NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

FEMI ALEXANDER MEWASE
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 17-60397

PETITION FOR WRIT OF CERTIORARI

Tommie L. Stingley, Jr. (MS Bar # 8329)
Stingley Law Firm, PLLC
460 Briarwood Drive, Suite 400
Jackson, Mississippi 39206
Telephone: 601/709-3592
Facsimile: 601/709-4611

Attorney for Defendant-Petitioner

QUESTIONS PRESENTED FOR REVIEW

Whether the Fifth Circuit erred by affirming the improper removal of Juror 20.

Whether the Fifth Circuit erred by upholding the admission of evidence in violation of the Confrontation Clause and the Federal Rules of Evidence.

Whether the Fifth Circuit erred by imposing a sentence greater than necessary to achieve the goals of sentencing in violation of 18 U.S.C. § 3553(a).

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case. On appeal to the Fifth Circuit, the two other Defendants-Appellants were Oladimeji Seun Ayeloton and Aderoju Raheem.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW ii

PARTIES TO THE PROCEEDING iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

I. OPINIONS BELOW 1

II. JURISDICTIONAL STATEMENT 5

III. CONSTITUTIONAL PROVISIONS INVOLVED 6

IV. STATEMENT OF THE CASE 7

A. Basis for federal jurisdiction in the court of first instance 7

B. Statement of material facts 7

V. ARGUMENT 13

A. Introduction 13

B. Review on certiorari should be granted in this case 13

VI. CONCLUSION 24

CERTIFICATE OF SERVICE 25

(Appendices 1 and 2)

TABLE OF AUTHORITIES

Page(s)

Cases:

Crawford v. Washington,
541 U.S. 36 (2004) 17

Davis v. Washington,
547 U.S. 813, (2006) 18

Gall v. United States,
128 S. Ct. 586 n.6 (2007) 20

Jordan v. De George,
341 U.S. 223 (1951) 22

Kimbrough v. United States,
128 S. Ct. 558 (2007) 22

Mississippi River Grain Elevator, Inc. v. Bartlett & Co.,
659 F.2d 1341 (5th Cir. 1981) 16

United States v. Bennett,
363 F.3d 947 (9th Cir. 2004) 19

United States v. Brown,
823 F.2d 591 (D.C. Cir. 1987) 14-15

United States v. Candia,
454 F.3d 468 (5th Cir. 2006) 22

United States v. Clay,
787 F.3d 328 (5th Cir. 2015) 20, 21

United States v. Curry,
471 F.2d 419 (5th Cir. 1973) 16

United States v. Ebron,

683 F.3d 105 (5th Cir. 2012) 14-15, 16

United States v. Edwards,
303 F.3d 606 (5th Cir. 2002) 15

United States v. Ginyard,
444 F.3d 648 (D.C. Cir. 2006) 14

United States v. London,
No. 17-20420 (5th Cir. 08/15/2018) (5th Cir. 2018) 18

United States v. Martinez-Rios,
595 F.3d 581 (5th Cir. 2010) 18

United States v. Pruett,
681 F.3d 232 (5th Cir. 2012) 14

United States v. Wells,
262 F.3d 455 (5th Cir. 2001) 16

Warger v. Shavers,
135 S.Ct. 521 (2014) 16

Statutes:

18 U.S.C. § 2 ..... 1, 2

18 U.S.C. § 371 ..... 1, 7

18 U.S.C. § 641 ..... 1, 7

18 U.S.C. § 1028(a)(7) 1, 7

18 U.S.C. § 1029(a)(3) 1, 7

18 U.S.C. § 1029(a)(5) 1, 7

18 U.S.C. § 1341 ..... 1, 7

18 U.S.C. § 1343 7

18 U.S.C. § 1344 ..... 1, 2, 7

18 U.S.C. § 1349 ..... 1, 7

18 U.S.C. § 1956 2

18 U.S.C. § 1956(a)(1)(B)(i) 2

18 U.S.C. § 1956(h) 1

18 U.S.C. § 1956(h)(2) 2

18 U.S.C. § 3231 7

18 U.S.C. § 3553(a) ..... ii, 3, 13, 20, 21, 22, 23

18 U.S.C. § 3553(a)(1) 20

18 U.S.C. § 3553(a)(2)(B) 21

18 U.S.C. § 3553(a)(2)(C) 21

18 U.S.C. § 3553(a)(6) 22

28 U.S.C. § 1254 5

28 U.S.C. § 1254(1) 5

Rules:

Rule 10, Supreme Court Rules 14

Rule 13.1, Supreme Court Rules 5

Rule 29.5, Supreme Court Rules 25

Rule 803(6), Federal Rules of Evidence 16

Rule 803(6)(A)-(C), Federal Rules of Evidence 17

Rule 902(11), Federal Rules of Evidence.....17

Rule 1001, Federal Rules of Evidence.....19

Rule 1003, Federal Rules of Evidence.....19

Rule 1004, Federal Rules of Evidence.....19

Provisions of the United States Constitution:

U.S. Const. amend. VI, ...6

U.S. Const. amend. V, Due Process Clause.....6

U.S. Const. amend. XIV, § 1, Equal Protection Clause 6

Provisions of the United States Sentencing Guidelines:

U.S.S.G. § 2B1.1.....20

U.S.S.G. § 2B1.2.....22

I. OPINIONS BELOW

On April 9, 2014, the Grand Jury for the Southern District of Mississippi returned an eight-count Indictment charging Mr. Mewase and 16 co-defendants with: violation of 18 U.S.C. § 371 regarding a conspiracy to violate 18 U.S.C. §§§ 1341, 1349, and 1344 for mail fraud, wire fraud, and bank fraud; violation of 18 U.S.C. § 371 for conspiracy to commit identity theft in violation of 18 U.S.C. § 1028(a)(7); use of unauthorized access devices in violation of 18 U.S.C. §§ 1029(a)(3) and 1029(a)(5); and, theft of government funds in violation of 18 U.S.C. § 641. The indictment charged that all such violations were done in violation of 18 U.S.C. § 1349 and began in 2001 and continued until the date of the indictment, April 9, 2014. These charges were based on allegations of the use of email communications to steal personal identification information, bank account numbers, cash, and merchandise.

On July 8, 2014, a nine-count superseding indictment was returned charging Mr. Mewase and the 16 co-defendants for the offenses alleging they began in 2001 and continued until July 8, 2014. Mr. Mewase was not charged under Counts 3 through 8 of the indictment, but six other defendants were charged with mail fraud in violation of 18 U.S.C. §§ 1341 and 2. Count 9 charged Mr. Mewase and the co-defendants with conspiracy to commit money laundering in violation of 18 U.S.C. §§ 1956(h) and 2.

On October 7, 2014, a second superseding indictment was returned on October 7, 2014 against Mr. Mewase and 18 co-defendants. This indictment contained nine counts and alleged that offenses were made beginning in 2001 and continuing until October 7, 2014, but Mr. Mewase was arrested in Pretoria, South Africa, on May 20, 2014 and extradited to the United States on May 26, 2015. Again, Mr. Mewase is not charged under Counts 3 through 8, but Count 9 alleges that he and the co-defendants conspired to commit money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i), 1956(h)(2) and 2.

The district court held a 16-day trial involving Mr. Mewase and two co-defendants. The jury convicted the co-defendants on several counts contained in the indictment for conspiracy to commit mail fraud, wire fraud, and bank fraud; conspiracy to commit identity theft, use of unauthorized access devices, and theft of government property; mail fraud; and conspiracy to commit money laundering. Mr. Mewase was convicted of conspiracy to commit mail fraud, wire fraud, bank fraud, identity theft, use of unauthorized access devices and theft of government property under Counts 1 and 2, but Mr. Mewase was acquitted for conspiracy to commit bank fraud charged as a part of Count 1 under 18 U.S.C. § 1344 and he was found also not guilty under Count 9 for conspiracy to commit money laundering under 18 U.S.C. §§ 1956 and 2.

After denying Mr. Mewase's post-trial motions for relief, the district court sentenced Mr. Mewase to serve 300 months in prison—240 months on Count 1 and 60 months on Count 2, to run consecutively, followed by three years of supervised release. He was also ordered to make restitution in the sum of $431,937.00. The district court entered a Final Judgment reflecting this sentence on June 5, 2017. The district court's Final Judgment is attached hereto as Appendix 1.

Mr. Mewase filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on June 4, 2017. The Fifth Circuit case number is 17-60397.

On appeal, Mr. Mewase interposed three arguments: (1) the district court improperly removed Juror 20, which violated Mr. Mewase's constitutional rights to a unanimous verdict and due process of law; (2) the district court improperly admitted into evidence various e-mail material and a copy of Mr. Mewase's passport in violation of the Confrontation Clause and the Federal Rules of Evidence; and, (3) the district court imposed an unreasonable sentence that was greater than necessary to achieve the goals of sentencing under 18 U.S.C. § 3553(a).

The Fifth Circuit affirmed in all respects the judgment of the district court holding that the district court properly removed and replaced Juror 20; the emails

and the copy of Mr. Mewase's passport were admissible; and Mr. Mewase's sentence was substantively reasonable. A copy of the Fifth Circuit's decision is attached hereto as Appendix 2.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed its Judgment affirming the district court in this case on March 4, 2019. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISIONS INVOLVED

"In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI.

"In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him." U.S. Const. amend. VI, Confrontation Clause.

"No person shall be … deprived of life, liberty, or property, without due process of law [.]" U.S. Const. amend. V, Due Process Clause.

"No State shall … deny to any person within its jurisdiction the equal protection of the laws."[1] U.S. Const. amend. XIV, § 1, Equal Protection Clause.

[1]The Fourteenth Amendment applies to the states, and not to the federal government. The following case excerpt, however, explains the close relationship between federal equal protection rights under the Fifth Amendment, which does not have a specific equal protection clause, and state equal protection rights under the Fourteenth Amendment.

> "The Due Process Clause of the Fifth Amendment applies to the federal government a version of equal protection largely similar to that which governs the states under the Fourteenth Amendment." *Rodriguez-Silva v. INS,* 242 F.3d 243, 247 (5th Cir. 2001); *see also Hinson,* 70 F.3d at 417 ("We employ the same test to evaluate alleged equal protection violations under the Fifth Amendment as we do under the Fourteenth Amendment") (citing *Adarand Constructors, Inc. v. Pena,* 515 U.S. 200, 215-17 (1995)(other citation omitted)). The Supreme Court has recognized that it's [sic] "approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment." *Weinberger v. Wiesenfeld,* 420 U.S. 636, 638 n.2(1975) (citations omitted).

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Mewase for conspiracy to commit mail fraud, wire fraud, and bank fraud; and, conspiracy to commit identity theft, use of unauthorized access devices, and theft of government property within the special territorial jurisdiction of the United States, in violation of 18 U.S.C. §§ 1341, 1343, 1344, 1349, 1028(a)(7), 1029(a)(3), 1029(a)(5), 641, and 371. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charges levied against Mr. Mewase arose from the laws of the United States of America.

B. Statement of material facts.

Facts pertinent to the issues on appeal pertain to the manner in which Juror 20 was removed during jury deliberations; the admission of testimonial hearsay and unauthenticated copy of a passport; and, Mr. Meawase's sentencing.

1. Juror 20

Following the 16-day trial, the jury began deliberations and on the second day of deliberations, the jury foreperson delivered notes to the district court alleging: that Juror 20 was undecided; that he would not give an answer; that he admitted that he slept through some of the testimony; that he did not believe that

one cannot go to Western Union and pick up a transaction based on his own opinion and notion and that he refuses to follow the judge's instruction.

Based on the notes, the district court solicited the testimony of the foreperson first and then Juror 20. The district court subsequently heard testimony from the other jurors. The foreperson and some of the other jurors testified that Juror 20 slept at different times during the trial; that he could not follow the law; that he did not understand and follow instructions; and, that he did not participate in the deliberations. But these allegations were not supported by all of the jurors and Juror 20 gave testimony expressing an interest in continuing to serve. Juror 20 acknowledged that he may have "nodded off" for a "very minimal" time, but he assured the court that he was able to follow the court's legal instructions. And, some of his fellow jurors gave noncommittal or ambiguous testimony about the sleeping issue and one juror testified that Juror 20 was, in fact, participating in the deliberations. The opinions of the jurors on Juror 20 were not unanimous. And it was clear that Juror 20 questioned the sufficiency of the evidence surrounding Western Union. It was also clear that Mr. Mewase and the two co-defendants agreed that Juror 20 should continue serve on the jury and continue his participation in the jury deliberations. These facts notwithstanding, the court opted to rely on the testimony of the foreperson and the jurors who testified against Juror 20 to remove and replace Juror 20. Shortly after the first alternate Juror was sat,

the jury rendered its verdict. Believing that removal of Juror 20 foreclosed his right to a unanimous jury verdict in his favor, Mr. Mewase filed the subject appeal.

The Fifth Circuit affirmed the district court's decision ruling that removal of Juror 20 was not an abuse of discretion. This Petition for Writ of Certiorari followed.

2. Testimonial Hearsay and Unauthenticated Copy of Passport

Prior to trial the district court granted the prosecution's motion to offer copies of records from FedEx and UPS as properly authenticated business records. The district court accepted the prosecution's representations that its motion was based on the desire to "avoid the burden and expense of producing a records custodian at trial to establish the authenticity of the records. The district court granted the prosecution motion to declare numerous emails as self-authenticating certified records from Google and Yahoo!. Mr. Mewase challenged the motions on the grounds that the records were testimonial statements and were not admissible without cross-examination of the declarants. At trial, Mr. Mewase interposed a continuing objection to the admissibility of the materials provided by the mailing/shipping and social media entities, but the materials were admitted. The only evidence introduced at trial connecting Mr. Mewase to an email address was the testimony of a government witness that a receipt of a visa application for immigration to the United States was found on Mr. Mewase's email account, but

the government never produced the actual application. The government's approach to verification that Mr. Mewase sent fraudulent mailing labels was to compare the email copy of the receipt for the visa application with copies of photographs of Mr. Mewase and correspondence to him found on social media together with a photocopy of Mr. Mewase's passport—but not the actual passport. Mr. Mewase appealed to the Fifth Circuit challenging the admission of the emails and records under the provisions of the Confrontation Clause and the Federal Rules of Evidence. He also challenged the admission of the photocopy of his passport under the Best Evidence Rule.

The Fifth Circuit affirmed the trial admissions ruling that: the district court findings of hearsay exceptions were valid because the email records were accompanied by certificates from records custodians and were opposing party and coconspirator statements; and, the email records were not testimonial because they were not created for the purpose of proving a particular fact at this trial. The Fifth Circuit also ruled that the photocopy of Mr. Mewase's passport was admissible because the original passport was lost during Mr. Mewase's extradition. This Petition for Writ of Certiorari followed.

3. Sentencing

Mr. Mewase has no criminal history, but his guideline range was set by the district court at the total offense level of 39 based on the court's calculation of the

total intended loss of his offenses. The district court applied a 22-level increase for the intended loss that resulted in a Guideline range of 262 to 327 months, but reduced that range to 262 to 300 months due to the statutory maximum.

At sentencing, the district court stated that Mr. Mewase had "been less directly involved in some of these activities . . . [and that the court] cannot find . . . that Mr. Mewase's conduct was a sufficient proximate cause of the loss to Amex . . . [and] there's very little, if any, evidence the court is aware of that connects him to this particular part of the scheme . . . [s]o the court is not going to order Mr. Mewase to pay restitution to American Express." The district court also acknowledged that Mr. Mewase's conduct was not violent. It was also pointed out in Mr. Mewase's Presentence Investigation Report that he suffers from a physical disability regarding one of his hands.

Notwithstanding these factual observations, the district court denied Mr. Mewase's request for a variance and imposed the sentence at the highest end of the guideline range, which was 300 months. Aggrieved by the district court's sentence, Mr. Mewase filed the subject appeal challenging the intended loss calculation and unreasonableness of his sentence.

The Fifth Circuit upheld the sentence imposed by the district court ruling that the district court needed only to conclude that Mr. Mewase knew or reasonably should have known that the offenses would cause harm and to make a

reasonable estimate of the loss based on the evidence. The Fifth Circuit also ruled that a presumption of reasonableness is applied to Mr. Mewase's sentence because it is a within-Guidelines-range sentence. This Petition for Writ of Certiorari followed.

V. ARGUMENT

A. Introduction.

The underlying issues on appeal are whether the district court erred by: removing the holdout Juror 20; admitting emails and documents that were unauthenticated, hearsay, and testimonial statements; and, imposing an unreasonable sentence based on improper consideration of the 18 U.S.C. § 3553(a) sentencing factors.

The specific legal issues are whether:

1. Juror 20's removal and replacement interfered with Mr. Mewase's Six Amendment right to a unanimous verdict because he had doubts about the sufficiency of the government's evidence surrounding Western Union;

2. Juror 20's removal was improper under the constitutional principle of due process;

3. The out-of-court emails and documents were inadmissible under the Federal Rules of Evidence and the constitutional principles of the right of the accused to confront the witnesses against him.

4. An individualized assessment was properly used in accordance with the 18 U.S.C. § 3553(a) factors to determine the appropriate sentence for Mr. Mewase.

B. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons."

1. Juror 20

In *United States v. Pruett*, 681 F. 3d 232, 247 (5th Cir. 2012), the court stated that the removal of a juror prejudices a defendant "if the juror was discharged without factual support or for a legally irrelevant reason." But in order to make that determination, the district court must follow the command of the Sixth Amendment and make a searching inquiry into the need for the discharge and "[t]he presence of a holdout lends heightened significance to the district court's duty of inquiry." *United States v. Ginyard*, 444 F.3d 648 (D.C. Cir. 2006). And a district court may not dismiss a juror during deliberations if the request for discharge stems from doubts the juror harbors about the sufficiency of the government's evidence." *United States v. Brown*, 823 F.2d 591, 596 (D.C. Cir. 1987). The Fifth Circuit has read the District of Columbia Circuit decision in *Brown* for the proposition that a "court may not dismiss a juror based upon its conclusion that the juror is failing to participate in the deliberative process in accordance with the law unless there is no possibility that the juror's problem stems from his view of the sufficiency of the evidence." *United States v. Ebron*,

683 F.3d 105, 127 (5th Cir. 2012) (quoting *United States v. Edwards*, 303 F.3d 606, 633 (5th Cir. 2002)).

In Mr. Mewase's case, the district court focused on the allegations that Juror 20 slept during the trial, which affected his ability and willingness to participate in the jury deliberations. But the jury foreperson notes and the testimony of fellow jurors expressed that Juror 20's difficulties during deliberations arose from his view of the adequacy of the government's evidence concerning Western Union. While the district court did not make any inquiries concerning Juror 20's statements about Western Union in order to avoid discussions about the merits of the case, the district court's inquiry never eliminated the possibility that Juror 20 was the lone holdout based on his view of the sufficiency of the government's evidence.

The Fifth Circuit's *Ebron* Court stated that the reasoning of *Brown* can be applied to juror dismissals when "the juror's conduct cannot be evaluated without delving into the reasons underlying the juror's views of the case, i.e., where the deliberative process has been implicated." *Ebron*, 683 F.3d at 127. The *Brown* Court reasoned that "when a request for dismissal stems from the juror's view of the sufficiency of the evidence that the government offered at trial, a judge may not discharge the juror: the judge must either declare a mistrial or send the juror back to deliberations with instructions that the jury continue to attempt to reach

agreement." In contrast to Mr. Mewase's case, that is what the district court did in *Ebron*—the jury foreperson and other jurors were not questioned until after the jury was instructed to continue deliberations and to follow the court's instructions.

In addition, if the juror foreperson or any counsel noticed that Juror 20 had slept during any time during the trial, they had a duty to call a juror's inattentiveness to the court's attention when first noticed." *United States v. Curry*, 471 F.2d 419, 422 (5th Cir. 1973). Moreover, this Court has stated that it is understood that jurors will bring with them their "general body of experiences to the jury room" when they engage in deliberations. *Warger v. Shauers*, 135 S.Ct. 521, 529 (2014).

For the reasons stated above, this Court should grant certiorari to address whether the dismissal of Juror 20 violated Mr. Mewase's constitutional right to a unanimous jury verdict and his due process rights.

2. Federal Rules of Evidence and the Confrontation Clause

"Whether evidence is admissible under [Fed. R. Evid.] 803(6) is 'chiefly a matter of trustworthiness." *United States v. Wells*, 262 F.3d 455, 460 (5th Cir. 2001) (quoting *Mississippi River Grain Elevator, Inc. v. Bartlett & Co.*, 659 F.2d 1314, 1319 (5th Cir. 1981). Under Rule 803(6), the business record exception is not met to allow admission if the "*source* of information or the method or *circumstances* of preparation indicated lack of trustworthiness." (emphasis added).

In order for documents to be self-authenticating under Fed. R. Evid. 902(11), the requirements of Fed. R. Evid. 803(6)(A)-(C) must be satisfied. The testimony of the witnesses presented by the prosecution was not credible to show that the witnesses had personal knowledge of when the email documents were made and who actually made them. This is a crucial point for Mr. Mewase because the record shows that when he was arrested there were numerous individuals in the residence who scattered upon the police's arrival. Those individuals possessed paperwork and devices such as computers. Moreover, the government's witnesses testified that sometimes an IP address does not match the login where an email originated and no one conducted any verification on the IP addresses that came from South Africa.

Furthermore, even if a portion of the documents were self-authenticating, they were inadmissible because the thresholds established under the best evidence and hearsay rules were not overcome. The documents and organizational certifications and declarations from the social media entities were testimonial statements pursuant to *Crawford v. Washington*, 541 U.S. 36 (2004) and should not have been admitted. They were testimonial because it was objectively shown that they were presented by the prosecution to "prove past events potentially relevant to later criminal prosecution" of Mr. Mewase and the co-defendants and they were generated exclusively for use at trial.

Davis v. Washington, 547 U.S. 813, 822 (2006); *United States v. Martinez-Rios*, 595 F.3d 581, 585-86 (5th Cir. 2010).

Some of the statements introduced by the government at trial indicated that the social media "may not require or verify user information because it offers many of its services to users for free" and that the statements are made in response to a search warrant. In *United States v. London*, No. 17-20420, (5th Cir. 08/15/2018) (5th Cir. 2018), the Fifth Circuit explained that a statement is testimonial if its primary purpose is to establish or prove past events potentially relevant to later criminal prosecution. *Id*. at 6. The *London* Court found that certificates of proof of FDIC insurance were testimonial documents because they were specifically prepared for use at trial and introduced through the testimony of a FBI agent and not the declarant. *Id*. at 7. The *London* Court explained that the Confrontation Clause bars the admission of out-of-court testimonial statements unless the declarant-witness is unavailable and the defendant had a prior opportunity to cross-examine. *Id*. at 6. According to the trial transcript none of the declarants who signed the statements testified as to the authenticity of the sources of the emails. The email evidence contributed to the jury's verdict and had a substantial impact on the verdict causing a guilty verdict. *Id*. at 8.

With respect to the prosecution's efforts to establish a nexus between Mr. Mewase and certain emails by presenting photocopies of pictures including a photocopy of a passport, Mr. Mewase was denied the use of his actual passport. Fed. R. Evid. 1001 applies to this issue because the identity of the perpetrators in this case was a controlling issue in this case—the prosecution's entire case-in-chief was concerned with identifying the senders and receivers of emails and packages. Fed. R. Evid. 1004. Accordingly, admission of a photocopy of the passport in lieu of the original passport to prove Mr. Mewase's identity was unfair because of its lack of trustworthiness. Fed. R. Evid. 1003. *United States v. Bennett*, 363 F.3d 947, 954 (9th Cir. 2004). Mr. Mewase was acquitted of money laundering and bank fraud. The errors committed during the trial under this issue affected his substantial rights because it is a reasonable probability that but for the errors, the results of the trial would have been different in Mr. Mewase's favor.

Accordingly, this Court should grant certiorari to determine whether the emails and other documents were admitted legitimately under the Federal Rules of Evidence and whether the statements were testimonial and admitted in violation of the Confrontation Clause.

3. Sentencing Challenge

The lengthy sentence imposed upon Mr. Mewase provides a compelling reason to grant certiorari.

The calculation of loss attributed to Mr. Mewase was based on 37,817 credit card numbers with a constructive value of $500 per access device for a total of greater than 18 million dollars; 3,400 mailing/shipping labels at an estimated value of $500 per package; $300,000 estimated UPS losses; monetary amounts associated with money grams, western union transfers; and, checks handled by two other co-defendants. Calculations of these amounts caused Mr. Mewase's guideline level to be at 39. However, no verification was done by the government to verify the credit card numbers and the government never produced physical labels, just electronic labels. The losses were, therefore, speculative. Under U.S.S.G. § 2B1.1 comment (n.3(A)(ii)) intended loss is limited to the pecuniary harm "that the defendant purposely sought to inflict." There is no evidence that Mr. Mewase purposely sought to inflict pecuniary harm—no evidence at trial connected him to any fraudulent checks.

Under 18 U.S.C. § 3553(a) trial courts are commanded to consider "the nature and circumstances of the offense and the history and characteristics of the defendant." *Gall v. United States*, 128 S. Ct. 586, 596 n.6 (2007). In *United States v. Clay*, 787 F.3d 328 (5th Cir. 2015), the Fifth Circuit stated that 18 U.S.C. § 3553(a)(1) "issues a 'broad command' requiring the district court to

'consider the nature and circumstances of the offense and the history and characteristics of the defendant.'" *Clay*, 787 F.3d at 330. The *Clay* Court also states that "[o]ther § 3553(a) factors have similarly broad concerns that a district court must assess, in an individualized manner, before imposing its sentence. *E.g.*, 18 U.S.C. § 3553(a)(2)(B) (requiring consideration of the need for the sentence to 'afford adequate deterrence'); *id.* 18 U.S.C. § 3553(a)(2)(C) (requiring consideration of the need for the sentence 'to protect the public from further crimes of the defendant')." *Clay*, 787 F.3d at 331. The *Clay* Court further instructs that the "Supreme Court held that the district court may, after considering the factors in § 3553(a), determine 'that, in the particular case, a within-Guidelines sentence is 'greater than necessary' to serve the objectives of sentencing." *Clay*, 787 F.3d at 331. Moreover, the *Clay* Court reasoned that "[a] district court's failure to recognize its discretion to vary in this context constitutes procedural error." *Clay*, 787 F.3d at 332. In other words, Mr. Mewase was entitled to have his sentence set by the district court in recognition of this discretion. Besides Mr. Mewase's limited participation in the charged misconduct, he has no criminal history, suffers from a physical disability, and will never experience the benefit of a half-way house because of his alien status. However, because the district court chose to place more weight on the "need to promote respect for the law" and the district court's overwhelming

concern for crime prevention, the district court did not properly balance the sentencing factors even though Mr. Mewase's limited participation was evident. Therefore, sentencing Mr. Mewase at the highest end of the guideline range was unreasonable. *United States v. Candia*, 454 F.3d 468, 475 (5th Cir. 2006) ("[this Court's] unreasonableness review is guided by the § 3553(a) sentencing factors, not by the district court's statements about one such factor.").

Section 3553(a)(6) provides that in sentencing, consideration should be given to the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct. *Kimbrough v. United States*, 128 S. Ct. 558, 574 (2007). Several defendants who did not go to trial but were similarly situated to Mr. Mewase received substantial less terms of imprisonment as compared to Mr. Mewase's sentence. In addition, the consequence of deportation also mitigates the amount of imprisonment necessary to punish Mr. Mewase. *Jordan v. De George*, 341 U.S. 223, 232 (1951). If Mr. Mewase completes his terms of imprisonment, he will be, in all likelihood, deported to his country of origin. Deportation also mitigates the need to impose a long prison sentence for deterrence or protection of the public.

Under U.S.S.G. § 2B1.2, the Guidelines explicitly authorize an adjustment where the defendant played a mitigating or limited role in the

offense. The jury acquitted Mr. Mewase of money laundering and bank fraud. This finding alone shows that the jury opined that Mr. Mewase's role was less pronounced or significant. The district court's failure to properly complete an individualized assessment under the 18 U.S.C. § 3553(a) sentencing factors is another compelling reason to grant certiorari.

VI. CONCLUSION

Based on the arguments presented above, Mr. Mewase asks the Court to grant his Petition for Writ of Certiorari in this case.

/s/ Tommie L. Stingley, Jr.
Tommie L. Stingley, Jr. (MS Bar # 8329)
Stingley Law Firm, PLLC
460 Briarwood Drive, Suite 400
Jackson, Mississippi 39206
Telephone: 601/709-3592
Facsimile: 601/709-4611

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

FEMI ALEXANDER MEWASE
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 17-60397

CERTIFICATE OF SERVICE

I, Tommie L. Stingley, Jr., appointed under the Criminal Justice Act, certify that today, May 31, 2019, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by United States Priority Mail, postage prepaid, No. 9405511899561832155524, addressed to:

The Honorable Noel Francisco
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

/s/ Tommie L. Stingley, Jr.

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MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), Petitioner Femi Alexander Mewase requests leave to file the accompanying Petition for Writ of Certiorari from the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), in the United States District Court for the Southern District of Mississippi and on appeal to the United States Court of Appeals for the Fifth Circuit.

Date: May 31, 2019.

Respectfully submitted,

/s/ Tommie L. Stingley, Jr.

Tommie L. Stingley, Jr., Esq.
Stingley Law Firm, PLLC
460 Briarwood Drive, Suite 400
Jackson, Mississippi 39206
Telephone: 601/709-3592
Facsimile: 601/709-4611

Attorney for Defendant-Petitioner