UNITED STATES DISTRICT COURT

IN THE

SOUTHERN DISTRICT OF FLORIDA

ROGERIO CHAVES SCOTTON,
Petitioner,

CASE NO: 17-cv-62428-KMW

Vs.

UNITED STATES OF AMERICA,
Respondent.
_____/

PETITIONER'S MOTION TO OBJECT THE MAGISTRATE RECOMMENDATION REPORT AND TO SEEK THE STAY OF THIS CASE UNTIL THE GOVERNMENT RELEASE ALL RECORDS ALLEGED BEEN UNDER THE CD'S DISCOVER. ALTERNATIVE THE COURT SHOULD GRANT AN EVIDENTIARY HEARING.

Comes now, Rogerio Chaves Scotton, by and through pro se, respectfully moves this Court with this motion to object the magistrate recommendation report and to seek the stay of this case until the court release the case records.

In support of this motion, Scotton states as follows:

As an initial matter, Scotton respectfully request, as a prose litigant, that this Court construe his motion liberally pursuant to HAINES vs. KERNER, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), accepts all factual allegations contained herein and as detailed under this application as true, and evaluates all reasonable inferences derived from those facts in the light most favorable to Scotton. TANNENBAUM vs. UNITED STATES, 148 F.3d 1262 (11th Cir. 1998). Indeed, Scotton reminds the Court that this is a prose motion that should be deserving of the less stringent standard of consideration mandated under UNITED STATES vs. JONES, 125 F.3d 1418, 1428 (11th Cir. 1997), and the Court "must look beyond the labels of petition filed by prose detainees to interpret them under whatever statute would provide relief". MEANS vs. ALABAMA, 209 F.3d 1241, 1242 (11th Cir. 2000) (per curiam); ANDREW vs. UNITED STATES, 373 U.S. 334, 337-38, 83 S. Ct. 1236, 10 L. Ed. 2d 383(1963). "[A]djudication upon the underlying merits of claims is not hampered by reliance upon the titles Scottons put upon their documents". (quotation omitted). This practice acknowledges the importance of allowing meritorious claims to be heard and decided regardless of mere pleading defects introduced by legally unsophisticated litigants, as this one filed by Scotton. Because here Scotton seeks justice which was not done whatsoever in this case.

I. RELEVANT BACKGROUND

Petitioner, Rogerio Chaves Scotton, has filed a *pro se* Motion to Vacate pursuant to28 U.S.C. § 2255 on **December** 11, 2017, [CV ECF No. 1], challenging his conviction and sentence entered after he was found unlawful guilty by a jury to twenty-seven counts of mail fraud and two counts of false statements under the case number Case, 12-60049-CR-WILLIAMS. For the reasons

explained on Scotton's memorandum of law and hereby, he objects the magistrate report and seeks the stay of this case until the government release all records and the evidences alleged been given to Petition during the discovery process as well as all evidences that could prove that the twenty-seven counts of convictions were shipped, delivered and cause losses to FedEx, UPS and DHL as mentioned on the second superseding indictment. Although the government suggested under the indictment that all 27 counts were delivered in Brazil, no loss amount were never mentioned. However, at trial, unlawfully the government amended the indictment by introducing 27 packages, claiming to be the 27 packages alleged been delivered in Brazil.

Nonetheless, this Court could clearly see, as have many respectfully attorneys seeing, that this case is filthy with constitution violations and fraud, in which demands Scotton's conviction vacated and revise as a matter of universal law. Type of Universal Law which Logic prohibits logical contradictions known as sophistry that occurred on numerous occasions in this case. Scotton is entitled to relief in this § 2255 proceeding and this court should set this case for an evidentiary hearing.

On December 14, 2020, Magistrate Judge Lisette Reid submitted her recommendation report and asked this Court to deny Scotton's requests for justice by misrepresentation and misleading all his substantial constitutional claims filed. In fact, the Magistrate herself stated under the motion that both attorneys [redacted] and [redacted] advise this Court that they have gone to jail to review discovery with Scotton. NOT truth. NO EVIDENCE HAVE EVER BEEN PROVIDED TO SUPPORT THE MAGISTRATE CLAIM OR even TO SUPPORT THE ATTORNEYS CLAIMS. However, trial transcripts review that during the course of Scotton' trial, all prosecutor discovery CD's were proved to be, in fact, *blank (empty)*. (See DE-511 pg 42, DE-511 pg 126, DE-511 pg 128, and DE-47O pg 90-91); (See also, DE-51 130-132, DE-47O pg 93). WHY THIS COURT

INSIST ON SATURATING THE DOCKET OF THIS CASE WITH FALSE STATEMENTES WHICH ARE NOT SUPPORT BY ANY EVIDENCE. Or why this court continued to refuse to release this case records including the alleged business records which was alleged containing under the CD's discovery mentioned to supporting the allegation of the 27 counts as well as the spreadsheets? Where is the prove of loss amount to the 27 counts of conviction? Where are the business records alleged been given by the government under the CDS discover which was the only base formed and used to impose the restitution? Such restitution was also unlawfully used by ICE to remove Scotton from the United States. Why all the CJA vouchers from all court appointed attorneys are not released? This court has clear knowledge that the court appointed attorneys have given false statements under those vouchers.

A) *Stuart Adelstein: Court appointed attorney Adelstein have came to Broward on one occasion to talk to Petitioner for not much than 7 minutes. Days later, the court appointed came to FDC Miami. After seeing another 7 inmates, the attorney called the Petitioner for less then Five (5) minutes to advice that he was inspecting the CD's discover and that he would talk with the Petitioner on the follower week. On the following week, the same scenario took place and after seeing others inmates, the attorney called the Petitioner and informed that he has contact the government to request the CD's discover. This, despite that on the previously week he informs the Petitioner that was inspecting such Cd's. Under the CJA vouchers, the attorney falsely claimed 21.6 hours of interview and conferences. THE ATTORNEYS HAS NEVER SPEND MORE THAN 15 MINUTES WITH THE PETITIONER DURING ALL HIS 4 CONFERENCES.*

B) the court appointed attorney suggested under his CJA vouchers that he have spent ***38.3 hours*** *reviewing records. DURING TRIAL, THE PETITION ESTABLISHED THAT ALL CD'S WERE IN*

FACT, BLANK (EMPT). Therefore, the attorney claim is established to be false and is a clear fraud toward the tax payers.

C) the court appointed suggested also spent 3.4 hours in researching and witting motions. The only motion filed by this attorney was to withdraw from the case. His suggest of 3.4 hours is absurd and unverified by the record itself.

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:	42.3	5287.50		5287.50	
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:	67.3	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.)					
			8970.00		8970.00	

19. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM 11/4/13 TO 7/30/13

20. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION

21. CASE DISPOSITION OPEN

The CJA voucher mentioned above also shows manipulation under brief writing, total rate per hours. The Court also have not provided the attorney attachments.

The Petitioner contends that the CJA vouchers clear shows not only the attorney's fraudulent behavior, but established ineffective assistance provided during the attorney legal representation which entire the Petitioner to an evidentiary hearing. For this attorney falsely declaring to spend 38.3 reviewing empty CDs is outrageous and fraud against the judicial system.

If tis court compel the attorney visitation sheets submitted to FDC Miami, this court will see that attorney Adelstein also visited others inmates on the same day he visited Scotton, and will see

This Court should also compel all other inmate's visitation sheets the attorney visited on the same day and time he visited the Petitioner as to compare with the others defendant represented by the attorney under the CJA voucher which he must likely declare also numerous hours with them as he declares that he spends with the Petitioner. Hence, his declaration mentioned above is outrageous false.

D) Jason Kreisse: Standby counsel or advisory counsel refers to a lawyer who assists a client who has invoked his right to self-representation. For the record, the Petitioner ***never invoked*** his rights to self-representation. Standby counsel also remains available during the trial for consultation. In this case, the attorney has seat on the least bench of the Court's galleria which were ordered by Judge Rosenbaum. Thus, the Petitioner has denied his rights to have a standby attorney next or behind him during trial.

During the trial, the attorney was on the back with his laptop working on his other client's cases which the Court's cameras could clearly shows that the standby attorney was not available during trial for consultation with the Petitioner.

Sentence transcripts demonstrate that the attorney was order to not prepare or investigate this case because he would not receive any compensation. In fact, the attorney has complaining to the judge during sentence, that he had not reviewed records or investigated the case since by court order, he in fact, was prohibited to do that. However, under the CJA vouchers the attorneys stated that he had reviewed record for over 42.2 hours, that he had interview the Petitioner for 30.6 hours, and that he had conducted investigation for 16,2 hours. This allegation of legal service provided under the CJA vouchers by attorney Kreisses is absolute false since the attorney himself mentioned

during trial that the judge had prohibit him from work in this case. Please see sentencing transcripts.

The rules clearly states that a standby attorney should be placed behind or next to the Petitioner during trial and be fully prepare to take over if the Petitioner could not proceed. In this case, the attorney was order by the judge to stay on the lest seat of the court's gallery. Thus, Scotton was denied this right and was obvious outrageous for this attorney to request tax-payers funds under his CJA vouchers for legal services that he knew never been provided.

RECEIVED CJA DEC 3 2015

CATEGORIES (Attach itemization of services with dates)	HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH ADJUSTED HOURS	MATH/TECH ADJUSTED AMOUNT	ADDITIONAL REVIEW
15. In Court — a. Arraignment and/or Plea					See attached Spreadsheet
b. Bail and Detention Hearings			.9		
c. Motion Hearings			19.0		
d. Trial			136.0		
e. Sentencing Hearings			3.5		
f. Revocation Hearings					
g. Appeals Court					
h. Other (Specify on additional sheets)			3.9		
(Rate per hour = $ 125/110/126) TOTALS:			163.3	18,041.80	
16. Out of Court — a. Interviews and Conferences			30.6		
b. Obtaining and reviewing records			42.2		
c. Legal research and brief writing			23.4		
d. Travel time			26.0		
e. Investigative and Other work (Specify on additional sheets)			16.2		
(Rate per hour = $ 125/110/126) TOTALS:			138.4	15,782.90	
17. Travel Expenses (lodging, parking, meals, mileage, etc.)		1647.70		647.70	
18. Other Expenses (other than expert, transcripts, etc.)		3 97.10		97.80	
		34,500.00		34,570.20	

19. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM 8/27/13 TO 8/31/14

20. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION

21. CASE DISPOSITION 09

22. CLAIM STATUS ☒ Final Payment ☐ Interim Payment Number ____ ☐ Supplemental Payment
Have you previously applied to the court for compensation and/or reimbursement for this case? ☐ YES ☒ NO If yes, were you paid? ☐ YES ☒ NO
Other than from the court, have you, or to your knowledge has anyone else, received payment (compensation or anything or value) from any other source in connection with this representation? ☐ YES ☐ NO If yes, give details on additional sheets.
I swear or affirm the truth or correctness of the above statements.
Signature of Attorney: ____ Date: 11/30/15

23. IN COURT COMP.	24. OUT OF COURT COMP.	25. TRAVEL EXPENSES	26. OTHER EXPENSES	27. TOTAL AMT. APPR/CERT
18,041.80	15,782.90	647.70	97.10	34,570.20

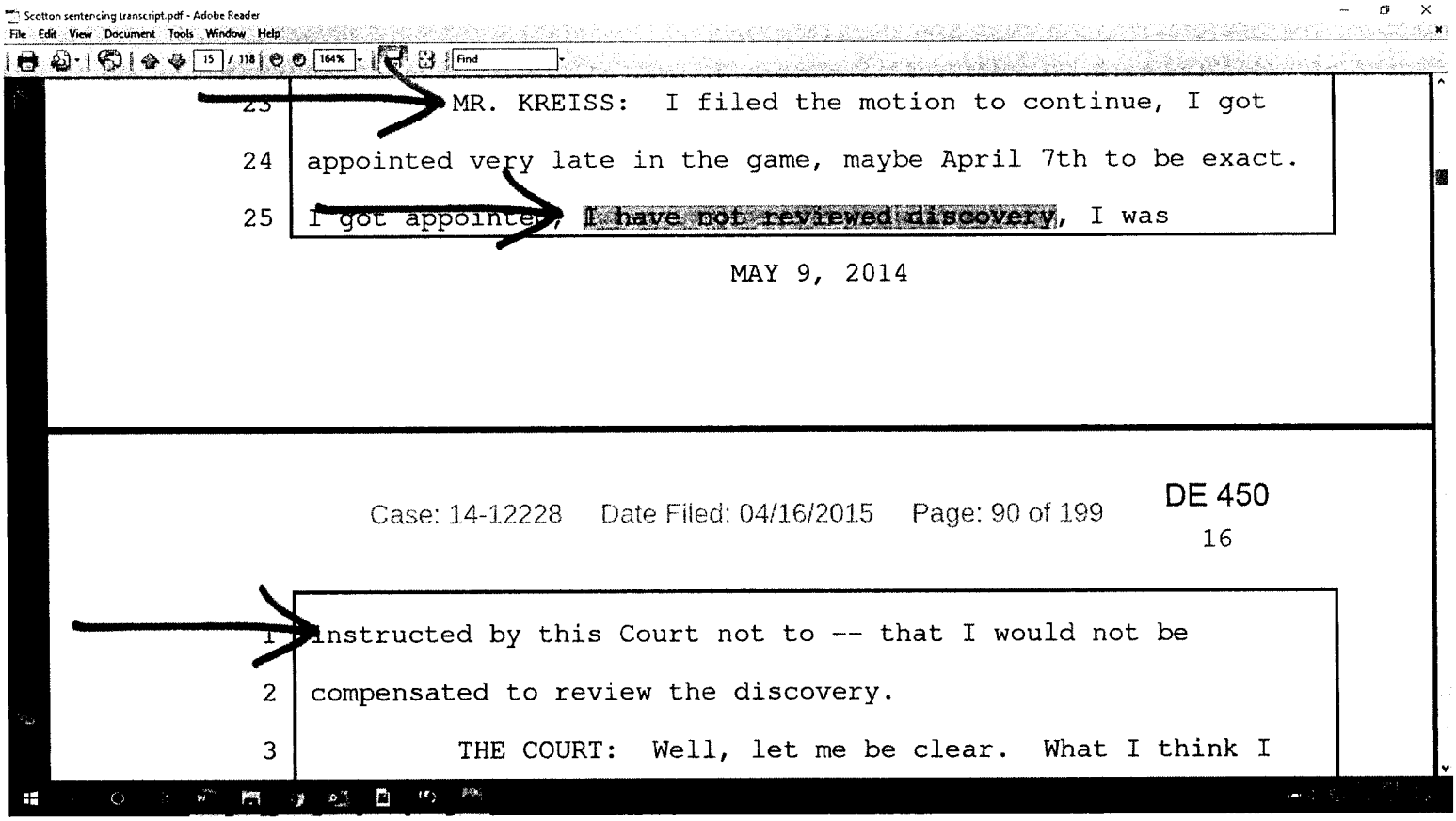
28. SIGNATURE OF THE PRESIDING JUDICIAL OFFICER — DATE 2/5/16 — 28a. JUDGE/MAG. JUDGE CODE 3233

29. IN COURT COMP.	30. OUT OF COURT COMP.	31. TRAVEL EXPENSES	32. OTHER EXPENSES	33. TOTAL AMT. APPROVED
				$ 34,570.20

34. SIGNATURE OF CHIEF JUDGE, COURT OF APPEALS (OR DELEGATE) Payment approved in excess of the statutory threshold amount. — DATE 3-16-16 — 34a. JUDGE CODE 1-36

Moreover, the attorney himself stated during the sentence hearing that he didn't review any record because he was not ordered to review any. How could then the attorney could declare this under his CJA voucher? Which record have him inspected when all CDs were proved to me empty?

During the period of three (3) years, Scotton have request this court to release the CJA vouchers from all attorneys appointed in this case including the appeal attorney. Still today Scotton have only received two of the CJA vouchers, in which one, from Stuart Adelstein and Jason Kreisses. The Petitioner contend that he was denied his first amend rights to obtain public records which would contradicts the Magistrate Judge statements made under her report recommendation and would prove fraud conducted by the court appointed attorneys against the tax payers.


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

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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

The entire Magistrate report established fraud in this single defendant case and how much injustice was done to coverup agent Vanbrunt fraudulent conduct, as well as his obsession for Scotton due to the involvement of his own wife which have now been discovered.

MAGISTRATE PROCEDURAL BACKGROUND:

a) ***…" The Court found Movant to be a serious risk of flight and ordered him detained. [CR ECF No. 16]. A SERIOUS RISK OF FLIGHT!!!*** Scotton has lived in the United States for more than 30 years. During this 30 year, Scotton when to Brazil on tree occasions. There is no record that Scotton owned any airplanes, have properties in Brazil. Rather, during the bond hearing, he asked for a house confinement, his mother offered her passport as well as her house as guarantee that Scotton would be in court to face the trial without cause any problem. Was proved also that the Petitioner had legal status in United States during this time. The assumption of flight risk was absurd. Scotton rights to bail were violated by presumption and fraud acts upon this court. In fact, false and fabricated letter suggesting that his immigration status was submitted in Court during the first hearing for bond. Of course, nothing was done. Another normal day and the inside federal Court.

b) ***…Prior to trial, Movant dismissed "five" different attorneys. After these multiple representations, the Court determined that Movant would represent himself at trial. An attorney was appointed to act as standby counsel during trial".***

There are numerous clear evidences that Scotton has not dismissed five different for some inappropriate behavior as suggested falsely by this Court, in which used as excuse on many occasions to violate the Petitioner's rights to legal representation. The memorandum of law and others motion that included attached evidences, have established such.

c) ***…replaced because he disagreed with Doake's advice and strategy.*** STOP THE LIES, there was **no strategy**. The only advice provided to Petitioner was to plead guilty. The attorney HAS NEVER INSPECTED THE SPREADSHEETS OR THE ALLEGED DISCOVERED CDS. They

have never inspected or verified any business record in regarding the fabricate spreadsheets. Otherwise, they would advise this court that those CDS were **empty** and there is no business record that could referrer to the fabricated spreadsheets. The fact that this court insist on falsely stating that Scotton have not cooperate with the attorneys is complete dilutional and could not be proved by video, photos, voice recording or any other substantial evidence. This is just another cover up of the fraud.

c) ***…Armstrong alleged that he met with Movant on three occasions and in each of the meetings Movant"became hostile, verbally abusive, and began shouting" at counsel.*** As the magistrate herself stating, **Armstrong "ALLEGED"**. THAT DOES NOT prove to be the truth. Where is the evidence of such hostile, verbally and abusive conduct from the Petitioner?? Where is the video, the audio recording from Broward county jail and FDC Miami??? Could this court prove that?? Or that is the normal proceeding, believe anything those appointed attorneys' clowns saying? This man has never provided any legal assistance in this case. At one occasion he came on Sunday, at the FDC Miami. This attorney was flat-out drunk after a fishing trip he when. His visitation was with the only mission, the mission to collect more tax-payers funds to pay his fishing expenses. No conversation about trial, defense, evidence, witnesses or discovery took place EVER. The fact that this attorney has never filed a CJA vouchers shows that no legal service has ever been provided for the Petitioner.

d) ***…filed a motion to withdraw stating that in a recent meeting, Movant had become agitated and threatening.*** Once again, where is the video from Broward county jail and FDC Miami?? besides the attorney allegation or this court allegation, there is absolutely nothing done in this case by this court appointed clown or the others, besides falsely bill the tax-payers. Moreover, this court own error to insist on keep two conflicted attorneys that was previously removed from the case for

conflict. Using logic, if those attorneys have done absolutely nothing to prepare or help the defendant for trial, how could this court could see that they would not provide legal services as standby clowns?

e) …***On August 21, 2013, the Court held a calendar call. [Id.]. Movant complained that he had not been given any discovery. [Id.]. Doakes advised the court that she had provided Movant with all discovery and that she and her investigator had attempted to review the discovery with Movant. [Id.]. The investigator testified under [*7] oath that he had gone to the jail to review discovery, but he refused to look at some of the materials. [Id.]. He testified that the discovery had been provided to Movant prior to November 2012. [Id.]. Adelstein also advised the Court that he went to review the material with Movant, but Movant informed him that he had already reviewed the material and did not wish to review them again. [Id.]. Adelstein left the material with Movant. [Id.].*** These people have no shame, their license is exclusive to lying. There was no discovery material regarding the falsa allegation of mail fraud. Only three (3) boxes fully of trash was left inside the court cell containing only different bank accounts opened by Scotton's stepfather, brother, and sister-in-law. Copies and renewal of Scotton's stepfather, brother, sister-in-law and mother's driver's license. Nothing to do with the allegation of mail fraud. There was absolutely nothing relevant to the accusations of mail fraud or anything relevant to the alleged false statements. However, on trial it was proved that the discovery ***CDs were empty***. Scotton objected the introduction of the spreadsheets which he has never receive under rule 1006 and that the CDs were blank. Judge Rosenbaum ordered the government to provide Scotton new discovery CDs at trial. The new CDs only had a few spreadsheets and nothing else. No business record has been given to Petitioner whatsoever. The Petitioner was not given any opportunity to inspected the accuracy of those spreadsheets which increase 18 levels under his guideline, resulting further

incarceration. (***DE-511 pg 42, DE-511 pg 126, DE-511 pg 128, and DE-47O pg 90-91); (See also, DE-51 130-132, DE-47O pg 93***). When the lies stop! Where is the business record?? Why this court continued to blind eye on numerous constitutional violations. Every single one attorney called by the Petitioner stated that this case must be reversed which include attorney Jason Kreisses himself, David Bogenschutz and even Michael Rose.

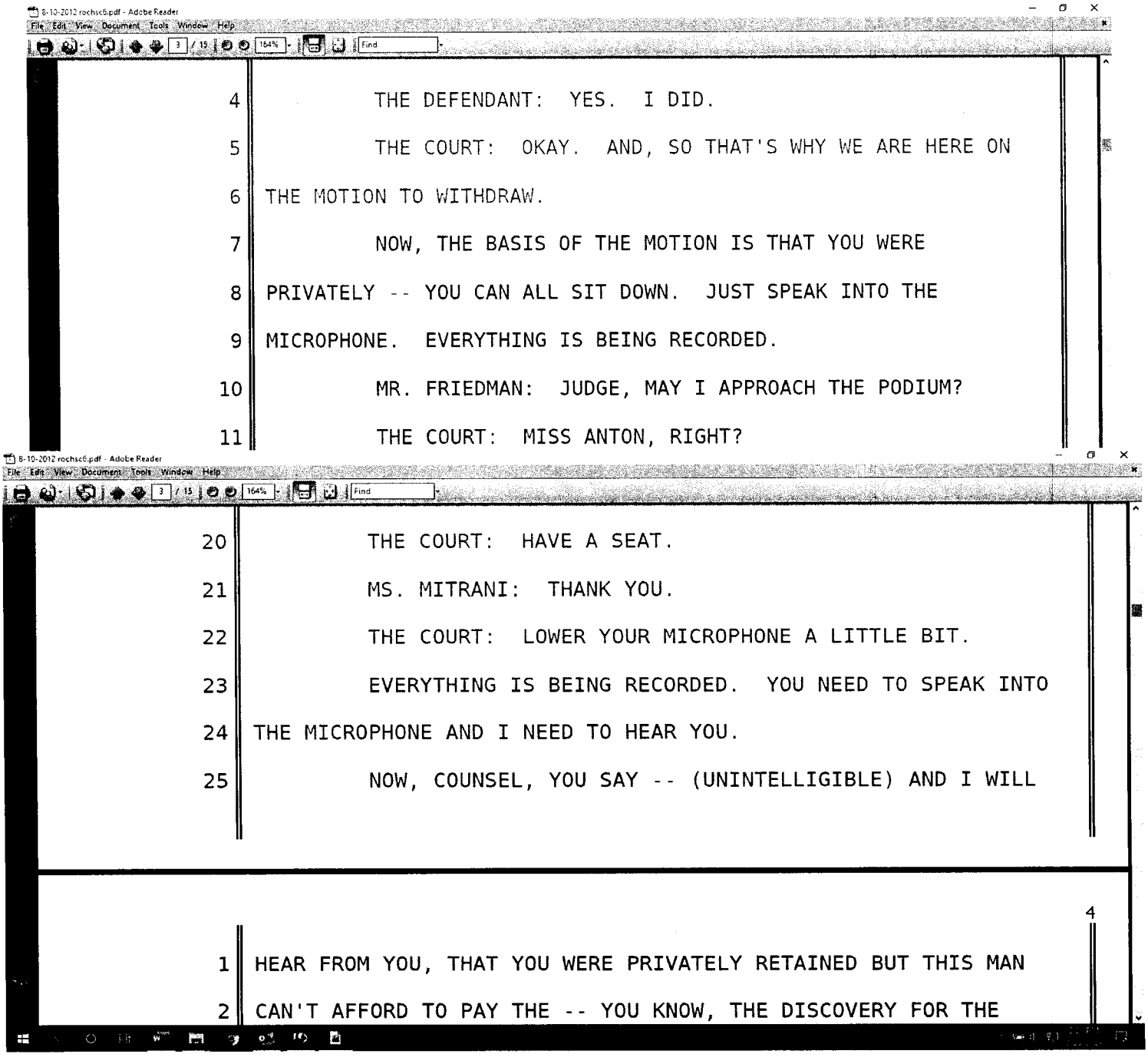
Section 2255:

The Petitioner contends that this petition pursuant to section 2255 is not a substitute for his direct appeal as suggested by the magistrate Judge. In fact, The Petitioner seeks relief because this court imposed a sentence in violation of the constitution laws under the fourth, six, eight and fourteen amendment. There are numerous acts of transgressions of constitutional rights in this case that the appeal attorney has not raised during the direct appeal that the Petitioner requested him to do so, in which the record clear shows under the Petitioner motion to withdraw court appointed attorney. McKay v. United States, 657F.3d1190,1194n.8(11thCir.2011). Such intentional acts and behavior conduct by the appeal attorney has result on a complete miscarriage of justice. The Petitioner rights to a proper and effective direct appeal was intentional sabotaged by the Appeal attorney. *Lynn v. United States*, 365 F.3d 1225, 1232 (11th Cir. 2004) (citations omitted); *see also United States v. Frady*, 456 U.S. 152, 165, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982).

The Petitioner proved here that the Appeal attorney have disregarding of Petitioner's rights are outrageous and his conduct was acts of fraud and cover-up. In fact, under one of the attorney's own letter he misled the Petitioner and worse refuse to do what the law required him to do so. The attorney stated that ***"IN FEDERAL COURTS THERE ARE NO AUDIO RECORDINGS".*** Now, why a license attorney would make such outrageous false statement?? Why these attorneys have

refused to correct those manipulated trial transcripts by requesting the verbal audio recording? Who have conspired with him to do such cover-up?

There are numerous precedent cases which clear shows courts releasing those verbal audios so others defendant could correct the errors under they case transcripts. Thus, the Petitioner were denied these rights. In fact, during the hearing conducted by Judge William C. Turnoff, the Petitioner were advice by the judge himself to speak closed to the microphone, and further, the judge stated that everything was being recording.



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THE DEFENDANT: YES. I DID.
THE COURT: OKAY. AND, SO THAT'S WHY WE ARE HERE ON THE MOTION TO WITHDRAW.
NOW, THE BASIS OF THE MOTION IS THAT YOU WERE PRIVATELY -- YOU CAN ALL SIT DOWN. JUST SPEAK INTO THE MICROPHONE. EVERYTHING IS BEING RECORDED.
MR. FRIEDMAN: JUDGE, MAY I APPROACH THE PODIUM?
THE COURT: MISS ANTON, RIGHT?

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THE COURT: HAVE A SEAT.
MS. MITRANI: THANK YOU.
THE COURT: LOWER YOUR MICROPHONE A LITTLE BIT. EVERYTHING IS BEING RECORDED. YOU NEED TO SPEAK INTO THE MICROPHONE AND I NEED TO HEAR YOU.
NOW, COUNSEL, YOU SAY -- (UNINTELLIGIBLE) AND I WILL

4

HEAR FROM YOU, THAT YOU WERE PRIVATELY RETAINED BUT THIS MAN CAN'T AFFORD TO PAY THE -- YOU KNOW, THE DISCOVERY FOR THE

This court must find that the claims under Scotton' section 2255 is valid, not because he says so, but because the record of this case, the evidences presented under numerous others motion filed by the Petitioner as well as universal law demands that much. This Court cannot ignore any longer the evidence hereby attached and this case shows too many wrong, too many if, too many fabrications. The spreadsheet was challenged by Scotton during this entire case. Such fabricate and inaccurately evidence unlawfully introduced have ***increase 18 levels*** of Scotton guidelines, *resulting on absurd increase his staying in prison as well as his deportation*. (**see exhibit 1**). Furthermore, the same spreadsheets were modified by the FBI agent himself after the witness's testimony. (***See exhibit 2***). The agent testified that he had himself created the spreadsheets. That the government failed to prove that FedEx, UPS and DHL suffer losses under the 27 counts of mail fraud. That the second superseding was unlawfully amended during trial because the prosecutor mentioned under the indictment 27 packages were delivered in Brazil. However, during the trial display for the jury 27 packages alleged to be the same packages mentioned been delivered in Brazil without any losses amount. This act of fraud has undermined and prevented Scotton from properly defense since he has prepared to defend himself from 27 packages alleged been shipped and delivered in Brazil. But at trial, the prosecutor changes the charges and the allegation set fourth under the indictment by illegally introduced 27 packages in court without losses amount and numerous inaccurately spreadsheets. No mentioned of any loss amount for the 27 packages and no mentioned of these 27 packages under the inaccurate spreadsheets. Where is the fraud them??? *Beeman v. United States*, 871F.3d 1215, 1221-1222 (11th Cir. 2017).

Furthermore, the court could see that Scotton claims of ineffective assistance is based on truth facts. The attorneys have not even look under the ***discovery CDS*** during they representation time. Otherwise, they would have notice that those government CDs were in fact, empty. Lee v. United States, 582 U.S., 137 S.Ct. 1958, 1964, 198 L. Ed. 2d 476 (2017).

Under this section 2255 Scotton contends that he does satisfy and have demonstrate that all counsel's performance was deficient and fake. That along with they false declaration under the CJA vouchers. And those counsel's deficiencies performance serious prejudiced Scotton during pretrial, trial and the entire case. Strickland v. Washington, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984). The STRICKLAND prongs have been meeting by facts and evidences here in this case. See id.at 697; See also Brown v. United States, 720 F.3d 1316 (11th Cir. 2013).

Scotton further contends that under his section 2255 petition he has demonstrated that had him been represented by a competent counsel this court would know that there was no business record under the CDS discovery and further that the same CDs were in fact blank. Gordon v. United States , 518 F.3d 1291, 1301 (11th Cir. 2008) (citations omitted). Any competent counsel would had inspected the accuracy of the spreadsheets and would have advice this court that such inaccurate was totally impossible to inspected because no business records existed whatsoever. Scotton was serious prejudice by the acts of his court appointed counsels that have constantly refuse to inspect important material, have refuse to interview witnesses and suppressed fabricate evidence introduced at pretrial and trial. Have the jury know about the inaccuracy of this spreadsheets, that such was created by the agent Vanbrunt himself, that there were no business records existing, regarding the spreadsheets as suggested by the prosecutor, had the jury been instructed properly to what is necessary to form the base of mail fraud, the outcome of this case would have been

complete and definitely different. Strickland, 466 U.S. at 694. In fact, had the attorney inspected the spreadsheets they would have established that such loss amount declared at sentence was fraud since no business record existed and that the information under the spreadsheets were repeated. Without the fabricate losses, Scotton, would have been sentence to a much less time. (see exhibit 3). Glover v. United States, 531 U.S. 198, 203, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001). Those exhibits submitted under this section 2255 and hereby is a clear prove factual support for Scotton contentions of counsel's performance in this case. Smith v. White, 815 F.2d 1401,1406 (11th Cir.1987). The Strickland test does not require a showing of what the best or good lawyers would have done, but rather whether some reasonable lawyer could have acted in the circumstances as defense counsel should have acted in this case. See Dingle v. Sec'y for Dep't of Corr., 480 F.3d 1092, 1099 (11th Cir. 2007). In this case the attorney's decision of not investigate or help Scotton was "so patently unreasonable that no competent attorney would have chosen it. "Id. (citations omitted).

The magistrate also argues here the following:

At the time the issue was raised it was clear that the blank CD *had not been provided* by the Government. This is total false. There is no evidence of such, When Scotton objected the introduction of the spreadsheets at trial, the prosecution suggested that the court appointed attorneys may have made copies of the discovery CDS and given to Scotton. The Court excuse the jury on a break and order the prosecutor to provide fresh copies of the CDs to Scotton. THE EVIDENCE proved CLEAR THAT THE EMPTY CDS WERE GIVEN TO SCOTTON BY THE PPROSECUTOR. Both CDs, the **fresh** copies and the **blank** have the FBI agent Roy vanbrunt had-writing. The magistrate statement and the record are wrong and false because the blank CDs were in fact provided by the prosecutor. On an evidentiary hearing Scotton would be able to clearly establish such. Moreover, Scotton could not inspected the new CDs at trial.

It was also established that the Government had provided the Petitioner with a Bates Stamped CD in a timely fashion.

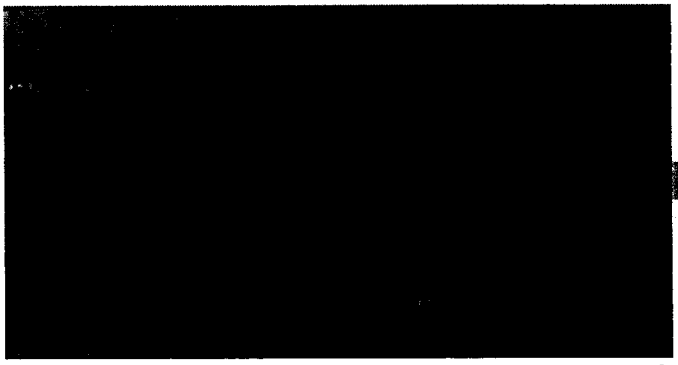
The CDs were provided to Petitioner are blank, don't you get??? And there are no business records. There are no records to inspect or to compare the accuracy of the fraudulent spreadsheets. None of the court appointed attorneys have inspected or review the CDs. The attorney's declaration to receive compensation is in fact, is absurd and clear fraud against the tax payers.

The Court also found that Movant had been provided with all CDs that were used by the Government at trial. Scotton have proved that he was provide with *blank* CDs. At trial he was provide with others CDs, after the Court order, however, these new provided CDs in Court only containing the inaccurate spreadsheets. Scotton would proof that at any evidentiary hearing.

In light of this record, counsel was not ineffective for failing to raise this meritless claim on appeal. Of course, the magistrate would say that. This is the typically judicial cover-up. However, the evidence is on the court's face.

There also many other statements made by the court that could not be proven because there was never any evidence to show such.

This court may not yet know that this case started from the moment Scotton decided to divorce Agent Vanbrunt's wife's friend, Cirlene Maria dos Santos, Scotton's ex-wife. This was recently investigated by Brazilian authorities. In fact, as of today, Cirlene Santos changed her name on all social media to Cyrlene Santtos.



After Scotton's divorce and after Andrea Vanbrunt's requests her husband to pursue Scotton, Agent Roy Vanbrunt became obsessed with Scotton and stated on numerous occasions to Scotton's friends that he would place him in jail one way or the another. And that himself would deport him after he complete his sentence. The agent mentions this before living Junio Silva house. Junior Silva, one of the Petitioner's witnesses was prohibit by this Court to testify.

Following the logic, the government's claim of mail fraud under alleged unpaid shipping services is not support by the statute. There is no mail fraud in this case due to the simple factor that there was no loss of money mentioned under the 27 counts. FedEx, UPS and DHL are not the recipient since nothing was sent or mailed to them through the mail or currier companies.

Another act of fraud in this case have result on a loss of $16,000 for the Petitioner's mother. Court appointed Stuart Adelstein along with bondsman, David Rodrigues took from the Petitioner's family $16,000 with promises to have the Petitioner release on a $100,000 NEBIA bond. This never took place and the funds were never returned to the Petitioner family.

STATE OF FLORIDA
Plaintiff

-VS-

Rodriguez, David
Defendant

IN THE SEVENTEENTH JUDICIAL CIRCUIT COURT, IN AND FOR BROWARD COUNTY

CASE NUMBER 14014433CF

DC NUMBER _____

Local Jurisdiction Identification Number _____

☒ ORDER OF PROBATION ☐ DRUG OFFENDER PROBATION ☐ COMMUNITY CONTROL
☐ COMMUNITY CONTROL/PROBATION ☐ COMMUNITY CONTROL/DRUG OFFENDER PROBATION
☐ DRUG OFFENDER PROBATION/PROBATION ☐ SEX OFFENDER PROBATION
☐ COMMUNITY CONTROL/SEX OFFENDER PROBATION

This cause coming before the Court to be heard, and you, the defendant, being now present before the court, and you having

☐ entered a plea of guilty to ☐ been found guilty by jury verdict of
☒ entered a plea of nolo contendere to ☐ been found guilty by the court trying the case without a jury of

Count 1 Grand Theft in the 3rd Degree
Count ____ Count ____
Count ____ Count ____
Count ____ Count ____

SECTION 1: JUDGMENT OF GUILT

☒ The court hereby adjudges you to be guilty of the above offense(s)

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on ☒ Probation ☐ Community Control ☐ Drug Offender Probation ☐ Sex Offender Probation for a period of 5 years under the supervision of the Department of Corrections, subject to Florida law

SECTION 2: ORDER WITHHOLDING ADJUDICATION

☐ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on ☐ Probation ☐ Community Control ☐ Drug Offender Probation ☐ Sex Offender Probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law

SECTION 3: INCARCERATION DURING PORTION OF SUPERVISION SENTENCE

It is hereby ordered and adjudged that you be

☐ committed to the Department of Corrections

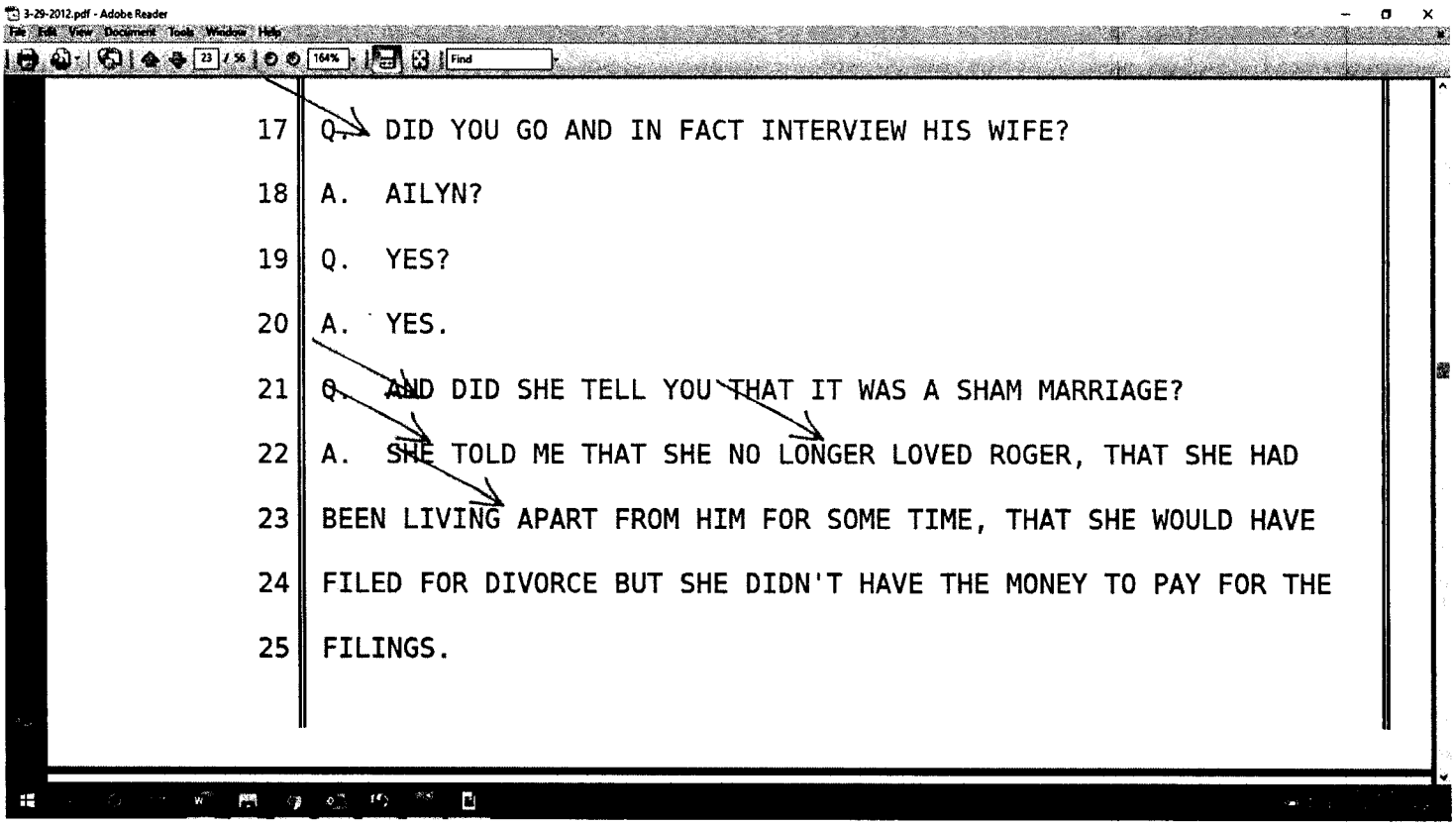
for a term of _____ prison with credit for _____ jail time, followed by ☐ Probation ☐ Community Control ☐ Drug Offender Probation ☐ Sex Offender Probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law
or

Another act of fraud committed to Petitioner and his family was when attorney Kristin Figueroa Contreras took from Petitioner's family $60,000 with the promises to represent the Petitioner during direct appeal. Later and after the Petitioner filed a letter complaining to the Florida bar, the attorneys promise under another letter to refund $20,000 despite not provide any legal services. (***See exhibit hereby attached***). See also, https://youtu.be/-BIYWykA2kA.

The Petitioner contends also that on any evidentiary hearing he will prove that count 28 and 29 are clear fabrication as well. This because his ex-wife Aylin Mollinedo contradicted her testimony in trial and have made different statement under the application for marriage dissolution.

During the stage of Petitioner divorce, Ailyn provide false information to the family court in numerous occasions. However, she told the truth about the day and time the couple have separate.

On bond hearing, March 29, 2012, the agent himself stated that Ms. Mollinedo testified that she didn't love the Petitioner anymore and that they have been separated.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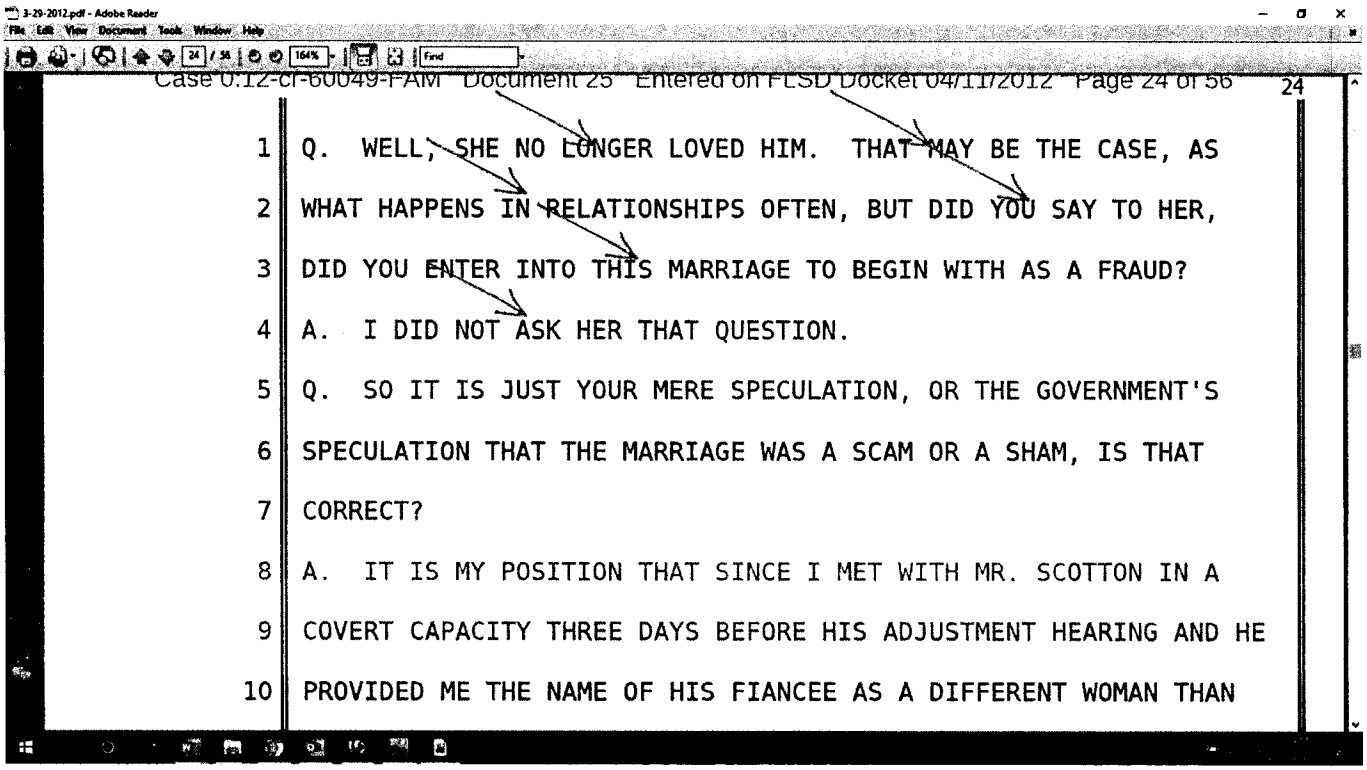
17 Q. DID YOU GO AND IN FACT INTERVIEW HIS WIFE?
18 A. AILYN?
19 Q. YES?
20 A. YES.
21 Q. AND DID SHE TELL YOU THAT IT WAS A SHAM MARRIAGE?
22 A. SHE TOLD ME THAT SHE NO LONGER LOVED ROGER, THAT SHE HAD
23 BEEN LIVING APART FROM HIM FOR SOME TIME, THAT SHE WOULD HAVE
24 FILED FOR DIVORCE BUT SHE DIDN'T HAVE THE MONEY TO PAY FOR THE
25 FILINGS.



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Case 0:12-cr-60049-FAM Document 25 Entered on FLSD Docket 04/11/2012 Page 24 of 56 24

Q. WELL, SHE NO LONGER LOVED HIM. THAT MAY BE THE CASE, AS WHAT HAPPENS IN RELATIONSHIPS OFTEN, BUT DID YOU SAY TO HER, DID YOU ENTER INTO THIS MARRIAGE TO BEGIN WITH AS A FRAUD?

A. I DID NOT ASK HER THAT QUESTION.

Q. SO IT IS JUST YOUR MERE SPECULATION, OR THE GOVERNMENT'S SPECULATION THAT THE MARRIAGE WAS A SCAM OR A SHAM, IS THAT CORRECT?

A. IT IS MY POSITION THAT SINCE I MET WITH MR. SCOTTON IN A COVERT CAPACITY THREE DAYS BEFORE HIS ADJUSTMENT HEARING AND HE PROVIDED ME THE NAME OF HIS FIANCEE AS A DIFFERENT WOMAN THAN

On year later, after the Petitioner refuse to accept the government two suggesting of pled, the Petitioner's ex-wife was approached again by not one but two FBI agent in attempted to break her apart. After such intimidation, Aylin Mollinedo became the government superstar witness. However, Ms. Mollinedo stated under her application for dissolution of marriage that she had separate from the Petitioner on October, 2011. (See, Aylin Reyes Mollinedo vs. Rogerio Scotton, case number, 2019-015162-FC-04, state case number: 132019DR015162A00104). There is obviously that Ms. Mollinedo was intimidated and threat by the agent. On an evidentiary hearing, the Petitioner will present witnesses that would testify that Ms. Mollinedo confessed been intimidated, that she like the Petitioner but under such threats she could not help him.

Therefore, this Court should have now clear view of this case, the evidence, the misconduct, the fraud and the restitution unlawfully imposed and used by ICE as a venue to remove the Petitioner from this country.

On November 15, 2019, ICE served the Petitioner with forms I-851 and I-851A (intent to issue a final administrative removal order and final administrative removal order) in violation of Petitioner due process rights. This because the I-851 (intent notice of removal) stated that the Petitioner have 10 calendar days to respond to the charges set forth under said document. However, the form I-851A (final administrative order) were filed and served on the same day.

The Petitioner also contends that the restitution imposed on him by the Court was unlawful because the Court rely on unverified charts and have never review any business record. This court only rely on false statements mentioned by the prosecution saying that the documents were given to Petitioner under the discovery CDs. However, refuse to order such disclosure of documentation in camera.

The Court of Appeals also rely on the district court judge's false statement that the spreadsheets were provided to Scotton. However, the evidence now prove that such statement was in fact, false.

The government had believed that the only way to sweep the problem under the injustice rug was to remove the Petitioner illegally from the country. To show prejudice in this case, the restitution has absurdly increased the Petitioner stay in prison and unlawfully was used as venue to remove him from the United States. The spreadsheets have no document or business records to rely on it.

It was also negligent on the part of Judge Rosenbaum not to demand from the prosecution to disclosed all business documents referring to the spreadsheet, disclosed the losses amount of the

27 counts, and to falsely say under the case record that such non-existent documents was already been given to the petitioner on two occasions during the discovery process. This false declaration was one of the instruments used by Eleventh circuit, in which it led to the affirmation of this false conviction launched against Petitioner Scotton.

This illegal spreadsheet introduced also have prejudice the Petitioner when was used wrongfully by other government' agency.

On November 15, 2019, ICE served to Petitioner while he still under B.O.P custody, a notice of intent to issue a final administrative removal order and a final administrative removal order in violation of his due process rights. (See exhibit hereby attached). Both notices were issued on November 13, 2019.

The Petitioner filed his petition for judicial review on the eleventh Circuit because ICE wrongfully qualify him as an aggravate felony only by relaying on the restitution imposed in this case.

On November 13, 2019, January 1, 2020 and, March 12, 2020, the Department of Homeland Security ("DHS") issued three administrative final removal orders notices against the Petitioner Rogerio Chaves Scotton. These final administrative notices were served on November 15, 2019, January 29, 2020 and, March 13, 2020.

Under all three final administrative removal order notices, the DHS alleged that the Petitioner is an aggravated felon under § 1101(a)(43)(M)(i) which DHS's conclusion was based solely on the restitution imposed on the Petitioner during his sentencing, by the Southern District of Florida. See, UNITED STATES vs. ROGEIRO CHAVES SCOTTON, case no, 12-CR-60049-KMW.

The Petitioner was released from federal prison on February 27, 2020 and placed under ICE custody based on the detainer lodged against him eight years ago, meaning, March 3, 2012.

The last final administrative removal order was served on the Petitioner while he was at Irwin County Detention Center on, March 13, 2020 with the same charged mentioned on the final administrative removal order that was served on November 15, 2019 and January 20, 2020.

On two occasion, the Petitioner filed to the Eleventh Circuit his petition for judicial review which he challenges the DHS decision to classified him as an aggravated felon under § 1101(a)(43)(M)(i) based solely on the restitution imposed. See, ROGERIO CHAVES SCOTTON vs. WILLAIM P. BARR, case no: 19-14756; 20-11181.

On April 3, 2020, the Immigration Judge ("IJ") for the Atlanta Division, denied the Petitioner motion for bond stating that he is an aggravated felon who is not entitled to bond. The IJ did not specify which record or records he referred to during the hearing that he made his findings. In fact, the IJ stop the hearing momentarily when it was discovered that he did not have all the documents pertaining to the Petitioner's criminal case. There was no explanation given to the Petitioner which document the IJ rely by clear, unequivocal convincing evidence that Petitioner's conviction forms the base for an aggravated felony.

The Petitioner contend that the IJ abuse his discretion by refusing to properly review the records, and properly addressing the Petitioner question made under the law 1101(a)(43)(M)(i). The IJ further stated at the conclusion that the Petitioner was not entitled to adjustment of status under 212(h) based on his I130 application approved filed on his behalf by his mother (extreme hardship), concurrently with a waiver, stating that the Petitioner is an aggravated felon.

The DHS have charged the Petitioner with administrative removability and the DHS officer found the Petitioner removable for having been convicted of an "AGGRAVATED FELONY".

The Petitioner asserts that his conviction did not qualify as an "aggravated felony" under 8 U.S.C. § 1101(a)(43)(M)(i) based solely on the restitution order.

This Honorable Court will see that the restitution order was the only document that referred to any loss in the Petitioner's conviction of mail fraud. And as such, was based on judicial findings regarding conduct and loss amount that were not charged, proven beyond reasonable doubt, or admitted by the Petitioner, nor, was mentioned under the indictment or the twenty-seven counts of conviction.

Because the Southern District of Florida Judge based its restitution order on judicial findings made by lower standard of proof, it was an error, as a matter of law, for the DHS officer to concluded that the restitution order, standing alone, constituted "clear, unequivocal and convincing" proof necessary under the section 1101(a)(43)(M)(i) to transform the Petitioner's conviction as an aggravated felony.

The DHS made his judicial findings that the Petitioner is an aggravated felon without specifying on record which document they have relied on to make his decision clear, unequivocal and convincing evidence, that the Petitioner is an aggravated felon under 1101(a)(43)(M)(i).

The Petitioner Scotton was administratively ordered to be removed based on his conviction of mail fraud and restitution under 8 U.S.C. § 1227(a)(2)(A)(iii), however, he asserts that the fraud offense of with which he was convicted did not meet the definition of an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i).

The Petitioner argued that removal based on an aggravated felony of fraud in which the loss to the victim exceeded $10,000 was improperly applied to him, because the amount of loss mentioned under the restitution order was not an element of the alleged 27 counts of conviction.

Petitioner sought appeal review of the decision of the IJ denial his bond application and his findings that the Petitioner is not entitled to adjustment of status under 212(h) concurrently with waiver based on approved I-130 filed by his U.S. citizen mother on his behalf. The Petitioner's

restitution order was based on factual findings regarding conduct and loss amounts that were not charged, proven or admit; therefore, it was an error for the DHS officer and IJ to conclude that the restitution order standing alone, constituted "clear, unequivocal and convincing" proof of the loss necessary to transform the Petitioner's conviction into an aggravated felony.

The Petitioner contends that this Court should review the restitution imposed for abuse of discretion. ASSA'AD vs. UNITED STATES AG, 332 F.3d 1321, 1341 (11th Cir. 2003). "[A] mistake of law is, by definition, an abuse of discretion". UNITED STATES vs. HOFFER, 129 F.3d 1196, 1200 (11th Cir. 1997) (citation omitted). Whether the Petitioner's Scotton conviction qualifies as an "aggravated felony" is a question of law that this Court should review because the restitution used against the Petitioner was imposed unlawfully and without evidence. See, UNITED STATES vs. HOOSHMAND, 931 F.2d 725, 737 (11th Cir. 1991); BOLOGUN vs. UNITED STATES AG, 425 F.3d 1356, 13600 (11th Cir. 2005). To determine whether the Petitioner's prior conviction constitutes an aggravated felony, the DHS and IJ should have first look to the language of the statute of conviction. See, In re Akami, 22 I&N. Dec. 949, 950 (BIA 1999). If the statutory language contains some offenses that would qualify as aggravated felonies and others that would not, then the statute is "divisible", and the DHS should have looked to "the record of conviction, meaning, the indictment, plea, verdict, and sentence, to determine the offense of which the alien was convicted". Id.; JAGGERNAUTH vs. U.S. AG, 432 F.3d 1346, 1349 n.1 (11th Cir. 2005). The DHS and IJ determination that a prior conviction constitutes an "aggravated felony" must be supported by "clear, unequivocal and convincing" evidence. WOODBY vs. INS, 385 U.S. 276,286, 87 S. Ct. 483, 17 L. Ed. 2d 362 (1966); 8 U.S.C. § 1229a(c)(3)(A).

In this particular case, the Petitioner Scotton was charged with mail fraud in violation of 18 U.S.C. § 1341 and was convicted after five weeks of trial by a jury. The Petitioner here also

challenges the restitution imposed and the DHS and IJ's determination, that his conviction qualifies as an aggravated felony based solely on the loss amount mentioned under the restitution order.

In this case, the element of the mail fraud with which the Petitioner was charged did not require that any loss amount be proved. "Unless", such increase Petitioner's punishment. Indeed, and by law, any factor that increase punishment were element which the jury must find guilty beyond a reasonable doubt under, ALLEYNE vs. UNITED STATES, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013); SOUTHERN UNION CO. vs. UNITED STATES, 567 U.S. 343, 132 S. Ct. 2344, 183 L. Ed. 2d 318 (212); APPRENDI vs. NEW JERSAY, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). "The significant increased sentencing range triggered by…the finding of a purpose to loss amount", means that the purpose "must be treated as a material element [that] MUST be found guilty by a jury beyond a reasonable doubt." Something in this case that was not provide for the jury findings. Id. at 30 731 A. 2d at 498. The dissenters conclude that "there can be little doubt that the sentencing factor applied to Applied during his sentence for the purpose of loss amount to a victim or victims, must fairly be regarded as an element of the crime requiring inclusion in the indictment, and proof beyond a reasonable doubt". 159 N.J. at 51, 731 A. 2d at 512.

[A]t stake in this case, as well as under the Petitioner criminal case, there are constitutional protections of surpassing importance which proscription of any deprivation of liberty without "due process of law" and the guarantee that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury". Taken together, these rights indisputably entitled a criminal defendant to "a jury determination that [he] is guilty "beyond a reasonable doubt" of every element of the crime with which he is "CHARGED" BY "INDICTMENT". The Petitioner was never charge under the indictment the amount of $2,582,935.60. UNITED STATES

vs. GAUDIN, 515 U.S. 506, 510, 132 L. Ed. 2d 444, 115 S. Ct. 2310 (1995); See also, SULLIVAN vs. LOUISIANA, 508 U.S. 275, 278, 124 L. Ed. 2d 182, 113 S. Ct. 2078 (1993); WINSHIP, 397 U.S. at 364 ("the due process clause protects the accused against conviction except upon proof beyond a reasonable doubt *of every fact necessary to constitute the crime* with which he is charged"). Restitution is not a form of judicial punishment dependent upon factfinding by the jury, but *if it increases the defendant punishment*, it must be taken back to the jury to be found guilty or innocent beyond a reasonable doubt.

The trial Court's factual finding as to the alleged losses amount caused by the Petitioner in his criminal case, violated APPRENDI, ALLEYNE and SOUTHERN UNION CO, and Petitioner's *sixth amendment rights to a jury determination*, because the criminal restitution order was a judicial finding *not related to the twenty-seven counts of conviction*. Such judicial findings were an error in the underlying criminal case because seriously ***prejudice*** the Petitioner. As such, his imposed sentence was substantially increased. (SOUTHERN UNION CO. SUPRA, 132 S. Ct. at pp. 2350-2352). The trial Court have unlawfully increased the Petitioner punishment beyond the jury's verdict under the twenty-seven counts mentioned on indictment. The Petitioner's constitutional rights were violated.

The second superseding indictment did not specify any loss amount nor, have the twenty-seven counts of conviction. Indeed, the Petitioner was not charged with any loss amount and did not admit to any loss during the trial or during his sentencing hearing.

Moreover, there is no loss amount attributable to the twenty-seven-count charged in the indictment, to which the Petitioner was charge and found guilty at trial. Contrary to the DHS, immigration judge and this court conclusion, there was no evidence that the mail fraud counts of conviction with which the Petitioner was charged "alleged other losses". In fact, the prosecutor

didn't indicate any loss under the indictment whatsoever. The DHS therefore could not have relied on the statutory element of the offense, the indictment, the trial or sentence records to conclude that the Petitioner was convicted of an aggravated felony, as defined in the INA act.

The DHS was also not entitled to rely solely on the loss amount mentioned in the restitution order as "clear, unequivocal and convincing" evidence that the Petitioner was convicted of an aggravated felony. On its face, the restitution order of $2,582,935.60 was not linked to the count of conviction and only requested by judicial finding that such must be paid to three companies, FedEx, UPS and DHL. The restitution order was not a finding made based on the twenty-seven counts of conviction nor, its related to the twenty-seven counts mentioned under the indictment. Rather, the order was based on additional conduct that was alleged only under unverified and inaccurate spreadsheets which this court allowed to be unlawfully introduced at trial as well as, unproved conduct mentioned under the PSI. The Petitioner objected to the PSI's assertion that he had caused losses to FedEx, UPS and DHL whatsoever, over the twenty-seven packages (counts of conviction) undelivered associated with the losses mentioned on the restitution. And further objected to the total loss amount mentioned under the PSI not charged by the indictment and not link to the counts of conviction. The Petitioner, therefore, did not admit, adopt, or assent to the factual findings that formed the basis for the restitution order.

Furthermore, while a sentencing, the Court in the criminal context may order restitution nor only for convicted conduct, but also for a broad range of relevant conduct. The plain language of the INA requires that an alien have been convicted of an aggravated felony to be removable. The INA does not authorize removal on the basis of the relevant conduct that may be considered at sentencing. Rather, what constitutes an aggravated felony for purpose of the INA must be tethered to convicted conduct. Relevant conduct for sentencing purposes, on the other hand, may include

criminal conduct that was not charged. See, UNITED STATES vs. IGNACIO MUNIO, 909 F.2d 436, 438-39 (11TH Cir. 1990). Relevant conduct may also include acquitted conduct. UNITED STATES vs. WATTS, 519 U.S. 148, 117 S. Ct. 633, 136 L. ed. 2d 554 (1997); UNITED STATES vs. AVERI, 922 F.3d 764, 765-66 (11th Cir. 1996). See also, UNITED STATES vs. DICKERSON, 370 F.3d 1330, 1342-43 (11th Cir. 2004).

In *DICKERSON,* the Eleventh Circuit rejected the argument that a restitution order based on conduct that could not be prosecuted was inconsistent with the defendant's plea to a conspiracy charge, observing that "[c]ounsel confuses the separate issues of conviction and restitution". 370 F.3d at 1343, n.20.

Similarly, here in this case, the DHS confuse the issues of conviction and restitution. There was no basis in the record from which the DHS could have found by "clear, unequivocal and convincing" evidence that the restitution order was link to the twenty-seven counts of conviction or that such was based on admission. See, e.g., KNUTSEN vs. GONZALES, 429 F.3d 733, 739-40 (7th Cir. 2005) (vacating removal order based on admission of loss caused by relevant conduct and contained in restitution order; holding that inquiry should focus narrowly on losses "particularly tethered to conviction counts alone."). See also, KHALAYLEH vs. INS, 287 F.3d 978, 979-80 (10th Cir. 2002)(conviction constituted aggravated felony where although defendant pled guilty to only one count in the indictment, that count incorporated by reference a scheme to defraud that admittedly caused losses in excess of $10,000); CHANG vs. INS, 307 F.3d 1185, 1191 (9th Cir. 2002)(vacating removal order based on restitution award in excess of $10,000 where amount of loss admitted in the plea agreement was less than the requisite amount); MUNROE vs. ASCROFIT, 353 F.3d 225, 227 (3rd Cir. 2003)(conviction constituted aggravated felony where defendant pled guilty to fraud charges that alleged loss in excess of $10,000, even though

sentencing Court later reduced restitution amount to $9,999); FEREIRA vs. ASHCROFT, 390 F.3d 1091, 1099 (9th Cir. 2004)(conviction constituted aggravated felony where charging document alleged loss, and plea agreement set restitution at $22,305 for fraud conviction); CONTEH vs. CONZALES, 461 F.3d 45, 55-56 (1st Cir. 2006)(conviction constituted aggravated felony where defendant was convicted if a conspiracy charge which also alleged overt act in furtherance of the conspiracy that caused losses in excess of $10,000).

Moreover, the restitution order was insufficient, as a matter of law, for the DHS to have met his burden to show that the conviction constitutes an aggravated felony under the INA Act (as an offense of fraud or deceit involving a loss in excess $10,000) by "clear, unequivocal and convincing" evidence. The restitution order in this case, was the only document that referred to any loss amount, and it is not linked to the twenty-seven counts of the indictment, does not refer to the twenty-seven counts of conviction. The restitution order was based only on factual findings regarding conduct and loss amount that were not charged, proven or admitted. The DHS on the other hand, had to find that the Petitioner has been convicted of an offense of fraud or deceit involving a loss in excess of $10,000 by clear, unequivocal and convincing evidence. Because the sentencing Court based its restitution order on factual findings made by a lower standard of proof and unlawful spreadsheets introduced, it was an error for the DHS to conclude that the order, standing alone, constituted clear, unequivocal and convincing proof of the loss necessary to transform the Petitioner's conviction into an aggravated felony under the INA act.

The U.S. Supreme Court unanimously held that the $10,000 threshold set out in 1101(a)(43)(M)(i) referred to the particular circumstances in which, the alien committed the fraud crime on the particular occasion, rather than to an element of the fraud crime. The language of the definition referred to conduct, involved in an offense of conviction, rather than to element of the

offense, and the statutory amount of loss would otherwise have little, if any, meaningful application in view of the minimal fraud statutes with a monetary loss threshold as an element.

The relevant statute 18 U.S.C. § 1341 did not require a finding of loss. Indeed, the jury made no such finding during the Petitioner's trial. However, at sentencing, the Petitioner objected the stipulated loss amount which exceeded $2,5 million, especially because as such, have increased the Petitioner's imprisonment term without taken first to the jury to make the decision beyond a reasonable doubt. The Petitioner was sentenced as a first-time offense to a term of 108 months imprisonment and requested to pay $2,582,935.60 million in restitution. This is absolute abuse of discretion.

Subparagraph (M)(i)'s threshold refers to the particular circumstances, in which an offender committed a fraud or deceit crime on a particular occasion rather than to an element of the fraud or deceit crime. Subparagraph (M)(i)'s language is consistent with a circumstances-specific approach. The words "in which" (modifying "offense") can refer to the conduct involved "in" the commission of the offense of conviction, rather than to the elements of the offense. Congress is unlikely to have intended subparagraph (M)(i) to apply in such a limited and haphazard manner.

The question before this court and for DHS is whether the italicized language refers to an element of the fraud or deceit "offense" as set forth in the particular fraud or deceit statute defining the offense of which the Petitioner was previously convicted. If so, then in order to determine whether a prior conviction form the kind of offense described, the DHS and IJ must look to the criminal fraud or deceit statute to see whether it contains a monetary threshold of $10,000 or more. See, TAYLOR vs. UNITED STATES, 495 U.S. 575, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990) (so interpreting the Armed Career Criminal Act). The Petitioner asserts, however, that the italicized language does not refer to an element of the fraud or deceit crime. Rather, it refers to the particular

circumstances, in which an offender committed a (more broadly defined) fraud or deceit crime on a particular occasion.

Petitioner Rogerio Chaves Scotton, an alien, immigrated to the United States in November 13, 1989. In 2012, he was indicted for alleged offense of mail fraud, 18 U.S. C. § 1341. Under numerous acts of non-existent fraud and prosecutorial misconduct, a jury found the Petitioner guilty after a five-week trial, and after submitting a note to the Court stating that they have not understood the charges lodged against the Petitioner. And because the statute does not require a finding of any particular amount of the alleged offense cause to the victim or victims, the jury made no finding about the amount of loss. At sentencing, the Petitioner did not admit to any loss amount and further object such falsely and alleged losses. The Court then outrageous imposed a sentence of 108 months of imprisonment and order the Petitioner to pay $2,582, 935.60 in restitution.

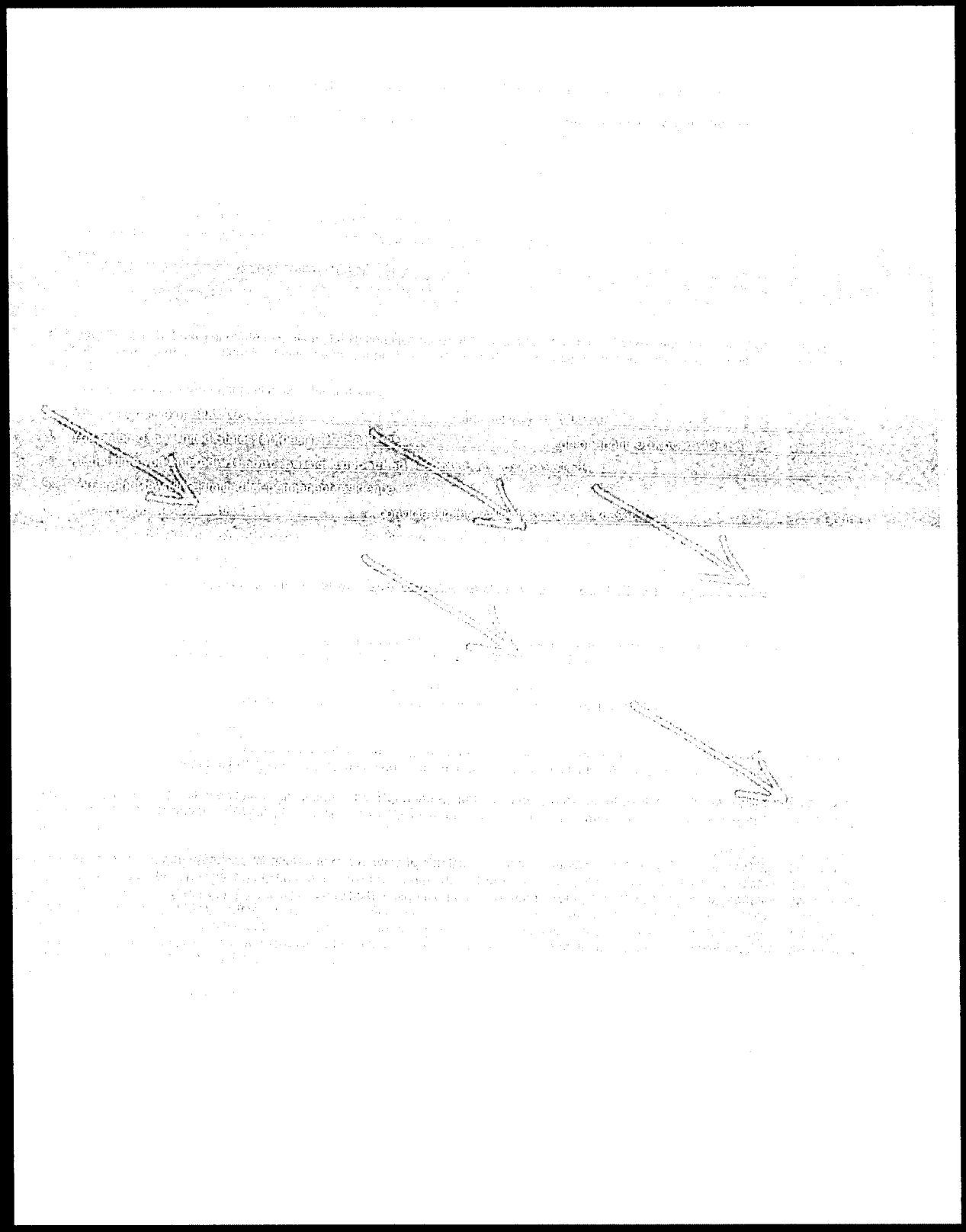
The government failed the burden of proving removability by clear and convincing evidence. See, Id. § 1229a(c)(3)(A), and by extension, must carry the devoir of persuasion as to a Petitioner's conviction for an aggravated felony. Thus, if § 1101(a)(43)(M)(i)'s $10,000 threshold referred an element that must be proven in every instance to sustain a conviction, the Petitioner's fraud conviction would not have been aggravated felony conviction. But if the $10,000 threshold referred to facts underlying the convictions, then the fraud conviction would have been aggravated-felony conviction.

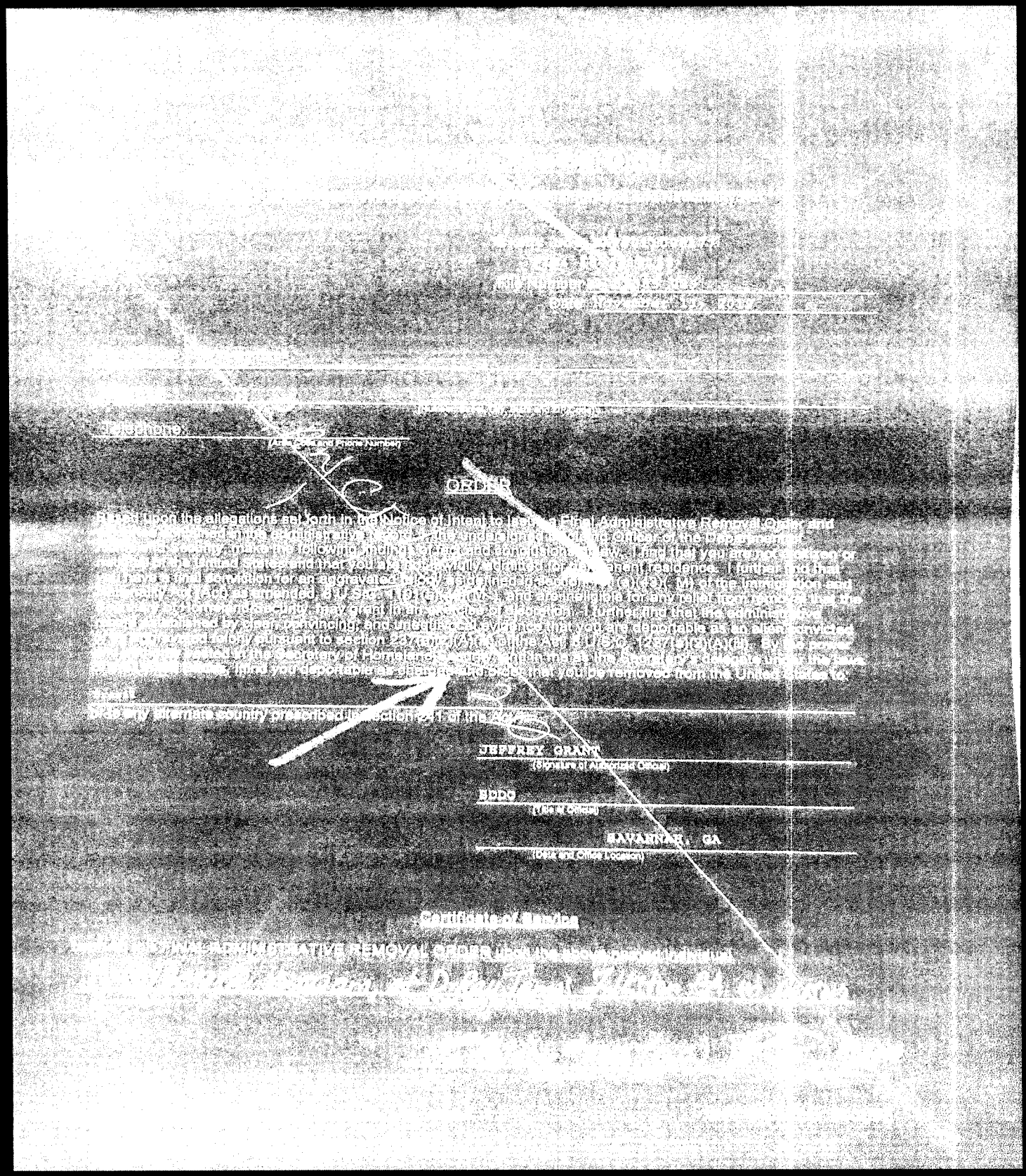
The Supreme Court has also clarified that "the loss [amount] must be tied to the specific counts covered by the conviction". See, NIJHAWAN vs. HOLDER, id. At 42, 129 S. Ct. at 2303 (quotation makers omitted).

The Petitioner contends that the restitution was clear a violation of law. Which have resulted on more punishment applied to Petitioner not required by law. In fact, the Petitioner was hold at Irwin County Detention Center without any legitime reason and was ordered removal after almost 4 months. When the government wants to extradite or removal any individual from or to the United State, they do under or over the law. However, this typical ICE incarceration apparently to be convenient for the government, politics, courts and all shareholders of private companies like Lasalle Corrections LLC and GEO Group. The Petitioner in fact, was forced to endure more incarceration time that was described under his guideline. His continue unlawful detention at the time by GEO Group and ICE is a clearly travesty of justice. It is fraud conduct by private corporations who has been given official license to slave alien immigrants and trading them for profit on Wall-Street.

The Petitioner criminal case and deportation issue so far has been secured through numerous acts of misconduct, fraud and wrongfully assumption that he is an aggravated felon under 1101(a)(43)(M)(i) as well as politics unconstitutional need to fulfill private prison on the taxpayers' expense.

In this case, the government as well as DHS has avoided to address the claims made by the Petitioner under his section 2255 as well as at the time, under two judicial review motions, engage in an unconscionable plan to violate the law and pervert the course of justice. The Petitioner was sweep under the rug of injustice, and deported from the country with the sole intention of covering up the fraud done in this case and to preventing him from unmasking the agent, the prosecutor, the attorneys and unfortunately the court as well of this shenanigan conduct and injustice paid with taxpayers' money.





The record of this case has numerous false claims made by attorneys, government and this court. Every single claim has no merit because there is no evidence to support any claims or declaration made by all parties. Those claims are made with the only intention and attempted to side-step Scotton's arguments and requests for justice.

CHALLENGES OF MAIL FRAUD:

The magistrate suggested that the Petitioner's challenge to the mail fraud allegation was not mentioned during the direct appeal and therefore, it is not permitted to be used under section 2255.

The Petitioner contends that he didn't attempted to bring such challenge at this stage of the case. However, he addresses the ineffectiveness assistance provided by the court appeal attorney who was instructed on numerous occasions to address this with the appeals court. Any competent attorney would have included this matter under the appeal brief. In this case, the Appeal attorney intentional avoided to include in his appeal brief all constitutional violation that occurred in this case. Indeed, attorney Kreisses mentioned once to Petitioner that such case has so many constitutional violations that is impossible for the appeal court not to reverse and sent back.

Nonetheless, would be a miscarriage of justice this court to ignore this matter now, because the allegation made by the government was that the Petitioner shipped 27 packages without paying the ship service provided by FedEx, UPS and DHL. This despite never mentioned losses under the 27 counts of the indictment and the 27 packages displayed in court during the trial. As such, it is no surprise that the jury stated under a note that didn't understand the case and request supported documentation. However, the jury request for documentation was denied.

In this case, this court could not more identify the boundaries of mail fraud than congress could. However, have adopted notary, and "it depends" analysis, but allowed the jury to take the

responsibility to defining the alleged offense of mail fraud. Does the law clearly stated that the jury must find the Petitioner guilty beyond a reasonable doubt? It's the jury submitted a note stating not understanding the charges after five weeks of trial? Have the jury under they own note requested from this court support documentation? Therefore, how then the jury in this case could go back after made such statement make the finding of guilty BEYOND A REASONABLE DOUBT? With the jury note, a clear evidence itself, Petitioner's conviction has been obtained without any doubt under outrageous acts of corruption and fraud. It is clear fraud because 12 citizens not trained on law, was requested by this court to make clear definition on what legislation of mail fraud is. The jury as any jury have only believe that, if the FBI arrested the Petitioner, he may have done something wrong. Or whatever the jury believes is not moral upright or is unfair or is dishonest consequently is a matter of guilty. How could the jury decide what something is wrong when "THEY SEE IT"?

In this case, the government failed to provide any precise definition of scheme to defraud under section 1341 of title 18. But they have placed the typically "dog and pony show" designed to sway the fraud way and to convince the jury that a professional race car driver had the need to do such thing. Far from reality, this court could never find any act or conduct in this case that could justify the conviction under the statute of mail fraud. But permitted 12 unelected-citizen-to-define-arguer legal criminal-conduct; and impermissible (unconstitutional) delegation of legislative duty.

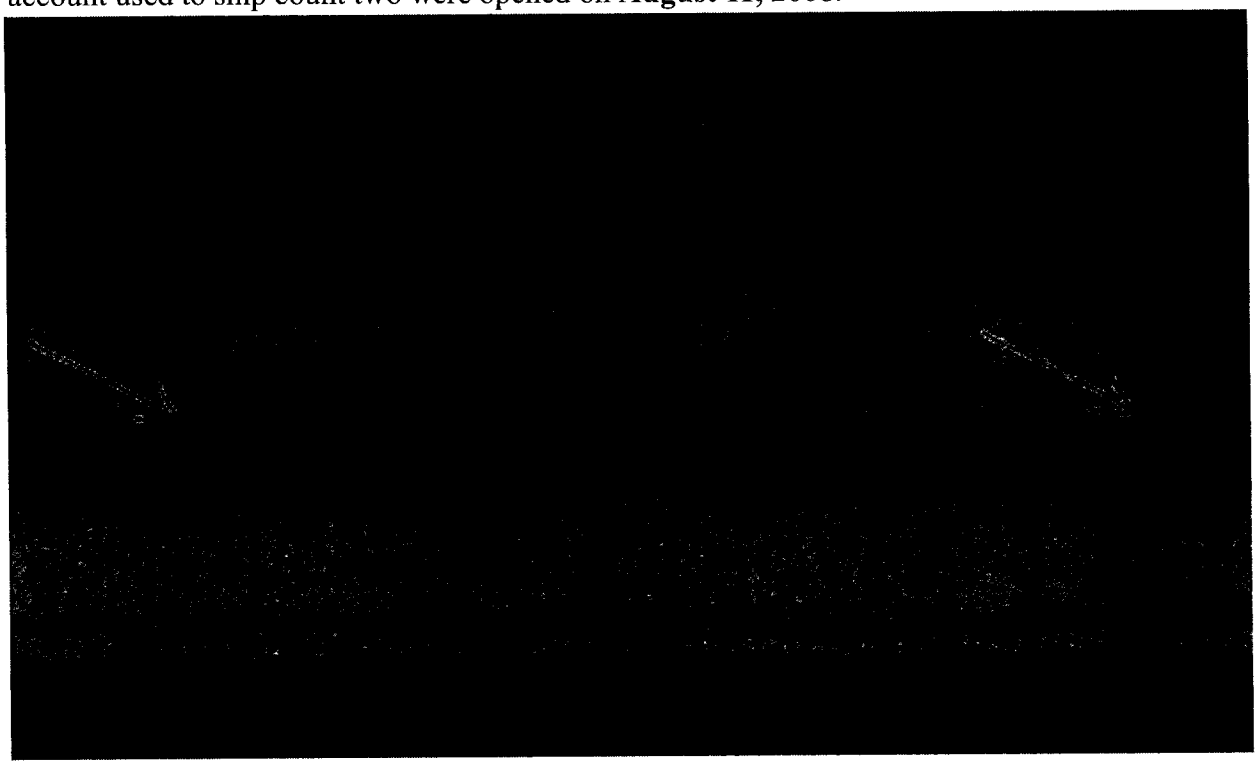
In this novel, the government lodged false allegation that 27 packages were shipped by the Petitioner and delivered in Brazil. And further theses 27 packages cause losses for FedEx, UPS and DHL. (please see second superseding indictment). However, during trial, unlawfully amended the second superseding indictment by introducing 27 packages suggesting being the same packages mentioned under the indictment. Here, there is two different theory presented to the jury.

Both never mentioned losses amount. Moreover, this unlawful prosecutorial misconduct prevented the Petitioner from any opportunity to defense since he was accused of 27 packages shipped and delivered in Brazil instead to 27 packages unshipped and presented in open court without losses amount. Allegations that shipping services provided by FedEx, UPS and DHL does not falls under § 1341.

The Petitioner contends that the jury in this case were provided with wrong and false instruction of mail fraud under section 1341. YATE vs. UNITED STATES, 354 U.S. 298, 312 77 S.Ct. 1064, 1L. ed 2d 1356. This conviction cannot stay and the second superseding indictment rested in part, on a false and improperly construction of mail fraud which was based on nothing more than accusation of billing issue which never occurred and thus, was originate by the agent himself with his wife Andrea. SKILLING vs. UNITED STATES, 558 U.S. 130 S.Ct. 393, 175 L. ed 2d 267 (2009). As mentioned, there is two different theory given to the jury by the government which none of these theories consisted of finding factual element of crime under the meaning of mail fraud. Whether accounts were created and not authorized to be used in this case, (which is not truth) this allegation is not related and does not rank the purpose of mail fraud pursuant to 18 U.S.C. § 1341. YATE vs. UNITED STATES, 354 U.S. 298, 312 77 S.Ct. 1064, 1L. ed 2d 1356.

In this case, the indictment failed to state clear an offense under section 1341. Thus, this conviction cannot any longer stay and must be without any further vacated and reversed. There are numerous aspects of the allegation set fourth on the indictment that the evidence presented on this section 2255 prove to be contrary and shows that the allegation lodged against the Petitioner is false. For example, the allegation of 27 packages been delivery in Brazil and cause losses for the alleged companies are in fact, false. The government display in trial 27 packages suggesting been the same mentioned on the indictment. The government alleged under the indictment that count 2

was shipped by the Petitioner on **August 8, 2008.** However, the spreadsheet suggested that the account used to ship count two were opened on **August 11, 2008**.



The government alleged under the same spreadsheet that the Petitioner opened a FedEx account under RIO MOTORSPORT used to ship numerous packages and didn't pay the bill. However, the FedEx spreadsheets stated that this particular account (263300874) suggested that the first package shipped was on **October 8, 2001** and that the account were closed on **September 18, 2001**. There is no mentioned of losses. The record clear reflets that the Petitioner began his online business on the **end of 2007**. Here the allegation is clear false because there is no possibility to ship a package under this account on October were such was already closed on September. The government also alleged under the indictment that the Petitioner had opened a FedEx account under a New York city company named BH Photo & Video. This allegation is also proved to be false because the account was **opened also on 2001**, and during trial was proved that was in fact, opened by the NY company themselves and that this company also ship to Brazil as well.

SQUADRAO MICKEY MOUSE PLANILHA **MICKEY-MOUSE SQUAD SPREADSHEET**

Account No.		City State Zip	Phone Number	Contact Person Provided	Email Address	Date Opened	Name Given in Public	How Opened	1st Ship	Date Closed	Amt of Loss
194121881	BRASIL E	MARGATE FL 33063	305-675-6715	SILVA, FABIO	INFO@BRASILEXPRESSONLINE.COM	11/22/2010	Fabio Silva	Telephone	12/13/2010	1/26/2011	$ 50,487.36
281419757	BRASIL E	ALPHARETTA GA 30005	561-892-1404	GOMES, EDDIE	INFO@BRASILEXPRESS.COM	1/1/2011	Eddie Gomes	Telephone	1/13/2011	1/13/2011	$ -
417365486	BRAZIL E	MARIETTA GA 30067	954-629-0998	AMORI, MARCIO	BRAZILEXPRESS@GMAIL.COM	3/6/2008	Marcio Amori	Telephone	3/6/2008	3/18/2008	$ 9,495.13
195791228	BRAZIL EX	MARIETTA GA 30067	561-892-1404	MOREIRA, PAULO	INFO@BRAZILEXPRESS.COM	12/1/2010	Paulo Moreira	Telephone	12/6/2010	1/13/2011	$ 22,927.73
282041890	SKY AIR E	BOCA RATON FL 33432	561-361-4348	CHAVEZ, ALEX	CUSTOMERSERVICE@SKYAIRONLINE.COM	1/18/2011	Alex Chavez	Telephone	1/18/2011	1/21/2011	$ 15,285.89
365587760	MATTE LIC	BOCA RATON FL 33432	561-368-7348 561-368-7347	COLOM, ALEX	NONE	2/27/2007	Alex	Uncertain	3/15/2007	4/20/2007	$ 36,337.48
193662463	RIO MOTOR	BOCA RATON FL 33486	561-361-4342	DONATO, ALEX	INFO@RIOMOTORSPORTS.COM	11/23/2010	Alex Donato	Telephone	11/23/2010	3/8/2011	$ 224,485.14
63300874	RIO MOTOR	BOCA RATON FL 33486	561-620-2514	ROGER SUTTON	None	9/17/2001	Christine	Uncertain	10/8/2001	9/18/2001	$ -
(bill to; addre		LIGHTHOUSE POINT FL 33074									
367661267	RIO MOTOR	MARGATE FL 33063	954-244-6493	SILVA, ROBERTO	RJSS76@HOTMAIL.COM	3/26/2007	Robert Silva	Uncertain	3/27/2007	7/30/2007	$ 29,325.87
438211047	CITRIX ONL	FORT LAUDERDALE FL 33309	954-337-1585 561-368-7348 954-267-3600	FRIEDMAN, DAVID	None	8/11/2008	John Morgan	Telephone	8/11/2008	9/15/2008	$ 61,519.69
434702585	TRUMPO SH	DEERFIELD BEACH FL 33442	954-337-1589	SEABRA, ANTONIO	None	7/14/2008	Antonio Seabra	Telephone	7/15/2008	9/5/2008	$ 81,432.93
428356949	CO-PILOT E	POMPANO BEACH FL 33069	561-892-1017	MESQUITA, JORGE	COPILOT04@GMAIL.COM	5/27/2008	Jorge P Mesquita	Uncertain	5/27/2008	6/19/2008	$ 50,689.28
454103823	SUN MOON C	MARGATE FL 33063	561-892-1892	SCOTTON, EMERSON	INFO@BRAZILEXPRESSONLINE.COM	12/4/2008	Paulo Silva	Telephone	12/9/2008	4/23/2009	$ 32,445.34
(other	SHOPPING E		561-892-1892	SILVA, PAULO							
names)	BRASIL EXPI										
236553027	B H PHOTO V	BROOKLYN NY 11205	212-239-7500 X231	SCHTEIMAN, XXXXX	None	7/12/2001	Unknown	Uncertain	11/13/2001	8/4/2011	$ 55,143.22
(other address)		NEW YORK NY 10001	212-239-7500	PORGES, ISRAEL							
435022266	IMPULSE ENE	MIAMI FL 33169	954-719-1033	BERIAN, STEVEN	STEVENGOLD@GMAIL.COM	12/18/2008	Steven Berian	Telephone	12/29/2008	1/15/2009	$ 380.05
807761987	AMAZON.CO	SEATTLE WA 98144	206-266-1000	SMITH, JOHN	SEPPINOAMAZON@GMAIL.COM	12/18/2007	John Smith	FedEx Syst.	12/20/2007	1/13/2008	$ 9,738.42
452-6526-6	Wal-Mart	BENTONVILLE, AR 72716	479-337-1585	479-337-1585	None	10/8/2008	Steven Duke	Telephone	10/10/2008		$ 14,499.88
524-1604-2	SOUNDSTEAL	MONTEBELLO CA 90640	323-724-4400	WALDON, KELLA I	REPAIR@SOUNDSTEAM.COM	11/24/2008	Kella Waldon	Telephone	12/1/2008	12/2/2008	$ 3,000.85
773-1808-2	GLOBAL MONI	ATLANTA GA 30328	678-579-3650 678-579-3654	SANTO, ROBERT	None	10/21/2008	Roberto Santo	Telephone	10/22/2008	12/1/2008	$ 6,524.50
995-6472-8	TARGET	MINNEAPOLIS MN 55403	612-304-6073	SCOVANNER, DOUGLAS	None	11/7/2008	Douglas Scovanner	Telephone	11/15/2008	09/24/2009	$ 3,770.10

The Petitioner contends that the government inappropriate and falsely reading of section 1341, invites the court to approve expansion of federal criminal jurisdiction in the absence of evidence and clear statement by congress. Shipping service used and alleged not paid would subject federal mail prosecution a wide range of conduct regulated by congress authority. Unless congress conveys it purpose clearly, this court is prohibited to read the statute of mail fraud to a significant crime. JONES vs. UNITED STATES, 529 U.S, 548, 858, 46 L. Ed. 2d 902, 12O S. Ct. 1904. There is no constructive offense in this case. And more sadness, this court knew all time that there was not any constructive offense of mail fraud in this case. Which establishes that no one court appointed attorney have work in this case or attempted to do anything to defend the Petitioner.

Another aspect of this case mentioned by the Petitioner was the numerous false statements mentioned on the case record by judge Rosenbaum. One in particular mentioned on her response denying the Petitioner motion requesting new trial.

The Petitioner contends that maliciously the judge introduced false statement that the Petitioner had requested the government to provide him assistance on facilitate the appearance of witnesses subpoenaed in court. This statement is absolute false and typically cover-up of the prosecutorial misconduct.

The Petitioner contends that requested his appeal attorney to include in the appeal brief that agent Vanbrunt had admitted and intimidated witnesses which cause said witness not to comply with the subpoena. The appeal attorney refuse to do so because such would expose the judge false statement.

The compulsory process clause of the sixth amendment rights provides criminal prosecution, the accused shall enjoy the right...to have compulsory process for obtaining witnesses in his favor. U.S. CONST. AMEND. VI. The right to compulsory process encompasses "[t]he right to offer the testimony of witnesses, and to compel their attendance if necessary". WASHINGTON v. TEXAS, 388 U.S. 14, 19 (1967).

In this case, agent Vanbrunt engage in explicit unconstitutional acts with the only intention to prevent the Petitioner from presenting exculpatory testimony of key witness Junio Silva by telling him that he has to testify against the Petitioner as he is guilty. When Junio Silva disagreed to testify and mentioning that the Petitioner has done nothing wrong, the agent became agitated, he intimidated and threatened Junio Silva by saying that he would force him under a federal subpoena and that he was forbidden to talk to the Petitioner. Before living Junio Silva's house, the agent told Junio Silva that with him or without him, he would make sure that the

Petitioner would go to prison and after serving his term, he would be outside waiting to deport the him from the United States. The agent made the same statement to Claudia Scotton and Carlos Colon. Those witnesses free unhampered choice to testify was interfered by agent Vanbrunt.

The Petitioner also contends that agent Vanbrunt made false report about Junio Silva in order to make the Petitioner withdraw the witness by making the him believe that Junio Silva was against him. Recently, the agent's report was showed to Junio Silva who denied ever stating any negative statements regarding the Petitioner and thus, agreed to testify on any evidentiary hearing.

The agent further has called another witness without authorization in order to prevent this witness from testifying. (See, DE 478:56). Defense witness Ron Wolff's free and unhampered choice to testify was interfered by the agent intimidation phone call to the witness.

SCOTTON: "did you receive any call from FBI agent Roy Vanbrunt'?

WOLFF: I have received calls from people regarding this case in the last week or so, yes.

SCOTTON: and the FBI called you too?

WOLFF: I do believe the FBI call me.

SCOTTON: ..."calls that you have received the last couple of days of prosecutor or FBI?

WOLFF: "Roy Vanbrunt. I receive a call by the FBI agent name Roy.

SCOTTON: and did you talk about the report?

WOLFF: yes, I did.

(See, DE-480:84-85-86-87-88). The agent lied and denied ever talking to Mr. Wolff. (See DE-478:56).

Mr. Ron Wolff would testify and provide crucial evidence that Mr. Osvaine Duarte, the third party shipping company that handled the Petitioner shipments, had used Mr. Wolff business FedEx account without authorization. Mr. Wolff further would present the police report he made with NY-PD and Sand Springs PD regarding Duarte using his FedEx account.

Given this clear and dramatic evidence of prosecutorial misconduct, the Petitioner asserts that his constitutional rights to a compulsory fair trial were violated. Supreme Court has established that the government violates due process when its conduct "effectively drives a) witness of the stand". WEEB v. TFXAS, 4O9 U.S. 95, 98 (1972) (per curiam) (holding right to present a defense w- as violated when trial Judge single out and admonishes a defense witness about the risks of perjury in "unnecessarily strong terms). fact, under WEBB, "[I]t is well established that substantial government interference with a defense witness's free and unhampered choice to testify amount to a violation of due process". AYALA v. CHAPPHJU 829 F.3d (1081, 1098 (9th Cir. 2016) (quoting FARP v. ORNOKIS, 431 F.3d 1158, 1170 (9th cir. 2005)). Although WEEB dealt only with judicial misconduct, wrongful conduct by prosecutor or 1aw enforcement officers can also constitute substantial government interference with a defense witness's choice to testify. See, e.g., UNITED STATES v. VAVAGES, 151 F.3d 1185, 1189 (9th Cir. 1998) ('[t]he conducts of prosecutors, like the conduct of Judges is unquestionably governed by WEBB"; UNITED STATES v. LIITLE, 757 F.2d 1420, 1439-40(9th Cir. -1954-) (analyzing claim of defense witness intimidation by IRS agent); See also, AYAVA, -824 F.3d at 1111 (explaining that allegation of witness intimidation by detective, taken as true, would amount to constitution violation).

The Supreme Court has also made clear that "the sixth amendment right does not by its terms grant to a criminal defendant the right to secure the attendance and testimony of any and all witness, but only witnesses in his favor. UNITFD STATES v. VALENZUH ABERNAL, 458 U.S. 858, 867 (1982) (emphasis in original). Had Junio Silva been allowed testify without intimidation, he would have provided material testimony as to Osvaine Duarte shipping packages for him as well as he have shipped for the Petitioner. Junio Silva would also testify and affirm that the Petitioner's marriage was not false as Junio Silva himself spend time with the Petitioner family before. Those witnesses along with the 29 denied by the trial Judge Court would have allowed the jury to have a substantial defense theory. CACOPERCADO v. DEMOSTHEVRS, 37 F.3d 5 O 4s 509 (9th cir. 1994) (ho1ding sixth amendment witness interference claim fails without showing of relevance -and materiality). Those crucial witnesses above testimony would have been favorable and material. Thus, the agent unconstitutional behavior caused those witnesses not to testify. AYALA, 829 F.3d at 11119 BOHN, 622 F.3d at 1138 (quoting WILLIAH v. WOODFORD, 394 F.3d 567, 601(9th Cir. 2004). Had those witnesses been allowed to testify, they would provide clear evidence that would tends to "cast doubt" on the government's case, qualifies as material. UNITED STATES v. IZFAL-DEL CARHEN, 697 F.3d 964, 972 (9th Cir. 2012) See also, GOV OF VIRGIN ISLAND v. HI1, I-G, 956 F.2d 443, 446 (3rd Cir. 1992).

All this violation was clearly understood by the court appeal attorney who have intentional refuse to submit those violation for the court reviews. Because any other honest competent attorney would have vacated easy this conviction and reverse where the number of violations and fraud is overwhelmed in this single defendant case.

This court also have they guilts in this case. There are too many errors committed by this court which include the delay of this section 2255. Judge Moreno had his opportunity to correct his

intentional errors at less on four different motion filed by the Petitioner. However, he chooses to go with the corruption when he denial the Petitioner section 2255 on December 28, 2017 which was definitively outrageous and malicious. Under four different motions, the Petitioner advise him this court's error committed under CASTRO vs. UNITED STATES. There is impossible to say that his consistent denials were not intentional as long he have been a judge. His inappropriate behalf cost the Petitioner further imprisonment and this unprecedent delay to his section 2255.

This court cannot say that these errors were not intentional and malicious, because the petitioner filed four different requests under CASTRO vs. UNITED STATES, asking for the harmful correction of errors.

In this case prosecutor rely upon the mail fraud statute for a non-existent behavior, because they wish to charge isn't the subject of more targeted legislation. (United States v. Maze, 414 U.S. 395, 405-06 (1974) (Burger, C.J., dissenting). McNally v. United States, 483 U.S. 350, 356 (1987). Skilling v. United States, 561 U.S. 358, 412 (2010). United States v. Chandler, 388 F.3d 796 (11th Cir. 2004); United States v. Svete, 556 F.3d 1157 (11th Cir. 2009) jury instruction in the Eleventh Circuit failed to adequately explain the definition of fraud. According to United States v. Brown, 79 F.3d 1550 (11th Cir. 1996), the scheme to defraud must be "reasonably calculated to deceive persons of ordinary prudence and comprehension."

There is no constructive offense in this case of mail fraud. FedEx, UPS and DHL are not the ***recipients***. Nothing was mailed to the companies with the intent to defraud and the 27 counts (packages) have never caused any losses was they have been falsely claimed. And before punished, the Petitioner, it must be shown that his case is plainly within the statute." Fasulo v. United States, 272 U.S. 620, 629 (1926).

FINAL ARGUMENT:

This court knows very well the number of violations and errors that this case contains. This court also knows that the public record of this case contains several false statements made by lawyers, prosecutors and Judge Rosenbaum. Citing one of several false statements, Judge Rosenbaum falsely stated in an order denying a new trial that the Petitioner had asked the government to facilitate the appearance of the witness, Ron Wolf. The judge did not present and could not present any evidence that what was declared was true. In fact, the judge simply covered up the bad conduct of agent vanbrunt that caused this testimony to not want to appear to give his testimony.

Trial records clearly show that Agent Vanbrunt called and talked to the subpoenaed defense witness. Under oath, the Petitioner asked agent Vanbunt if he had called and talked to Mr. Wolf. The agent testifies no. When the court called Mr. Wolf in New York to find out why he refused to obey the subpoena, Mr. Wolf on oath testified that Agent Vanbrunt had called him and asked several questions about the police report he submitted against Osvaine Duarte. (See, DE 478:56).

Defense witness Ron Wolff's free and unhampered choice to testify was interfered by the agent unlawful and intimidation Vanbrunt's illegal and unauthorized phone call to the witness.

SCOTTON: "did yo receive any call from FBI agent Roy Vanbrunu'?
WOLFF: I have received calls from people regarding this case in the last week or so, yes.
SCOTTON: and the FBI called you too?
WOLFF: I do believe the FBI call me.
SCOTTON: ..."calls that you have received the last couple of days of prosecutor or FBI?
WOLFF: "Roy Vanbrunt. I receive a call by the FBI agent name Roy.
SCOTTON: and did you talk about the report?

WOLFF: yes, I did. (See, DE-480:84-85-86-87-88). The agent lied UNDER THE OATH WITH THE COURT KNOWLEDGE who have denied ever talking to Mr. Wolff. (See DE-478:56).

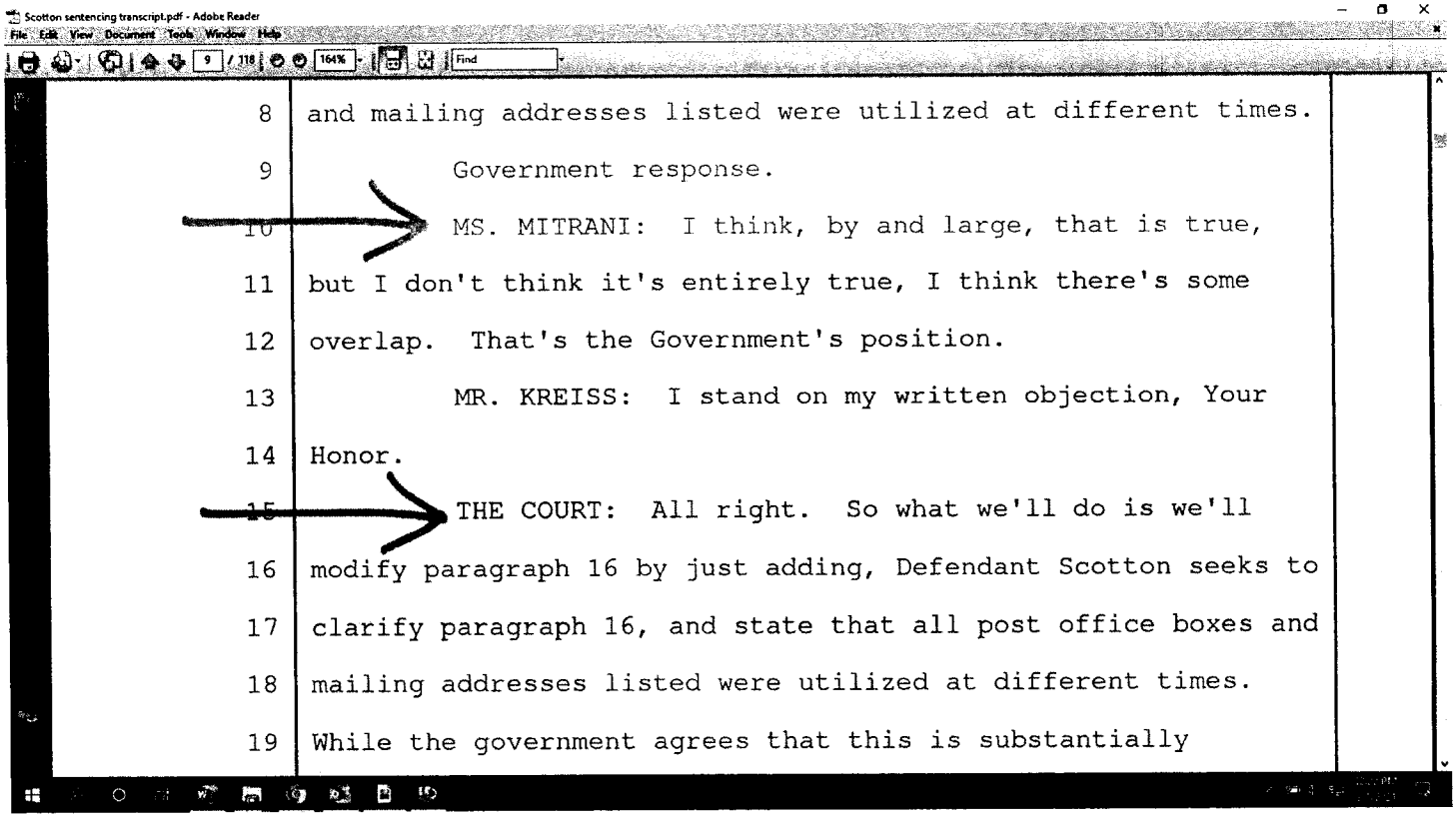
Mr. Wolff would have testified and provide crucial evidence that Mr. Osvaine Duarte, the third-party shipping company that handled the Movant shipments, had used Mr. Wolff business FedEx account without authorization. Mr. Wolff further would present the police reports he made with NY-PD and Sand Springs PD regarding Duarte using his FedEx account.

When the Petitioner advice judge Rosenbaum in trial that the agent lied under oath, the judge ignored the situation and asked the Petitioner to continue asking question to Mr. Wolff. Thus, under her order denying the Petitioner new trial, Judge Rosenbaum ***falsely says*** that the Petitioner asked the government for help to facilitate Mr. Wolff's appearance in court. This was not truth and wasn't the case. The Petitioner had his investigator and his standby lawyer dealing with the matter of subpoenas and witnesses' appearance in court. At the end and during the Petitioner's sentence, Judge Rosenbaum in addition to her lies and false statements, comes to put 2 extra points to his guidelines for obstruction of justice. Again falsely, the judge took in conclusion of her own false determinations that the Petitioner had intimidated his former employee and his ex-girlfriend through a subpoena, in which were delivered by the Petitioner's investigator. Not to mention other false statements mentioned by Rosenbaum in records, which the judge herself could not present any evidence to justify such inappropriate behavior. Want to talk about obstruction of justice, look into the lies made under oath by agent Vanbrunt, looking on the manipulation of numerous documents and the spreadsheets. WHERE IS THE BUSINESS RECORD?

Laws are created in different ways but to be effective, mechanisms for the enforcement of law and for resolving disputes involving law need to exist. The role of the courts is only to enforce and

and the mean time ignore every act of fraud conduct by agent Vanbrunt, Mitrani, ROSEMBAUM and those Court appointed clows that have defrauded the tax-payers resource by falsely declare that have provide legal assistance for the Petitioner.

There is also clear to see the injustice and the prosecutorial misconduct in this case. The government have changed the theory of they own case on numerous occasions. In fact, during the sentence false statements and false documents presented for the jury during the trial, the prosecutor agreed during the sentence that such information was falsely introduced.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and mailing addresses listed were utilized at different times.

Government response.

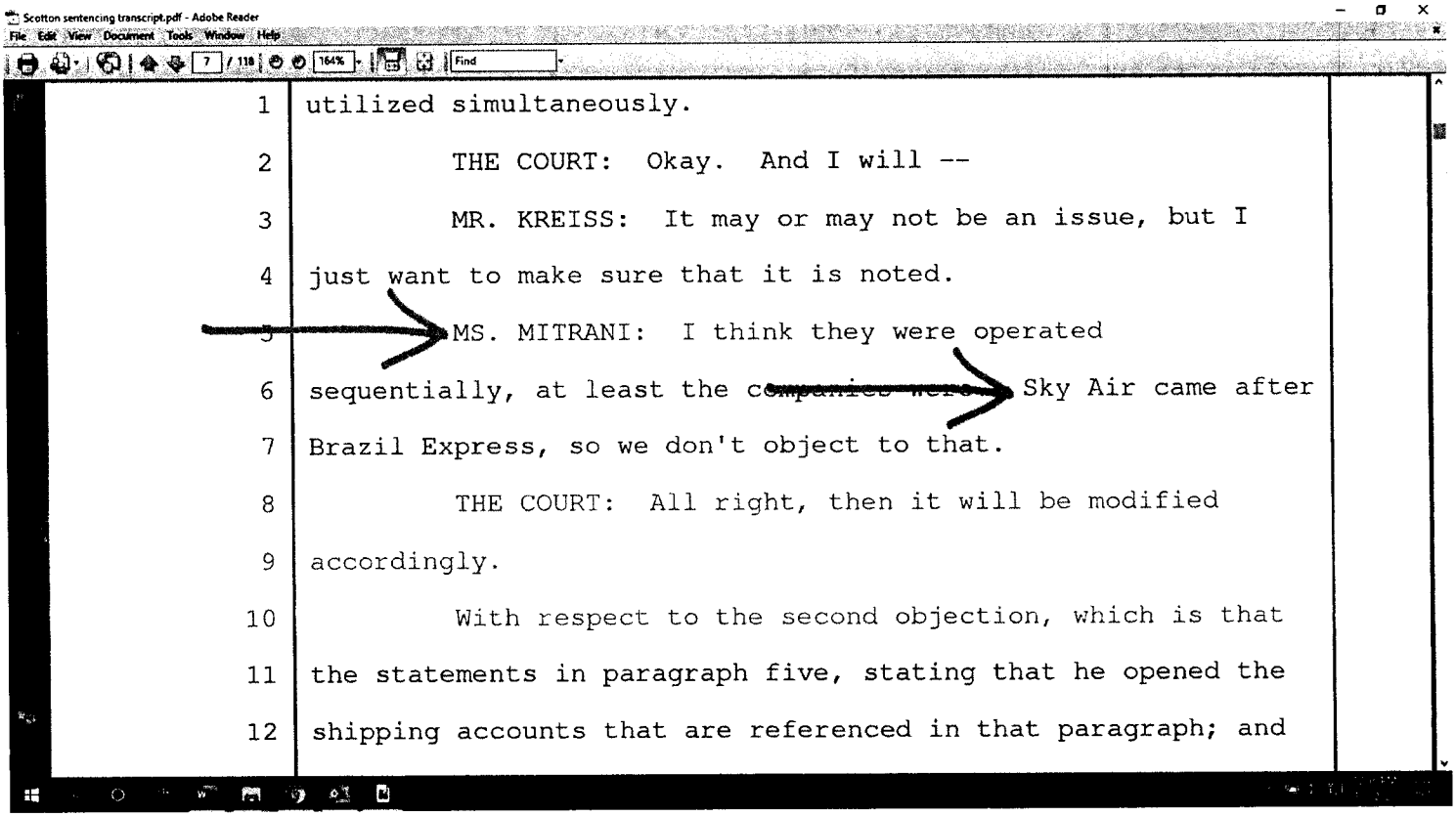
MS. MITRANI: I think, by and large, that is true, but I don't think it's entirely true, I think there's some overlap. That's the Government's position.

MR. KREISS: I stand on my written objection, Your Honor.

THE COURT: All right. So what we'll do is we'll modify paragraph 16 by just adding, Defendant Scotton seeks to clarify paragraph 16, and state that all post office boxes and mailing addresses listed were utilized at different times. While the government agrees that this is substantially

The government suggested during the trial that the Petitioner had opened on the same time numerous different P.O. Box to conducted the alleged non-existent fraud. During the trial and sentencing, the Petitioner objected such theory. And the sentence record above shows that the prosecutor confessed knew that the theory introduced in trial was false. The same occurred when

the government falsely suggested that the Petitioner had operated two different websites on the same time to conduct fraud. The Petitioner also objected at trial and during sentencing.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utilized simultaneously.

THE COURT: Okay. And I will --

MR. KREISS: It may or may not be an issue, but I just want to make sure that it is noted.

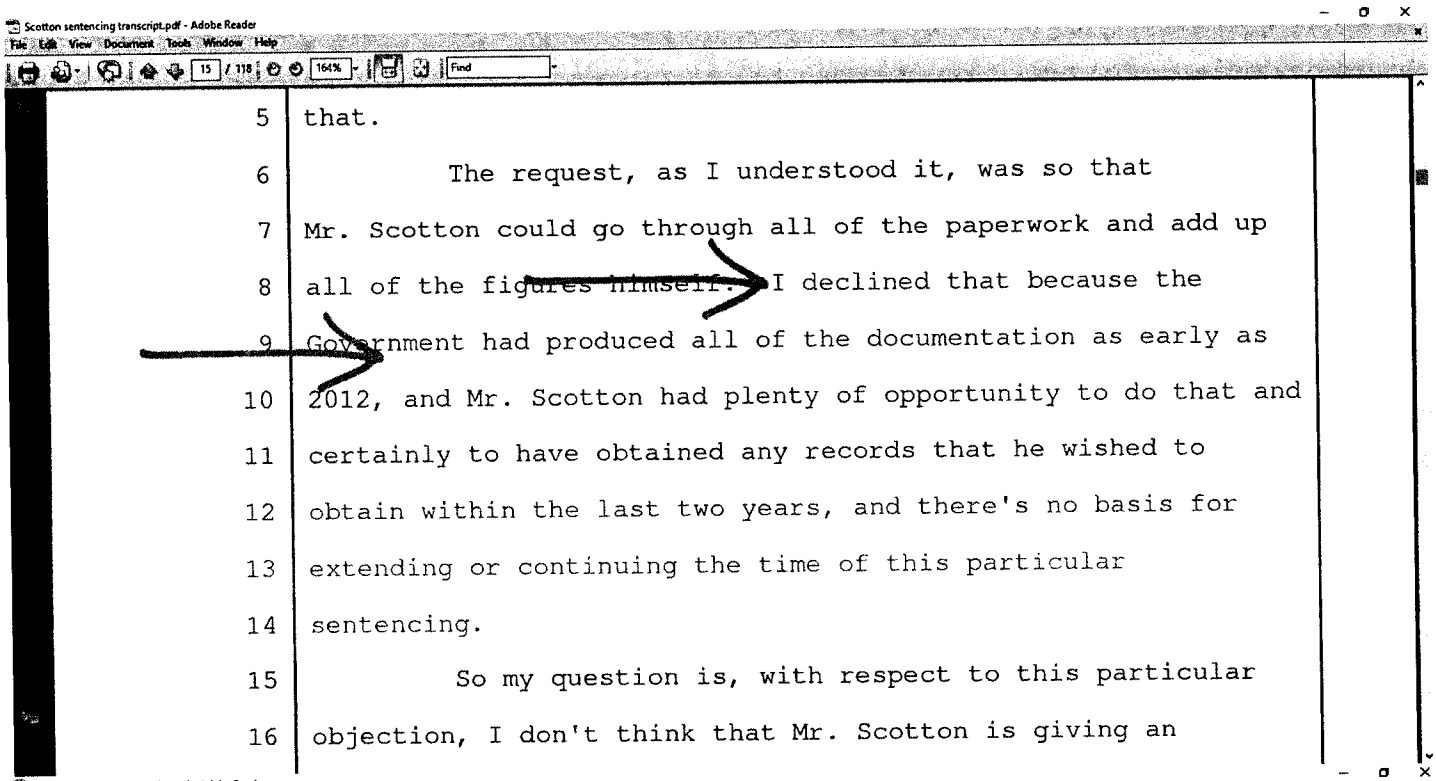
MS. MITRANI: I think they were operated sequentially, at least the companies were -- Sky Air came after Brazil Express, so we don't object to that.

THE COURT: All right, then it will be modified accordingly.

With respect to the second objection, which is that the statements in paragraph five, stating that he opened the shipping accounts that are referenced in that paragraph; and

GoDaddy record have clearly provided this information as the Petitioner had never operated both website on the same time.

The trial judge also insisted on cover-up for her colleague, falsely stating that the prosecutor had given the Petitioner all documents under the discovery. Why the Court refuse to asked the government to provide all business records related to the fabricate spreadsheets? Why keep lien under the case record that such was given to the Petitioner when were proved during trial that all CDs were blank? The government already know that on an evidentiary this conviction will be reverse, there was never any business records provided by those companies. Agent vanbrunt confessed on sentence that he fabricated these spreadsheets.



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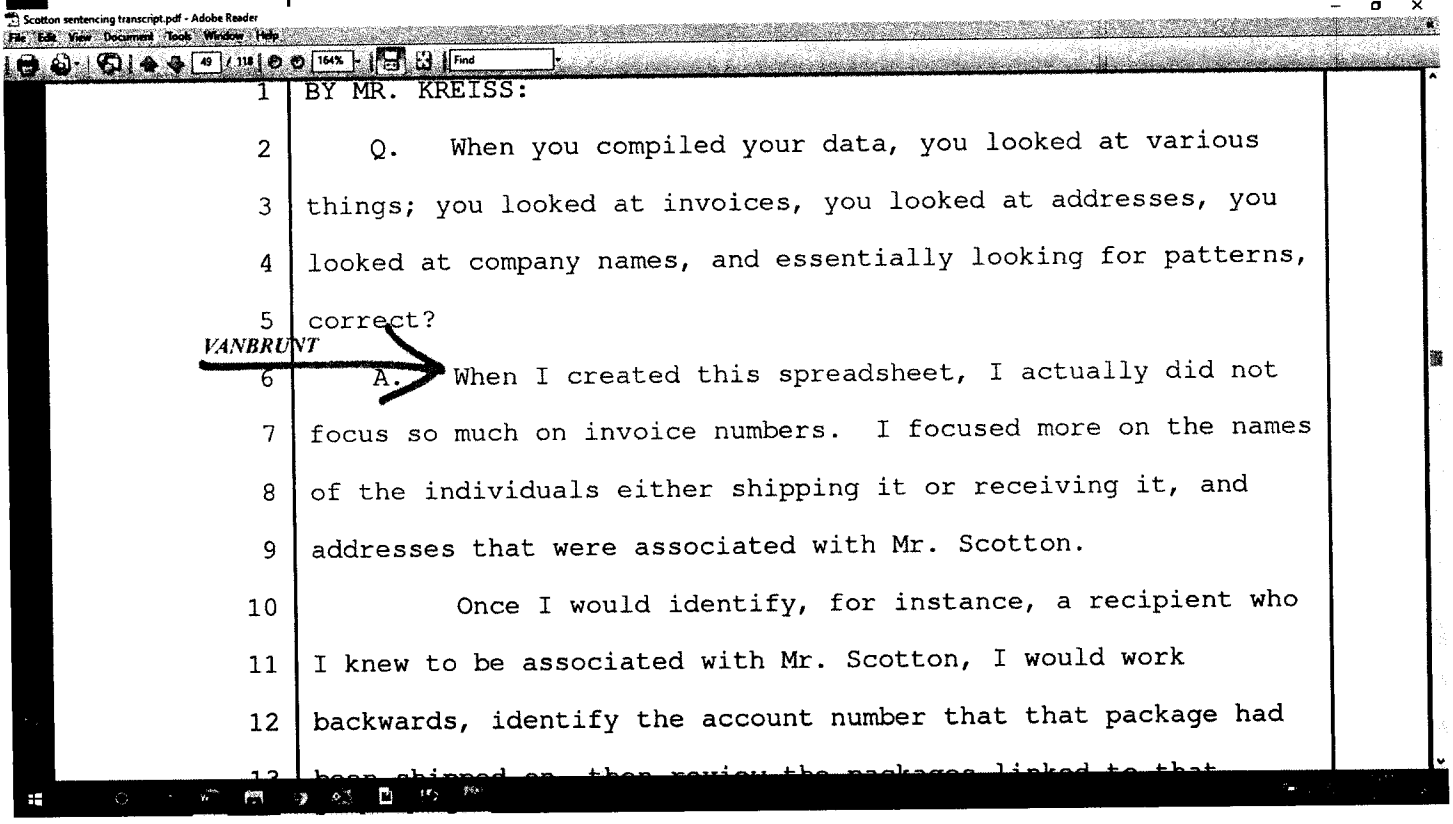
that.

The request, as I understood it, was so that Mr. Scotton could go through all of the paperwork and add up all of the figures himself. I declined that because the Government had produced all of the documentation as early as 2012, and Mr. Scotton had plenty of opportunity to do that and certainly to have obtained any records that he wished to obtain within the last two years, and there's no basis for extending or continuing the time of this particular sentencing.

So my question is, with respect to this particular objection, I don't think that Mr. Scotton is giving an



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BY MR. KREISS:

Q. When you compiled your data, you looked at various things; you looked at invoices, you looked at addresses, you looked at company names, and essentially looking for patterns, correct?

VANBRUNT

A. When I created this spreadsheet, I actually did not focus so much on invoice numbers. I focused more on the names of the individuals either shipping it or receiving it, and addresses that were associated with Mr. Scotton.

Once I would identify, for instance, a recipient who I knew to be associated with Mr. Scotton, I would work backwards, identify the account number that that package had

Conclusion

This case presents numerous violations and numerous acts of irreparable injustice. This court should not be looking at anything more or less than the law and the constitutional violations at this stage, regardless of any wrong attitudes of the defender or regarding his unprofessional way to litigate his own case.

Looking at the evidence presented here and during the entire case by the Petitioner, the logic could only be one. The Petitioner Scotton was accused of a revenge plot involving the agent wife, her friend Rosana Duarte and his ex-wife Cirlene Santos. Unfairly tried, and convicted to only fulfill agent Vanbrunt's wife and Scotton' ex-wife Cirlene Santos desire to destroy his life as revenge for the divorce. Today if the jurors are exposed to all these facts and evidences, none of them would have convict Scotton beyond a reasonable doubt. And this is one of the reasons to bring now all facts of this case under all social network and to the media. The people, the tax-payers have rights and need to know what the judicial system has become.

The Petitioner has endeavored to bring justice to his case and prove that this case should have been dismissed eight years ago since the indictment failed state an offense and the amount of constitutional violation and prosecutorial misconduct in this single defendant case. Here, in this motion, the Petitioner mentions just a few of the constitutional violations and error. Otherwise, and if the Petitioner reports every single violation, beginning from the day of his arrest, this motion would become a 500-page book. How, then, can this court ignore so many violations in one case containing only one defender? Hence, it can be seeing clearly here, in this case, that the Agent, the prosecutor and Judge Rosenbaum could never have imagined that the Petitioner would take this

further. Is it not the routine of the federal system to torture and intimidate people so that they enter into a guilt agreement? What not this routine lodged against the Petitioner entire family? However, didn't worked. This because the Petitioner's principles, as well as his character and dignity were questioned. The name of a Race car drive that helped this community has been tarnished. Now, it is time for all your masks to fall, and it is time for this court not to worry about whether the black robe will be mark with dirt and blood, but is time do what the Universal law requires; Justice.

Nonetheless, after more than eight years, the Petitioner bring for the Court's attention multiple judicial errors law, misrepresentation of evidence, contradictory and perjured testimony) perjured testimony, obstruction of justice caused by the case agent, due process violations, bias, abuse of discretion which when combined cause extreme and permanent prejudice to the Petitioner. As a result, led to a guilty verdict for a non-existent offense alleged the Petitioner didn't committed. The public reputation toward the U.S. system is and has been forever affected.

Therefore, the Petitioner moves the Court of Southern District of Florida, in the interest of justice, to grant an evidentiary hearing without any delay without allowing anyone to put their thumb on the scale of justice. So, the Petitioner could stop this madness and restore all his constitutional rights and mostly important his freedom which was unlawfully taken eight years ago under revenge and fraud conducted by the agent himself.

The Petitioner urges this Court to grant an evidentiary hearing because he has already served the entire time incarcerated imposed under serious constitutional violations, which in part already make this section 2255 nugatory and worthless.

This conviction should be vacated reverse and dismissed for all the reasons set forth by Scotton under this section 2255, evidences and all records.

Wherefore, in the interest of justice and fairness, Scotton prays for the reasons stated above, that this Court grant him his 2255.

Scotton submits this motion in good faith and the interest of justice.

Respectfully Submitted,

ROGERIO CHAVES SCOTTON
5201 BLUE LAGOON DRIVE, STE 800
MIAMI, FL 33126

PROOF OF SERVICE

I Rogerio Chaves Scotton, do certify that on this March 1, 2021, I have served the attached motion response to the magistrate report (which is under Scotton's constitutional rights) on the Southern District of Florida in the above proceeding. I have served this motion via, United States Postal Service (USPS) certified mail.

Respectfully Submitted,

ROGERIO CHAVES SCOTTON
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