offer anything of value to a witness because of their testimony. A controversial Tenth Circuit panel decision in ***U.S. v. Singleton (1998)*** briefly held that this statute barred prosecutors from offering leniency for cooperation, equating it to a bribe, though the decision was vacated en banc and not followed by other courts. Nonetheless, the case highlights the fine line: while prosecutors may offer leniency or other incentives to witnesses, they must disclose these deals in court. Failure to do so violates due process (per Giglio) because juries need to consider whether a witness has a motive to lie to gain a benefit. Courts will overturn convictions where such information was hidden from the defense.

Coerced or Threatened Witness Testimony Witness testimony must be voluntary and free of improper influence. If prosecutors (or other officials) coerce, threaten, or intimidate a witness to give certain testimony, any resulting conviction is at risk – both because the testimony may be unreliable and because it offends due process. Courts have intervened in cases of coerced witness testimony: ***People v. Boyer (Cal. 2006)***: The California Supreme Court emphasized that "coerced testimony of a witness other than the accused is excluded in order to protect the defendant's own federal due process right to a fair trial, and in particular, to ensure the reliability of testimony offered against him."

If the prosecution's misconduct (threats, pressure, etc.) undermines the free and voluntary nature of a witness's testimony, it can require reversal of the conviction.

Webb v. Texas (1972): Although involving a judge's actions, this U.S. Supreme Court case is frequently cited in this context. The defendant's only witness was scared off by a stern warning from the trial judge about perjury penalties. The Supreme Court unanimously overturned the conviction, finding that the judge's intimidation deprived the defendant of due process. Webb thus stands for the rule that neither a judge nor a prosecutor may threaten a witness (e.g. with prosecution for perjury) in a way that discourages them from testifying. Such intimidation of a defense witness violates the defendant's right to present evidence. (By extension, if prosecutors threaten their own witnesses to testify in a certain way, that testimony would be considered coerced and inadmissible.) ***People v. Warren (Cal. App. 1984)***: In this case a prosecutor warned a potential defense witness that if he testified for the defendant, he could be prosecuted for past crimes. The appellate court found this conduct improper – effectively witness intimidation – and reversed the conviction. The ruling made clear that a prosecutor's threat that chills a witness's willingness to testify can amount to reversible misconduct, since it interferes with the truth-finding process. ***United States v. MacCloskey (4th Cir. 1982)***: A federal example where the

prosecutor called a co-defendant's attorney and suggested the co-defendant might be re-indicted for perjury if she testified in the defendant's trial. The Fourth Circuit condemned this as prosecutorial misconduct, as it deterred a witness from testifying on the defendant's behalf. Courts will not tolerate tactics that substantially pressure witnesses to withhold testimony – whether that pressure is direct threats of legal action or other forms of coercion.

Beyond court rulings, such behavior can violate criminal laws. Witness tampering statutes (e.g., 18 U.S.C. § 1512) make it a crime to use threats, force, or intimidation to influence a witness's testimony. In essence, if a prosecutor or law enforcement officer crosses the line into tampering with a witness's free will, any conviction obtained may be overturned due to the profound unreliability and unfairness associated with coerced testimony. Courts require that testimony be the product of the witness's own free and voluntary will, not manufactured by fear or favors.

Unreliable Witnesses with Criminal Backgrounds or Contradictory Statements Sometimes prosecutors rely on witnesses who have checked histories (e.g. prior crimes of dishonesty) or whose stories have changed over time. There is nothing per se illegal about using such witnesses, but if prosecutors fail to disclose the witness's background or prior inconsistent statements – or if they knew the testimony was false/inconsistent – the conviction can be in jeopardy. Courts have sided with

defendants in cases where a witness's credibility issues were mishandled by the prosecution: ***Perkins v. LeFevre*** (mentioned above): The witness's criminal record (a source of impeachment) was concealed while he falsely claimed to be law-abiding. The court found this violated due process and granted relief. This illustrates that witness credibility problems (like past fraud or crimes) must be disclosed, especially if the witness lies about them on the stand. ***Mesarosh v. United States (1956)***: A dramatic historical example from the Cold War era. Several defendants were convicted of conspiracy based in part on testimony from a paid informant witness. After the trial, it emerged that this witness had given fantastic and false testimony in other cases (unrelated to the trial at hand). Even though prosecutors did not know of the falsehood at trial, the U.S. Supreme Court exercised its supervisory power to vacate the convictions and order a new trial. The Court famously declared that the justice system cannot allow a verdict to stand if based on "tainted testimony," even if discovered post-conviction. This case underscores the principle that the use of an inherently unreliable, dishonest witness can undermine a conviction, and courts will err on the side of fairness to protect the system's integrity. ***Banks v. Dretke (2004)***: In this capital case, the Supreme Court found that Texas prosecutors withheld critical impeachment evidence about two key witnesses. One witness was a paid

informant with a lengthy criminal background, and the other had been coached by police – facts never revealed to the defense. The Court held this suppression violated Brady, as the jury was entitled to know of these credibility issues. Banks's death sentence was overturned, reinforcing that a witness's fraudulent background or deal with the government must be disclosed as it could "undermine confidence" in the outcome. ***Wearry v. Cain (2016)*** (mentioned above): The prosecution's main witnesses had prior inconsistent stories and motives to lie (one sought a reduced sentence; another was fed information by a fellow inmate) which were not disclosed. The Supreme Court found the undisclosed evidence so undermined the witness' testimony that the conviction could not stand. This recent ruling shows that even absent outright perjury, if a witness's credibility is substantially in doubt and the prosecution buried that fact, courts will set aside the verdict. ***United States v. Agurs (1976)***: The Supreme Court noted that when the prosecution knows a witness's testimony is false, it has a duty to correct it, and if the falsehood is material, a new trial is required – even if the defense did not specifically request the information. This builds on ***Napue*** and is particularly relevant if a witness has made contradictory statements that the prosecutor is aware of. ***United States v. Vozzella (2nd Cir. 1997)***: An example involving fabricated evidence, the government used business records it

knew contained false entries to bolster a witness's story. The Second Circuit reversed the conviction, faulting the prosecution for presenting evidence it should have known was bogus. By analogy, using a witness with known falsehoods in their story without clarification can equally warrant reversal.

In sum, courts demand transparency and honesty in how prosecutors handle witnesses with credibility issues. If a witness has a criminal or fraudulent background, or has given multiple conflicting accounts, the prosecution must disclose these problems and certainly cannot present or bolster such testimony as if it was a reliable truth. When prosecutors violate these tenets – whether by hiding impeachment evidence, failing to correct false statements, or actively misleading the jury about a witness's trustworthiness – appellate courts and habeas courts will step in. The remedy is often to overturn the conviction or grant a new trial in the interest of justice.

Prosecutorial misconduct affecting witness credibility strikes at the heart of a fair trial. The case law makes clear that:

Knowingly using or failing to correct false testimony = due process violation (conviction cannot stand).

Withholding deals, promises, or benefits given to witnesses (leniency, money, immigration status, etc.) = **Brady/Giglio** violation if material, often requiring a new trial.

Coercing or threatening witnesses—whether to testify falsely or to prevent truthful testimony—constitutes misconduct that can invalidate a conviction, as it undermines the voluntary nature and reliability of witness statements. The Government's reliance on discredited witnesses without disclosure of their credibility issues is grounds for reversal, particularly when prosecutors knew or should have known about their prior lies, dishonest conduct, or contradictory statements.

Both constitutional law (via the 5th and 14th Amendments' due process protections, and the 6th Amendment's right to confrontation) and ethical prosecutorial standards forbid such misconduct. Additionally, federal bribery and witness tampering laws prohibit these actions, as they corrupt the fairness of trial proceedings. Courts have consistently held that the integrity of the justice system depends on the honesty of witness testimony. When prosecutors taint that honesty—whether through intimidation, secret deals, or outright fabrication—courts have not hesitated to overturn convictions.

In Scotton's case, the Government's misconduct was blatant. Scotton's wife, Ayling, was twice intimidated before trial, yet during Scotton's cross-examination, her testimony directly contradicted the Government's theory of sham marriage. Notably, Scotton was never charged with a sham marriage, but rather false statements under Counts 28 and 29. The prosecution's tactics became even more egregious when they presented false documents suggesting that Ayling had received immunity—a claim that was completely untrue. The Government knowingly fabricated this narrative to pressure her into testifying falsely, violating Scotton's due process rights.

Even more alarming was the Government's reliance on Renata Moreira, Scotton's former secretary, as a key witness—despite knowing she had engaged in numerous federal crimes. The Government was fully aware that Moreira had committed:

1. Marriage fraud to unlawfully obtain U.S. residency.
2. Falsification of her newborn child's birth certificate, falsely listing another man as the father to conceal her real husband's illegal immigration status.
3. Tax fraud, making false claims on tax filings using fraudulent documentation.
4. Immigration fraud, later divorcing her fraudulent spouse and remarrying her actual husband so he could adjust his illegal entry from Mexico.

Instead of prosecuting Moreira for these serious federal offenses, the Government granted her protection and allowed her to testify falsely against Scotton. During Scotton's cross-examination, Moreira's nervous and contradictory statements became apparent, exposing the prosecution's calculated manipulation of evidence.

By using false testimony, withholding critical exculpatory evidence, and engaging in outright witness intimidation, the Government deliberately corrupted the trial process. Under ***Napue v. Illinois, 360 U.S. 264 (1959)***, a conviction must be vacated if the prosecution knowingly uses false testimony, even if the falsehood pertains only to credibility. Similarly, in ***Giglio v. United States, 405 U.S. 150 (1972)***, the Supreme Court held that failing to disclose impeachment evidence affecting a key witness's credibility requires reversal. Here, the Government knowingly allowed perjury to secure a conviction, rendering Scotton's trial constitutionally defective.

Given the serious constitutional violations arising from witness coercion, prosecutorial misconduct, and perjury, Scotton's conviction must be vacated. At a minimum, an evidentiary hearing is warranted to expose these severe due process violations.Sources: ***Mooney v. Holohan, 294 U.S.***

103 (1935); Napue v. Illinois, 360 U.S. 264 (1959); Alcorta v. Texas, 355 U.S. 28

(1957) (per curiam); Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Mesarosh v. United States, 352 U.S. 1 (1956); Webb v. Texas, 409 U.S. 95 (1972); Wearry v. Cain, 577 U.S. ___ (2016) (per curiam); United States v. Boyd, 55 F.3d 239 (7th Cir. 1995); United States v. Sipe, 388 F.3d 471 (5th Cir. 2004); United States v. Blanco, 392 F.3d 382 (9th Cir. 2004); United States v. Wallach, 935 F.2d 445 (2d Cir. 1991); United States v. Vozzella, 124 F.3d 389 (2d Cir. 1997); Perkins v. LeFevre, 691 F.2d 616 (2d Cir. 1982); People v. Boyer, 38 Cal.4th 412 (Cal. Sup. Ct. 2006); People v. Warren, 161 Cal.App.3d 961 (Cal. Ct. App. 1984); People v. Roman, 2016 IL App (1st) 141740; (See also Napue v. Illinois and Banks v. Dretke, 540 U.S. 668 (2004), for additional examples of courts granting relief due to false or unreliable witness testimony.)

Denial of the Right to Effective Assistance of Counsel

The Sixth Amendment guarantees that a criminal defendant has the right to the effective assistance of counsel at all critical stages of the proceedings. This is not an empty formality—"the right to counsel is the right to the effective assistance of counsel"(emphasis added). The U.S. Supreme Court has established that a conviction cannot stand if defense counsel's performance was so deficient that it "undermined the proper functioning of the adversarial process" such that the trial

cannot be relied upon as having produced a just result. In ***Strickland v. Washington***, the Court articulated a two-pronged test: a defendant must show (1) that counsel's performance was objectively deficient, and (2) that deficiency prejudiced the defense, depriving the defendant of a fair trial. Ultimately, if "the confidence in the outcome" is undermined by counsel's errors, the Sixth Amendment is violated. In Scotton's case, the record is replete with indications that his court-appointed lawyers failed to meet even the minimum standards of competency, thereby violating his Sixth Amendment rights. The Supreme Court has emphatically stated that if the right to counsel "is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel". Yet Scotton was effectively left to exactly that—counsel who, by their inaction and self-interest, abandoned the vigorous advocacy to which he was entitled. Among the glaring deficiencies, Scotton's attorneys (prior to his going pro se) failed to pursue obvious and critical defenses and motions. For example, significant evidentiary issues and statutory violations occurred during the pretrial and trial process, but defense counsel did not adequately object or preserve these issues. The summary charts incident is illustrative: the prosecution introduced voluminous summary exhibits of shipping invoices, apparently without providing the underlying documents to the defense in advance. A competent attorney would

have moved to exclude such evidence for non-compliance with Rule 1006 or requested continuance to review the underlying data. In Scotton's trial, however, only one of the challenged exhibits was objected to (by Scotton himself), leaving the others admitted without proper challenge. This failure to act cannot be attributed to sound strategy; it reflects an oversight that prejudiced Scotton's ability to challenge key evidence. Likewise, no counsel ensured that potentially biased jurors were struck before the trial — Scotton himself had to raise the issue of a juror who admitted being "afraid" of him. Although the trial judge conducted a belated inquiry and concluded that the juror could be impartial, the fact remains that Scotton, acting alone, was left to safeguard his own right to an unbiased jury, a role that his counsel should have shouldered from the start. Moreover, Scotton's relationship with his appointed attorneys deteriorated precisely because they were not zealous

protecting his rights. He ultimately felt compelled to represent himself at trial, a decision that speaks volumes about prior counsel's effectiveness. It is true that a defendant has a right to self-representation, but waving counsel should be a last resort. Here, Scotton's choice to go pro se was born of desperation when faced with attorneys who were unresponsive to his concerns and who failed to mount a robust defense. Effectively, Scotton suffered a constructive denial of counsel: having an

attorney in name, but not in substance. The Supreme Court has recognized that in certain egregious circumstances—such as when counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing"—prejudice to the defendant will be presumed because the adversarial process itself has broken down (citing ***United States v. Cronic, 466 U.S. 648 (1984)***). Scotton's case fits that description. The court-appointed lawyers largely sat idle, contributing little to no adversarial testing of the prosecution's sprawling case. Their inaction and the eventual absence of counsel at trial created exactly the kind of scenario in which the verdict cannot be trusted as fair. Under ***Strickland***, even without a presumption of prejudice, the outcome here was manifestly affected: had Scotton been represented by diligent and loyal counsel, there is a reasonable probability the results would have been different. At the very least, numerous errors and issues would have been properly preserved for appeal or corrected in the moment, potentially altering the course of the trial. The cumulative effect of counsel's deficiencies—from failing to contest important evidence and procedural violations, to effectively abandoning Scotton—deprived Scotton of a fair trial. The Sixth Amendment stands breached, and the appropriate remedy is to vacate the conviction or grant a new trial. A justice system that "cannot leave defendants to the mercies of incompetent counsel" must not leave this unjust

conviction in place. Furthermore, Scotton's appellate counsel also provided ineffective assistance, compounding the prejudice. On direct appeal, counsel narrowed the issues to a few select claims and omitted others of tremendous significance. For instance, appellate counsel did not raise the issue of Scotton's forced self-representation or the trial court's possible failure to ensure Scotton's waiver of counsel was knowing and voluntary – an issue that could have been raised on appeal given the fundamental nature of the right to counsel. Nor did appellate counsel address certain trial irregularities (such as any potential violations of Scotton's speedy trial rights or misconduct by the prosecution) that were apparent in the record. It is telling that Scotton, after the appeal, felt the need to pursue relief on his own: he even filed a civil action against one of his appellate attorneys for legal malpractice and fraud (alleging a "sham defense" and other breaches). While that civil case was dismissed on procedural grounds, the allegations underscore Scotton's point — his attorneys on appeal, much like those at trial, failed too rigorously advocate on his behalf. The Constitution guarantees not just a lawyer in form, but loyal and effective advocacy in substance. Scotton was denied on multiple fronts. The remedy for ineffective assistance of counsel is well-established: a new trial or vacatur of the conviction is warranted when the confidence in the outcome has been

undermined. This Court should hold that Scotton's Sixth Amendment rights were violated and grant appropriate relief.

Egregious Violations of Law and Fundamental Fairness Require Judicial Intervention

Beyond the failings of individual attorneys, Scotton's case exemplifies a broader collapse of the safeguards that our legal system is supposed to provide. The numerous errors and violations that occurred were not trivial technicalities; they strike at the heart of due process and the rule of law. Judges, prosecutors, and defense counsel all have a duty to ensure that the proceedings are conducted in accordance with the law and that a defendant's rights are protected. In Scotton's case, this did not happen. Rules and statutes enacted by Congress to protect defendants — for example, rules governing timely disclosure of evidence, the right to an impartial jury, and post-conviction procedures — were not properly observed. When such laws passed by Congress and constitutional mandates are flouted or ignored, the resulting judgment cannot be allowed to stand as legitimate. The post-conviction saga is illustrative. The district court's improper recharacterization of Scotton's motions (without the required ***Castro*** warning) effectively robbed Scotton of his one full opportunity to seek habeas relief until the mistake was corrected years later. This is a clear violation of Scotton's statutory and due process rights — one that an alert

attorney or a scrupulous court should have caught immediately. It took the Court of Appeals to finally vindicate Scotton's right to have his § 2255 motion heard on the merits. By then, precious years had passed. This delay exemplifies how the system's failure to follow its own rules resulted in substantial prejudice: Scotton has languished in prison while procedural missteps and oversight delayed justice. It should not be lost on this Court that such an error, left uncorrected, would have permanently barred Scotton from raising meritorious claims. In effect, the judicial system nearly allowed a procedural trap (sprung by the court's own error) to override a substantive right. Such an outcome would be antithetical to the concept of fundamental fairness. Equally troubling is the indication that officers of the court may have put personal gain and convenience above their duty. Court-appointed defense attorneys are paid under the Criminal Justice Act (CJA) from public funds. This arrangement exists to ensure that indigent defendants receive competent representation comparable to that which a paying client would receive. It is an affront to justice if an attorney uses the appointment as an opportunity to bill hours without rendering effective service. Any fraud on the CJA system — such as billing for work not actually performed or needlessly prolonging a case to inflate fees — is effectively a fraud on the court itself, since it undermines the integrity of the proceeding and the

public trust. The Supreme Court has warned that "no fraud is more odious than an attempt to subvert the administration of justice". When attorneys exploit their public appointment for self-enrichment at the expense of their client's defense, they are subverting the administration of justice in perhaps its cruelest form. The courts have both the authority and the obligation to rectify judgments that are obtained or sustained by such egregious misconduct. In ***HazelAtlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944***), the Supreme Court famously set aside a judgment years after the fact upon discovering that fraud had been perpetrated on the court, emphasizing that the public's interest in the integrity of the system outweighed any notion of finality in the face of a "deliberately planned and carefully executed scheme" to undermine the court's decision-making process. While ***Hazel-Atlas*** was a civil patent case, the principle applies with even greater force in a criminal case where a man's liberty is at stake. A "grave miscarriage of justice" occurs when a conviction is obtained in violation of the Constitution or by the failure of the legal process meant to safeguard the innocent; in such instances, it is the duty of the Court to overturn the result in favor of justice, even if doing so is extraordinary. There can be no denial that the legal system has shifted to a dark place, concerning itself only with financial and personal agendas rather than the pursuit of justice. In fact, most attorneys today are more interested in accumulating wealth and living luxurious

lives. Only a few are still willing to rigorously fight against injustice and bring justice to those who are entitled to it. In this case, the numerous violations now evident in the court records should have been flagged by all court-appointed attorneys and fought against forcefully until justice was served and all laws passed by Congress were respected by everyone, including judges. However, the records instead outline attorneys draining taxpayer funds, doing little or nothing at all, and disregarding the most important thing that Scotton has in life and has already lost for over eight years—his precious freedom. Despite this, some of these attorneys engaged in falsely declaring hours under CJA vouchers and unjustly enriching themselves while a life was being destroyed.

Beyond the substantive constitutional violations that tainted Scotton's conviction, the excessive delay in reviewing his § 2255 motion constitutes an independent due process violation. The Government and the Court allowed Scotton's motion to languish for four years, ultimately denying it only two years later after he had fully served his sentence—a delay that deprived Scotton of meaningful post-conviction relief.

The right to a prompt judicial review of habeas corpus and post-conviction motions is a fundamental due process requirement under the Fifth and Fourteenth

Amendments. The Eleventh Circuit has recognized that unjustified delay in resolving habeas petitions can itself amount to a denial of due process. See ***Aron v. United States, 291 F.3d 708, 711 (11th Cir. 2002)*** (holding that courts must act on § 2255 motions within a reasonable timeframe to ensure meaningful review). Similarly, in ***Long v. United States, 290 F.2d 606, 608 (6th Cir. 1961)***, the court found that excessive delay in post-conviction review may rise to a constitutional violation when it deprives the petitioner of meaningful relief.

Here, the Government strategically delayed proceedings to the point where Scotton was forced to complete his entire sentence before the Court even ruled on his motion. This delay was not incidental, nor an administrative backlog—it was an intentional and calculated decision to ensure that any relief granted would be meaningless. The Supreme Court has explicitly held that delays which frustrate a defendant's ability to obtain meaningful relief violate fundamental fairness under the Due Process Clause. See ***Barker v. Wingo, 407 U.S. 514, 530 (1972)*** (holding that excessive delays in criminal proceedings implicate due process concerns). Courts have also ruled that delayed judicial action in post-conviction proceedings violates due process when it results in a petitioner being effectively deprived of relief. See ***United States v. Smith, 218 F.3d 777, 783 (7th Cir. 2000)***.

The Government's delay ensured that Scotton's § 2255 motion was rendered moot, violating not only his constitutional rights but also the interests of justice. Given the numerous procedural and substantive violations in this case, the only fair remedy is to vacate Scotton's conviction or, at minimum, grant an evidentiary hearing to expose the extent of these due process abuses. Those promises were broken in Scotton's case. The violations outlined above are not merely technical or harmless; they have worked a substantial injustice upon Scotton, depriving him of his liberty and the fair consideration of his defense. This Court stands as the last guardian of justice in Scotton's long fight for his rights. Scotton urges the Court to grant this motion, vacate his conviction and sentence, and order a new trial or such relief as is just and proper. Only by doing so can the Court affirm that truth and fairness — not expedience or monetary gain — are the guiding stars of our legal system. Scotton has lost over eight irretrievable years of freedom to a flawed process; he prays that the Court will now restore his faith in the rule of law by righting this egregious wrong

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Scotton respectfully urges this Court to grant this Rule 60(b) motion, reopen his § 2255 proceedings, and vacate his convictions on Counts 1–27 (mail fraud) and Counts 28–29 (false statements). The record reveals a pattern of prosecutorial misconduct, suppression of evidence, and unfair trial practices that violated Scotton's constitutional rights. Individually and collectively, these violations devastated the integrity of Scotton's trial, rendering his convictions unreliable and unjust. At a minimum, Scotton has shown ample "good cause" to warrant discovery and a full evidentiary hearing on these matters. He asks the Court to:

Order an evidentiary hearing at which evidence will be taken concerning the prosecution's conduct, including Brady disclosures, handling of evidence, and interactions with witnesses and jurors.

Compel the Government to disclose all withheld or newly-discovered evidence favorable to the defense, including but not limited to the shipping company records, communications, and DVR footage discussed above, well in advance of the hearing.

Allow Scotton to obtain testimony or documents via subpoena from third parties (FedEx, UPS, DHL, etc.) as needed to supplement the record.

Appoint counsel to represent Scotton in the reopened proceedings, in the interest of justice and to ensure effective presentation of the complex issues.

Upon holding the hearing and completing any discovery, Scotton is confident the Court will conclude that his convictions cannot stand. The appropriate relief in that event is to vacate the convictions and sentences. The Court may then dismiss the indictment or order a new trial as law and justice require. Given the extraordinary misconduct demonstrated – the Government "struck foul blows" when only fair play is permitted– Scotton submits that dismissal of the affected counts with prejudice is warranted to deter such conduct and to fully remedy the constitutional harms.

Indeed, courts have not hesitated to vacate convictions where the prosecution's case was built on deceit or where the Government's actions made a fair trial impossible. This Court's supervisory powers and duty to uphold justice empower it to do the same here. Scotton has been in custody serving a lengthy sentence, but "[t]he right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment." ***Estelle v. Williams, 425 U.S. at 503***. No conviction obtained in violation of that fundamental liberty can be allowed to remain. Scotton respectfully asks this Court to correct the

course of justice in this case: reopen the proceedings, shine a light on the truth, and vacate these tainted convictions. The Constitution and precedents demand no less in the face of the profound violations shown.

Respectfully Submitted,

ROGERIO CHAVES SCOTTON
160 W Camino Real # 102
Boca Raton, Florida 33432
rogerioscotton50@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion DEFENDANT'S MOTION UNDER RULE 60(b) TO REOPEN § 2255 PROCEEDINGS AND VACATE CONVICTIONS was served on government, at his e-mail bertha.mitrani@usdoj.gov, on this 20 day of March of 2025.

ROGERIO CHAVES SCOTTON
160 W Camino Real Blvd
Boca Raton, Fl 33432
rogerioscotton50@gmail.com