ORIGINAL

CASE No. 18-9590

IN THE SUPREME COURT OF THE UNITED STATES

STEPHEN MAYER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Stephen Mayer
Incarcerated Pro Se Petitioner
Inmate I.D. 02303-104
Federal Correctional Institution
P.O. Box 779800
Miami, FL. 33177.

MAY 30, 2019.

QUESTIONS PRESENTED

I Whether evidence of Giglio/Napue violations can be utilized as new evidence under Federal Rules of Criminal Procedure 33(b)(1) or if it is limited to the fourteen day rule under Federal Rules of Criminal Procedure 33(b)(2).

II Whether if defense counsel's failure to object to Giglio violations at trial is a bar to post conviction relief even when the defendant directly addressed the court specifying counsel's refusal to challenge the Government.

III Whether if the false presentation of numerous facts at trial including falsely claiming the victim is an FDIC insured financial institution is a new species of Giglio violations when that presentation at trial is premeditated with the cooperation of defense attorneys.

IV Whether if it is incumbent upon the Government to clarify matters for the Court when it issues conflicting opinions in the same case which undermine jurisdiction for the entire conviction.
Whether there is a point at which Giglio/Napue violations can be asserted as law of the case, or in so asserting, is the Government attorney who capitalizes on a colleague's known misrepresentations, committing a new subset of Giglio.

V Whether when prosecutors explain counts in closing arguments and state, "that's why it matters", must the context of this statement be considered material.

VI Whether when a court ignores or sanctions violations of federal court rules if such is grounds for prejudice and must the Court provide a reasoned response for the striking of motions and whether when the court is presented with facts undermining the court's jurisdiction if the court is compelled to respond by thoughtful examination of the motion or petition despite the type and style if presented by a pro se defendant.

LIST OF PARTIES

The parties to the original proceedings in the district court were Petitioner Stephen Mayer and the United States of America, Respondent.

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OPINION BELOW

The Eleventh Circuit Court of Appeals denied Mayer's petition for a rehearing or rehear en banc on March 15, 2019 of Mayer's appeal of the denial of his motions for a new trial and judicial recusal. A copy of the decision is filed herewith as Appendix A.

GROUNDS FOR JURISDICTION

The Eleventh Circuit denied Mayer's petition on March 15, 2019, see Appendix B. The jurisdiction of this Court is invoked by the timely filing of this petition for a writ of certiorari within the prescribed 90 days after entry of the Eleventh Circuit's denial. See 28 U.S.C. §1254(1) and Supreme Court Rule 13.1.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT 1

Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 14

Section 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL RULES OF PROCEDURE INVOLVED

Rule 4. Appeal as of Right—When Taken (FRAP)

(3) *Effect of a Motion on a Notice of Appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order — but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) — becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective — without amendment — to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

Rule 33. New Trial

(F.R. Crim. Proc.)

(a) Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) *Newly Discovered Evidence.* Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) *Other Grounds.* Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

Rule 201. Judicial Notice of Adjudicative Facts

(F.R. Evidentiary Proc.)

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

STATEMENT OF THE CASE

I. MATERIAL FACTS

Mayer was arrested in April of 2014 and charged with a single count of conspiracy to commit wire fraud (Doc. 3). In September of 2014, five weeks before Mayer's trial certain date without new evidence, a federal grand jury returned a superseding indictment charging Mayer with one count of conspiracy to commit wire fraud affecting a financial institution, in violation of 18 U.S.C. § 1349, and with eight counts of wire fraud affecting a financial institution, in violation of 18 U.S.C. §1343 (Doc. 30)(APP C).

Following an eight day trial, commencing January 20, 2015, the jury found Mayer guilty as charged (Doc. 91). The district court sentenced Mayer to serve 135 months imprisonment, to be followed by 5 years supervised release (Doc. 114). The Court also entered a forfeiture money judgement for $4,202,000 (Doc. 112) and ordered Mayer to pay restitution to the victim lenders who had sustained losses (Doc. 114 at 5). Mayer appealed his conviction and sentence (Doc. 116, 118).

The Eleventh Circuit Court of Appeals affirmed Mayer's conviction and most of his sentence, but vacated the forfeiture order and remanded for further proceedings. United States v. Mayer, 679 F. App'x 895, 904 (2017), cert. denied, No. 17-5094, 2017 WL 2909370 (U.S. Oct. 2, 2017). In doing so,

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We include essential portions of the record related to these issues in the three-volume Appendix filed herewith, and cite to those documents as "APP," followed by the letter assigned to the individual documents. Also, due to the lack of factual development in the opinion, we include record citations for district court docket entries not included in the Appendix, in the format "Doc." followed by the docket number and page number.

the Eleventh Circuit Appeals Court stated, "The total value of the final mortgages taken out on the 12 properties, $4,404,200, was the figure the Government used to calculate the forfeiture amount. Only $1,114,200 of these mortgages came from Green Point, a FDIC-insured entity." Id. and "The Government did not submit any evidence showing the entities are FDIC insured, and none of the charges stemmed from these mortgages."

On remand, the district court conducted an evidentiary hearing to determine the amount of proceeds obtained as a result of Mayer's conspiracy to commit wire fraud affecting a financial institution. At the hearing, the United States sought a forfeiture money judgement in the amount of $1,114,200, the same amount the appellate court had determined had come from, "Green Point, an FDIC-insured entity." ID. at 8 (Doc. 193; entire transcript; APP D). AUSA Howard-Allen asserted Green Point Mortgage was FDIC insured (Doc. 193 at 8 and 22). Mayer pointed to the fact that Green Point was not FDIC insured and that no 'affect' (loss) of a financial institution had been argued at trial (Doc. 193 at 9-12 & 28-31). Mayer referenced a trial exhibit, 18M (Doc. 193 at 12; APP E), which claimed Green Point was FDIC insured, that there had been "slippage" in trial in describing GPM as FDIC insured. The district court affirmed for the Government (Doc. 181). Proceeding pro se, Mayer filed a motion for reconsideration (Doc. 182) laying bare the issue that GPM had nonfinancial institution status and was not FDIC insured as claimed at trial, or by the Government at the hearing. On July 8, 2017, the Court granted Mayer pro se status, but denied his motion for reconsideration (Doc. 183).

Proceeding pro se, Mayer appealed the district court's order of forfeiture (Doc. 184 & 186). On appeal, Mayer argued that the appellate had erroneously concluded that Green Point Mortgage was a FDIC insured financial institution because the Government has knowingly presented false evidence and

exhibits, Appeal No. 17-13270. The Eleventh Circuit affirmed, Doc. 238 at 3, for the Government's finding because Mayer had failed to raise the issue in his direct appeal (despite this appeal being progeny of Mayer's direct appeal) that Mayer had forfeited the argument and could not defeat the law of the case doctrine, Id. at 3-4. Mayer's court appointed appellate lawyer, for his direct appeal, had flatly refused to raise the issue or prosecutorial misconduct in Mayer's direct appeal.

To understand the level of bias and prejudice in this case, it is necessary to review several foundational issues upon which Mayer's conviction rests.

Mayer was represented first by Assistant Federal Defender Mary Mills. Despite that Mayer could not afford to retain a criminal defense attorney, private real estate attorneys, Daniel Jonas and Akiva Fischman, volunteered to help develop a trial strategy consisting of: (a) challenging the Government's theory of prosecution in light of standard real estate business and lending practices, (b) challenging the legitimacy and completeness of the Government's documentary evidence, (c) challenging the truthfulness of the Government's witnesses, and (d) utilizing expert witnesses, including a handwriting expert and a real estate expert.

While in pre-trial detention, from October 6th through 10th, 2014, Mayer called his attorney friends, Akiva Fischman and Daniel Jonas, and paralegal, Ashley Law, using the Pinellas County Jail phone. During phone calls, Mayer raised concerns over prosecutorial misconduct for multiple issues including the fraudulent composition of numerous discovery files, the lack of any evidence against Mayer, questionable provence of deceased attorney Scott Larue's files and Bank of America attestations for discovery, which were photocopied and misfiled.

On October 10, 2014, the Government filed a motion for a protective order regarding discovery (Doc. 39), specifically stating, "Mayer may not copy or share discovery with any third parties, attorney or others." The magistrate

judge denied the order on the basis the Government failed to serve Mayer citing local rule 3.01(g). The Government refiled its amended motion for protection (Doc. 41).

On October 11 & 12 of 2014, Mayer met with his friend, civil attorney, Daniel Jonas, who travelled from Miami to Pinellas County jail in Tampa Bay.

On October 14, 2014, attorney Jonas penned a letter (sent via e-mail) to Mayer's public defender, Mary Mills, detailing some of Mayer's concerns. (Doc. 203-1 at 3-8; APP F)

On October 15, 2014, Mary Mills filed a motion to withdraw as counsel of record.

On October 15, 2014, the Government's amended protective order for discovery was temporarily granted (Doc. 47) pending a hearing.

On October 20, 2014, Mayer was brought to a hearing (Doc. 136; Transcript; APP G) scheduled by his defense counsel, public defender Mary Mills, to address her motion to withdraw as counsel of record on the basis of a breakdown in the attorney-client relationship. Mayer filed a motion in open court (Doc. 50) [1] titled, Emergency Motion to Protect Defendant's Right to Counsel under the Sixth Amendment." Mills committed perjury and made numerous false representations to be excused (See Doc. 203 at 36). At the same hearing, the Court upheld its order of protection for discovery and required Mayer to ensure all copies of discovery were returned to the Government under threat of contempt of Court (Doc. 136 at 6). The Government confirmed it was by listening to Mayer's jail house phone calls, which they stated was how they knew to file an order of protection (Doc. 136 at 44).

By the Court:

> "The order says you're not to give the discovery to any third persons, not any attorneys that you may be discussing the case with other than your counsel of record, and if you do, it will be a violation of the Court order and I will hold you in contempt of court."

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[1] The original version filed into the docket was missing two pages.

Mayer sought further clarification, Doc. 136 at 14:

MAYER:	"Then I'm precluded, as it stands from meeting with any lawyer, hiring or otherwise, insofar as a lawyer can't visit me, they've been barred from visiting me?"
THE COURT:	"YES." [emphasis in original]

D.C. Doc. 136 at 35 by the Court:

> "You've got to have an attorney that you have some confidence in, and you've got to have an attorney that can represent you in this case."

The Court then stated she, along with the magistrate judge. would appoint new counsel and cancelled Mayer's trial certain date (Doc. 136 at 45,46).

Mayer tried desperately to seek the fair administration of justice, his attorney friends offered free support, but the Court not only denied Mayer access for this criminal case, but denied Mayer privilege for any subject matter.

Doc. 136 at 44:

THE DEFENDANT:	Insofar as he does advise me about issues, and has for years, am I not entitled that he should visit me in the jail?
THE COURT:	No. If you wish to discuss something with him that is unrelated to this case, if you'll have your attorney file a motion and tell me what that is --

Immediately subsequent to the hearing, Mayer filed a pro se motion (Doc. 54) titled, "Motion to instruct, replace or dismiss counsel of record and or act pro se".

The Court's order of denial (Doc. 57) stated:

> "Because the Court has already addressed and ruled upon the issue raised in the motion, the motion is DENIED."

On December 9, 2014, Mayer filed a pro se motion (Doc. 70; APP H) to seek permission to pursue his commercial interests via his civil attorney.

The Court denied the motion (Doc. 76) and initially filed the motion with two missing pages [See page I.D. numbers or attached exhibits, which vary from the Government's copy filed in a previous appendix]. Prior to Mayer's October 20, 2014 hearing, Mayer had flatly refused to entertain a plea deal, which unbeknownst to Mayer, the Court had preaccepted on September 3, 2014.

Doc. 158 at 7, by the Court:

> "maybe Ms. Mills, you can get your client to plead and all our problems will be solved."

Doc. 158 at 9, by the Court:

> "I will be happy to accept the plea. You just let me know and I will have him on a calendar the next day."

Mayer's trial was reset for January 20, 2015, prior to which Mayer's newly appointed counsel, Bjorn Brunvand, failed to file a single motion despite promises to file motions in limine, challenging jurisdiction, statute of limitations, discovery, or seek a Franks hearing to clarify the dozens of falsehoods contained in the government agent's sworn affidavit used as a basis for the case. Prosecutors explained at Mayer's 2015 trial that Mayer conspired with and directed a buyer to make false mortgage applications for a first and second mortgage on four separate properties. The first and second mortgages represented one of eight separate counts of actual wire fraud. In each case, Mayer was either a member or shareholder of the selling corporate entity, but never the seller of record.

The Government claimed Mayer directed the buyer, who was the office manager of a mortgage brokerage, to commit mortgage fraud via Mayer's "accomplice" who was her employer.

On the first day of trial, the Government provided the Court with a bound book of exhibits, some of which had not been entered into evidence. At the commencement of trial day three (January 22, 2015), Mayer insisted counsel seek a copy of the "jury book". What ensued was the Government's warning to the Court about "18 series" exhibits, which were not at the time, entered into the record. The "18 series" exhibits were entered into evidence later that morning (Doc. 146 at 29). Mayer's counsel assumed Mayer would spot the issue that aside from the inclusion of the "18 series" summary exhibits, that they contained entirely false information as to owner of record, recipient of funds post closing, corporate governance, and that GPM was FDIC insured. Ultimately, Mayer only received a curated version supplied by AUSA Amanda Riedel. Mayer's first sight of the summary charts, or any of the 18 series of exhibits, was in his direct appeal when appellate counsel claimed it irrelevant.

Trial Day 3, Doc. 146 at 6-7:

THE COURT:	Mr. Brunvand.
MR. BRUNVAND:	Judge, good morning.
THE COURT:	Good morning.
MR. BRUNVAND:	Mr. Mayer has requested a copy of the printed-out booklet.
THE COURT:	Do you have another copy?
MR. BRUNVAND:	I have it in digital format, but I don't have the printed-out version.
MS. RIEDEL:	In your exhibits?
MR. BRUNVAND:	No, it's not in there.
MS. RIEDEL:	We'll absolutely --
THE COURT:	Would you give him a copy before we start this morning?
MS. RIEDEL:	It should be in there, but if not, we'll give him our copy.
THE COURT:	I've written on mine.
(Discussion had off the record.)	
THE COURT:	If you don't have one, I can pull -- I can actually let him use mine for the remainder of the testimony.
MS. RIEDEL:	The Court has two copies, the bound copy and the loose copy, in the exhibits that we gave you.
MS. HOWARD ALLEN:	We can have someone bring over another bound one.
MS. RIEDEL:	You have one bound copy and one loose copy.
THE COURT:	Let me find my loose copy.
MS. RIEDEL:	The 18-series.
THE COURT:	All right. I've stuck the photographs in mine, so I'll just give him mine, but it has the photographs in it.

MS. RIEDEL: You Honor, we have an extra copy.
THE COURT: Okay. Fine. Do you have it or not?
MS. RIEDEL: Yes. I'm just insuring they are all here.
THE COURT: It's not bound?
MS. RIEDEL: It's not. no.
THE COURT: Why don't you let me give him my bound copy.
MR. BRUNVAND: Judge, I think he wants a moment to review it and then he may want to make some comment to the Court.
THE COURT: Well, I'm not going to stop the trial. We're going to take a little bit of time to talk to Ms. ****, and he can look at it then. Let me pull what I stuck in here out. It would be easier for him to look at it if it's bound here. Okay. Would you give this to Mr. Mayer, please.
MR. BRUNVAND: Judge, can I step out just a moment for the facility?
THE COURT: Yes. You need to hurry because we have...

The government agent testified all four properties representing the counts of wire fraud on the indictment were foreclosed and a loss to the same lender (Doc. 145 at 138-139 & Doc. 147 at 134-135), Green Point Mortgage, which she testified was FDIC insured (Doc. 145 at 29). The agent introduced five exhibits each claiming GPM was FDIC insured (APP I). Only one of the four properties was foreclosed. Two were still owned by the buyer and the fourth property was never actually financed by the lender the Government claimed [see footnote 1]. Green Point Mortgage was never FDIC insured. The same agent further testified Mayer still owned and controlled the properties post closing by virtue of quit claim deeds (Doc. 145 at 16).

Direct by AUSA Riedel of FDLE Agent Wilcox, Doc. 145 at 16:

Q. What, if anything, did you determine was the purpose of Invest Fund Corp?
A. This was like the last corporation, um, and this was the one that later Susan Chen, um, was asked to invest in. This was like an offer to all investment holders -- real estate holding company. All of the properties ended up being deeded to this Invest Fund.
Q. Based on whose instructions, if you learned?
A. Mr. Mayer.

---

[1] See Doc. 1 at paragraphs 67 & 88, sworn affidavit by Secret Service Agent Keaton, which states two of the four properties were still owned by the buyer of record, representing Counts 4, 5, 6, & 7.

No such deeds existed with the buyer testifying she was the legal owner of record (Doc. 147 at 167). Ms. Fobare was the purchaser of the four properties, which represented all counts charged in the indictment. Brunvand cross of Fobare, Doc. 147 at 167:

Q. You contact an attorney who is recommended to you by Markus Esop?
A. Yes.
Q. And you're asking for his assistance with these properties?
A. That's correct.
Q. Do you tell him they're not really my properties?
A. Well, they were my properties. I didn't -- I don't recall the exact conversation. I just knew that they had to be sold.
Q. All right. Were you ever asked to sign quit claim deeds on these properties to another entity?
A. No.
Q. Or to another individual?
A. No.
Q. Okay. When you borrowed the money for these properties, were there any other entities that were part of the loan application, like a corporate entity or was it just you?
A. Just me.

Mayer wrote two mid-trial letters to the Court explaining the Government exhibits contained forged and altered documents, that counsel refused to address the issues and or impeach witnesses (Doc. 92, "Court's Exhibit 1" & "Court's Exhibit 2; APP J).

The Court read from Mayer's first letter (Doc. 147 at 4-7):

THE DEFENDANT: I have a letter for your Honor and I would very much appreciate it if I could give it to you.
THE COURT: Sure. Could you get the letter for me, please? Is it from you?

THE DEFENDANT: Yes, ma'am.

(Court perusing document.)

THE COURT: Okay. I've read the letter. As I understand it, Mr. Mayer has some concerns about the -- I think they are HUD statements which -- anyway, statements with his signature on them that have been admitted into evidence. I don't know, Mr. Mayer, if you're going to testify or not, but if you are going to testify, you can certainly discuss this with -- about the particular exhibits.

Let me just see if I can understand your concern. Your concern is that -- well, let me just read it. Do you mind if I read it?

THE DEFENDANT: Not at all. I apologize for the penmanship.

THE COURT: Here's what it says, he has some concerns about some documents. "Specifically bates reference Nos. ACCU-0001 through ACCU-327, which are attested to by Bryan Woods of the Consulting SCVS, d.b.a. Accu Title. At bates stamp ACCU-0232 and ACCU-0233 are the signature pages of two HUD-1 closing statements for different properties closed at different times. Both documents bear my signature, and to the untrained eye it might appear as if I was present at the closing. The inclusion of these pages is clearly a mistake, but someone exasperated by their exact placement in the file 5005 Troy Dale Road which has now been entered into evidence."

Is the concern they're not your signature, or they don't pertain to 5005 Troy Dale, or the fact that you weren't present at the closing?

THE DEFENDANT: It's the fact that they don't pertain to the title company, to the parties at the closing, and to the property in question, but they happened to have mistakenly found their way in the exact place within the package that would suggest that they belong there, and that was my concern.

THE COURT: Okay. Mr. Brunvand, have you had a chance to look at this?

MR. BRUNVAND: Yes, Judge. And I mean, I don't know that I want to try this issue in open court. I have suggested to my client that discrepancies, and if there's misplaced documents, what have you, are things we can point out. If he wants to, we can point it out during his direct examination, if he testifies. If he doesn't testify, they are in evidence. So if there are apparent discrepancies, they can be pointed out in closing argument.

THE COURT: Okay.

Subsequently, the title company agent for this specific closing testified as follows:

January 27, 2015, Doc. 154 at 23 by AUSA Riedel:

A.	That Stephen Mayer is the president and Shin-Sheng Chen is the vice president.
Q.	That's who was present at the closing?
A.	Not Stephen Mayer.
Q.	I'm sorry, Ms. Chen?
A.	Yes.
Q.	Did you know Stephen Mayer?
A.	No.
Q.	Had you ever met him?
A.	No.

None of which deterred prosecutors in remaining true to their false narrative, using the claimed loss to enhance Mayer at sentencing. In Mayer's direct appeal, the Government claimed at page stamped 50 of 99, Mayer attended this closing and signed the sales closing documents as the seller.

Upon delivery of Mayer's second letter the Court responded:

Doc. 148 at 5:

THE COURT:	Mr. Mayer, the suggestion I have for you is that you need to talk with your attorney, but he's the attorney. I mean, you're not representing yourself in this matter, and so if you have any concerns, express them to Mr. Brunvand, but it's his job to try the case. After, obviously, consulting with you, but he's the guy that's got to make the legal decisions. He's the guy that's got to decide what evidence should be asked about and what evidence shouldn't be asked about. And he's tried probably hundreds of cases, and you haven't. So, you know, you have an attorney appointed to represent you and you need to listen to your attorney.
THE DEFENDANT:	I do respect and understand that. I didn't want to be standing in Fed. Court --
THE COURT:	Could you --
THE DEFENDANT:	I didn't want to be standing in Fed. Court saying, "why don't you raise that issue with the Judge." That's why I did it.

On October 17, 2017, Mayer filed a pro se motion at the district court for a new trial sanctioned under Fed. R. Crim. Proc. 33(b)(1) which was within three years of his conviction (Doc. 203; APP K). Mayer's motion for a new trial was stamped as received by the clerk of the court on October 25, 2017. However, it disappeared until the defendant's sister, Reverend Binymin, made multiple inquiries of the clerk of the court, and finally, of the judge's chambers. The motion was correctly mailed and titled, however, the district court elected to forward it to the appellate on October 31, 2017, before its final docketing in the district court on November 8, 2017.

Mayer's 33(b)(1) motion listed a combination of Giglio/Napue violations, perjury, and manufacturing and altering of evidence. Mayer focused on just two of the more than 50 listed issues to present evidence necessary for a new trial: i) A certified statement by the FDIC stating, the lender, Green Point Mortgage (GPM), on which the charges of conspiracy and wire fraud were based, was not FDIC insured (Doc. 203-1 at 17-21; APP L) and ii) case law where the parent FDIC insured institution, Capital One, had asserted a defense to alter ego liability for its subsidiary, Green Point Mortgage, stating it was a distinctly separate entity (Doc. 203 at 17).

The district court denied Mayer's motion for a new trial (Doc. 220; APP M) Mayer filed a joint motion (Doc. 224; APP N) in the district court seeking i) a reconsideration of the Court's denial of Mayer's Rule 33(b)(1) motion for a new trial and ii) judicial notice of adjudicative facts which he sanctioned under Fed. Rule of Evid. Proc. 201(c)(2).

While Mayer's motion (Doc. 224) was pending, he filed a second motion to supplement his original motion (Doc. 231; APP O). Subsequently, Mayer filed a notice of appeal for his original Rule 33(b)(1) motion (Doc. 228), which resulted in the district court denying Mayer's motion for reconsideration and judicial notice on the erroneous belief that filing the notice of appeal

divested the Court of further jurisdiction. The Court's order of denial (Doc. 232; APP P) went further and struck Mayer's motions (Doc. 224 & 231) without cause from the record.

Mayer responded by filing a motion (Doc. 235; APP Q) to vacate and reverse the Court's order (Doc. 232) as erroneous, citing Eleventh Circuit Fed. R. of App. Proc. 4(b)(3)(B), which provides the Court with jurisdiction. The rule states the appeal notice becomes valid once the last remaining motion on a matter before the Court is ruled upon. As such, Mayer claimed the Court had jurisdiction and he was entitled to the reversal of the Court's order (Doc. 232) and judicial notice as requested (Doc. 224 & 231). The Court responded with an order stating even if the Court had jurisdiction, the motions were denied (Doc. 237; APP R).

Mayer's motion for judicial notice highlights a premeditated fraud by prosecutors in the false trial presentation of a mortgage lender as i) a FDIC insured entity and ii) as a financial institution in violation of the ex post facto clause of the United States Constitution.

Mayer detailed the significance of his request for judicial notice by quoting the prosecutor's opening and closing statements, most telling of which were AUSA Riedel's explanation of Mayer's charged counts, which she described during closing arguments as follows:

District Court Doc. 231 at 2 citing Doc. 149 at 47-48:

> "He got all the money, and at the end of the day, how does it affect a financial institution? This is why it matters that Green Point was FDIC insured. They lost money, and they are by definition, a financial institution because they are FDIC insured.
>
> That's the conspiracy.
>
> So then we move on to the substantive counts, Counts 2 through 9. This is similar. Ladies and gentlemen, we could have charged many, many counts in this superseding indictment. Many more than we did, but we chose to focus on Fobare's four properties that she did with Green Point, eight mortgages from Green Point, as an example. But we gave you all the evidence so you would understand the full depth of this scheme

> conspiracy. But for the purpose of Counts 2 through 9, the key transactions are the wires sent from Green Point as a result of Fobare's mortgages that she got in an agreement with the defendant and Mr. Esop.
>
> So there's eight counts, eight wire fraud transfers from the lender outside the State of Florida. We saw they wired in New York to bank accounts here, Fobare is the borrower. Green Point is the lender."

Mayer's motion for judicial notice was accompanied by i) a copy of a notarized statement from the FDIC stating the lender Green Point Mortgage was absent from any records as an FDIC insured entity, ii) an e-mail from the FDIC confirming the same, and iii) that Green Point Bank's FDIC insured status had expired in 2005.

The Government had claimed the lender, Green Point Mortgage, was a subsidiary of Capital One Financial Corp., and as such, the actions of Green Point Mortgage had affected its parent entity through loss (Doc. 30 at 2). At trial, no evidence of loss was provided and instead the Government claimed the lender, Green Point Mortgage, was FDIC insured and a financial institution.

The mortgages subject to this case were issued in 2006 by Green point Mortgage. Mayer's motion for judicial notice also detailed a 2012 9th Circuit case which clarified the issue of Green Point Mortgage's financial institution status in relation to 18 U.S.C. §20. See United States v. Grasso, (9th Cir. 2012) 724 F.3d 1077, which explained as follows:

> "In 2009, Congress amended 18 U.S.C. §20(1), which supplies the definition of "financial institution" for §1344 to cover "mortgage lending businesses" such as Green Point Mortgage and Aurora. See United States v. Bennett, 621 F.3d 1131, 1138 (9th Cir. 2010). This amendment applies prospectively, however, and with respect to the events in this case, the only definition of "financial institution" in §20(1) relevant here was "insured financial institution." FERA §§2(a)(3), 4(f)."

On February 16, 2018, Mayer filed a motion for judicial recusal (Doc. 233; APP S). Mayer cited the Court's multiple violations of rules of procedure and the violations of his constitutional rights including the Court's violations of attorney-client privilege, an earlier denial of the right to proceed pro se, and interference in the plea deal process. On March 5, 2018,

the Court denied Mayer's motion (Doc. 236; APP T). Mayer filed a motion (Doc. 239) to reconsider the Court's denial on March 19, 2018, which the Court denied (Doc. 240) on March 23, 2018. Mayer appealed (Doc. 245).

Mayer filed a notice of appeal for the denial of his motions for a new trial, judicial notice, and recusal, which the Eleventh Circuit combined and consolidated. Appeal Case Nos. 18-10466-JJ, 18-11208-JJ, and 18-11351-JJ (APP U; principle and reply brief). Mayer further filed a petition for a writ of mandamus (APP V) seeking an order directing the district court to provide judicial notice as requested (by motions; Doc. 224 & 231), which is mandatory under Rule 201(c)(2), or in the alternative, for the appellate court to provide judicial notice of the same facts. The appellate court denied Mayer's petition on May 23, 2018 (APP W). Ultimately, the Eleventh Circuit Court of Appeals denied Mayer's appeal and affirmed the district court ruling on January 15, 2019. Mayer moved for a petition for a rehearing (APP X) citing several issues, not least of which, was the Court's latest opinion being at odds with its prior opinions in the same case, the misquoting of Rules of Evidence and Procedure, and misunderstanding the record. The Eleventh Circuit states Mayer's failure to object at trial was a fatal flaw to relief, however, Mayer himself had objected to the fraudulent compilation of trial exhibits, perjury, and raised issue mid-trial with the Court, of counsel's refusal to act during the course of trial.

The Eleventh Circuit Court of Appeals denied Mayer's petition for en banc consideration on March 15, 2019, for which Mayer now files his timely petition for a writ of certiorari.

Mayer's original public defender claimed, "the evidence doesn't matter, the Government destroys it and still wins its case." Mayer's second appointed counsel, Bjorn Brunvand, asked why Mayer, "couldn't just be afraid like everyone else" because, Brunvand claimed, "it was never supposed to go this far." Mayer referenced these comments in motions (Doc. 99; 100; 101; 102) and

in court (Doc. 141 at 13-15). Mayer memorialized his conversations and meeting with counsel, detailing the false compilation of discovery, laying out a strategy requesting potential witnesses, and highlighting impeachable statements on the record (Doc. 99 at 14-28; Doc. 99-1 at 11-13, 17-20, 25-29; Doc. 101 at 4-9; Doc. 107-1 at 1-3).

Ultimately, the Eleventh Circuit's mandate affirming the district court's ruling is at odds with its findings in Mayer's direct appeal, which highlights the Court's lack of jurisdiction in this case.

Eleventh Circuit's opinion - Feb. 14, 2017 (Direct Appeal Case No. 15-12035)

> "Only $1,114,200 of these mortgages came from Green Point, an FDIC-insured entity." Referring to other mortgages, "The Government did not submit any evidence showing the entities are FDIC-insured, and none of the charges stem from these mortgages." (APP Y; entire order)

Eleventh Circuit's opinion - January 15, 2019 (Case No. 18-10466)

> "The letter Mayer sought to introduce as new evidence proving that GPM was not FDIC-insured reflected information that would have been available in 2015. Mayer fails to explain how he could not have obtained this publicly available information before his conviction, and that alone is fatal to his motion for a new trial. Id. Additionally, none of Mayer's evidence regarding GPM's FDIC status would have produced a different result at trial. The record reflects the Government sought to prove only that GPM had lent the funds of its parent corporations, all of which were established to be FDIC-insured financial institutions at all times relevant to Mayer's crimes. Evidence proving that GPM itself was not FDIC-insured in no way contradicted the Government's evidence, and could not have possibly affected the outcome of the trial. Moreover, Mayer does not point to anything in the record that suggests the Government attempted to suppress the evidence, whether it was material or not."

BASIS FOR JURISDICTION IN THE COURTS BELOW

In this criminal case, the district court had jurisdiction to enter its January 19, 2018 order denying Mayer's motions pursuant to 18 U.S.C. §3231. Mayer filed his timely notice of appeal in the Eleventh Circuit on February 5, 2018. That Court had jurisdiction over his appeal pursuant to 28 U.S.C. § 1291.

REASONS FOR GRANTING THE WRIT

ARGUMENTS I, II, & III

CONTRARY TO THE ELEVENTH CIRCUIT 1) TRIAL FRAUD BY PROSECUTORS IN ENDORSING KNOWN FALSE EVIDENCE IN THE FORM OF EXHIBITS AND PERJURED TESTIMONY IS NOT LIMITED BY A FOURTEEN DAY RULE FOR THE PURPOSE OF A NEW TRIAL. 2) WHEN THAT EVIDENCE IS MATERIAL IT CANNOT BE EXCLUDED FOR RELIEF BECAUSE IT WAS DISCOVERABLE AT TRIAL. 3) IF THE DEFENDANT DIRECTLY ADDRESSES THE TRIAL COURT STATING COUNSEL REFUSES TO IMPEACH WITNESSES OR CHALLENGE FALSE EXHIBIT, HAS THE DEFENDANT HIMSELF MET THE BAR FOR RELIEF.

This case represents several important issues of first impression. A) Whether when the defendant directly addresses the Court during trial objecting to perjury and fraud, stating defense counsel's refusal to act, is sufficient to meet the Eleventh Circuit's bar for relief because fraud was discovered at trial. B) Whether the circumstances of having appointed counsel deprives an indigent defendant of the Sixth Amendment right to participate in his own defense. C) Whether the premeditated presentation of perjury and false evidence known as Giglio and Napue violations are limited to a fourteen day window post sentencing for relief, and D) whether when Giglio/Napue violations are committed in plain sight if the failure to address them at trial forfeits any future favorable resolution because they become law of the case.

The district court was presented with Mayer's motion, sanctioned under 33(b)(1), identifying fifty plus issues of premeditated false presentation of evidence, perjury, and violations of rules of procedure. The appellate court likewise was presented with multiple issues on appeal to illustrate the scope of trial fraud, as well as, Mayer's evidence that the lender, Green Point Mortgage (GPM), on which Mayer's charges were based, was not FDIC insured as claimed at trial. Mayer highlighted two issues sufficient to earn a new trial. First, that the lender, GPM, was not FDIC as claimed at trial, and second,

Mayer addressed the indictment which claimed the lender, GPM, was a subsidiary of a FDIC insured lender, which the indictment claimed affected the parent entity through "loss". Mayer illustrated why the Government had needed to assert GPM was FDIC insured at trial because the parent entity couldn't claim loss in so far as it had previously asserted GPM was a distinctly separate entity and sold mortgages for profit. A necessary move by the parent entity, which served to protect them from billions of dollars in liability for the conduct of the subsidiary, GPM. Mayer also illustrated and demonstrated defense counsel's knowledge of these facts and refusal to challenge the Government.

As a threshold matter, contrary to the Eleventh Circuit ruling (18-11208 at 7), Mayer did 1) demonstrate why the publicly available evidence he provided for his new trial was not presented at trial. Mayer had in fact notified the Court of counsel's deficiencies during the course of trial (APP Y). 2) The Eleventh Circuit Appeals Court had already clarified the materiality of GPM's FDIC insured status in Mayer's initial direct appeal (Case No. 15-12035) when it acknowledged all the charges stemmed from GPM, which the Court believed was a FDIC insured entity. The Eleventh Circuit now opines, "The Government sought to prove only that GPM had lent the funds of its parent corporations... Evidence proving that GPM itself was not FDIC-insured in no way contradicted the Government's evidence." It is clear the Court misunderstood the trial exhibits, witness testimony, and closing arguments, which are a stark contrast to this statement. Indeed the Government supported perjury by witness-in-chief, Special Agent Wilcox, who entered multiple misleading exhibits into the record, which the Government explained during closing arguments with specificity as to why GPM's FDIC insured status mattered and how it related to the charged counts. The Eleventh Circuit then addressed Mayer's new evidence as follows: "Mayer does not point to anything

in the record that suggests the Government attempted to suppress that evidence, whether it was material or not." citing Giglio.

The Government violated Giglio/Napue and now the Eleventh Circuit Court of Appeals misunderstands the record and seeks to downplay the materiality of GPM's FDIC insured status. Excusing the premeditated presentation of false evidence and perjured testimony because its committed in plain sight contrary to the Eleventh Circuit's opinion. This cannot negate the violation of Mayer's due process rights under the Fifth and Fourteenth Amendment.

If "a prosecutor elicits testimony he... knows or should know to be false, or allows such testimony to go uncorrected," a verdict "must be set aside unless there is no 'reasonable likelihood that the false testimony could [2013 U.S. Dist. LEXIS 103] have affected the judgment of the jury.'" Shih Wei Su v. Filion, 335 F.3d 119, 126-27 (2d Cir. 2003) (quoting United States v. Agurs, 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976)); accord United States v. Spinelli, 551 F.3d 159, 166 (2d Cir. 2008); see also Giglio, 405 U.S. at 153-54; Napue, 360 U.S. at 269.

Mayer's original motion to the district court and brief on appeal cited his own representations to the Court, mid-trial, of counsel's refusal to object to impeachable testimony of government witnesses utilizing the Government's own discovery. The Government premeditated the trial presentation of numerous false facts using documents cut and pasted with different dates to obscure corporate governance (APP Z), as well as, forged closing documents all entered as exhibits in addition to exhibits claiming Green Point Mortgage was FDIC insured. The notion that because it was not surpressed evidence cannot excuse this malfeasance and must be at odds with the most rudimentary principles of justice.

Mayer's pretrial, trial, and appellate counsel were court appointed. Each of them refused to challenge the Government's misrepresentation of material

evidence. Mayer's civil attorney penned a letter to counsel pre-trial explaining a number of issues, not least of which, that GPM was neither FDIC insured or recognized as a financial institution. A copy of this letter was passed to each of Mayer's representatives (APP F). Mayer himself documented his concerns in person and in writing, filing numerous copies of his correspondence into the record. Mayer went further and addressed the Court mid-trial with two separate letters detailing concerns over discovery, testimony, and counsel's refusal to object or impeach witnesses (APP J).

Government witness, Agent Wilcox, provided approximately 15 hours of overview testimony over the first 3 days of trial. Most of the testimony was uncorroborated, making it hearsay and speculative with the majority being false. There is established federal law in support of Mayer's argument that when the prosecution fails to correct false testimony, the conviction must be set aside if (1) there was false testimony; (2) the prosecution actually knew of the false testimony, and (3) there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. Drake v. Portuondo (Drake II), 553 F.3d 230, 241 (2nd Cir. 2009); accord id. at 240 (citing United States v. Agurs, 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976); Giglio v. United States, 405 U.S. 150, 153, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959)). There is no doubt in this case that prosecution knew of and relied upon the presentation of false evidence, a move made more egregious by the hobbling of defense counsel.

The Eleventh Circuit ruling flies in the face of established Supreme Court rulings and violates Mayer's constitutional rights under the Fifth and Fourteenth Amendments.

It is well established that a prosecutor's knowing use of perjured testimony violates the due process clause of the Fourteenth Amendment. Giglio

v. United [606 F.2d 375] States, 405 U.S. 153, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); Napue v. Illinois, 360 U.S. 264, 269, 271-72, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959); Mooney v. Holohan, 294 U.S. 103, 112, 55 S. Ct. 340, L. Ed. 791 (1935); United States ex rel. Washington v. Vincent, 525 F.2d 262, 267 (2d Cir. 1975), Cert. denied, 424 U.S. 934, 96 S. Ct. 1147, 47 L. Ed. 2d 341 (1976). Due process requires not only that the prosecutor avoid soliciting false testimony but that he not sit idly by and allow it to go uncorrected when it is given. Giglio, supra, 405 U.S. [1979 U.S. App. LEXIS 11] at 153, 92 S. Ct. 763; Napue, supra, 360 U.S. at 269, 79 S. Ct. 1173. The requirement applies even when the perjury relates to a witness' credibility rather than bearing directly on the defendant's guilt:

> A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth....

Napue, supra, 360 U.S. at 269-70, 79 S. Ct. at 1177. And when truthful testimony not only would have cast doubt on the witness' credibility but also would have tended to corroborate the defendant's version of the facts, the perjury is all the more pernicious. Alcorta v. Texas, 355 U.S. 28, 31-32, 78 S. Ct. 103, 2 L. Ed. 2d 9 (1957).

In McCoy v. Louisiana, 138 S. Ct. 1500, 1505 (2018) distinguishing Florida v. Nixon, 543 U.S. 175 (2004), this Court clarified defense counsel may use professinal judgment to develop defense theories and trial strategies based on their assessment of the evidence, they cannot usurp the fundamental choice provided directly to a criminal defense under the Sixth Amendment: choosing the objective of his defense, see also Gannett Co. v. DePasquale, 443 U.S. 368, 382, n. 10 (1979) (The Sixth Amendment "contemplat[es] a norm in which the accused, and not a lawyer, is master of his own defense"). Mayer obviously wanted to challenge the Government's witness testimony and exhibits, which the Court ignored.

Therefore, this Court should grant this petition to consider 1) whether counsel's failure to address material Giglio and Napue violations at trial is a bar to granting a new trial under Federal Rules of Criminal Procedure 33(b)(1). 2) If a defendant raises issues at trial with counsel's failure to perform his duties is sufficient to defeat objections of counsel's refusal at trial is a bar to relief for a new trial. 3) Giglio and Napue violations suppressed or otherwise are still structural errors. 4) If the hobbling of defense counsel to ignore Napue violations is a new species of Giglio. 5) Can Giglio and Napue violations become law of the case.

REASONS FOR GRANTING THE WRIT

ARGUMENT IV

WHERE ONE SET OF PROSECUTORS PRESENT KNOWN FALSEHOODS, SUPPORT PERJURY, AND CONFUSE THE COURT WITH A VEXATIOUS PRESENTATION OF FACTS, IT MUST BE INCUMBENT ON OTHER COURT OFFICERS TO STEP FORWARD AND CORRECT MISNOMERS BY THE COURT AND REPELLENT WHEN COLLEAGUES KNOWINGLY BUILD UPON THE SAME FALSEHOODS AND CONFUSIONS.

When prosecutors knowingly present false evidence, rely on perjury, and obstruct defense counsel to object to such malfeasance the courts are defiled. When prosecutorial teams build on falsehoods, manipulate the courts and misrepresent the record justice is merely an illusion. This case represents a sad trend and highlights the apparent ease with which convictions can be a conveyor belt process.

In the case subjudice, Mayer's counsel was appraised of all the facts necessary to challenge the Government, pre-trial, at trial, and in Mayer's first direct appeal. Each of Mayer's court appointed representatives simply refused to do so. One stating the evidence doesn't matter, another that Mayer was supposed to be afraid like everyone else. Mayer's appellate lawyer informed Mayer he should not consider what prosecutors did or said, but acknowledged the Court's bias towards Mayer.

The Government's chief witness, Agent Wilcox, provided approximately 15 hours of uncorroborated overview testimony, entered hand crafted exhibits into evidence, which contained falsehoods of who owned what property, corporate governance, foreclosures, mortgage arrears, and who signed closing documents and attended closings. In short, the Government's presentation of this case contradicted their own discovery. In essence, the prosecution team was caught out pretrial for forged evidence without jurisdiction because Mayer refused to

plea.

Since Mayer's conviction,the initial prosecution team has taken a back seat to appellate counsel who have added fuel to the fire by misquoting the record and repeating the same falsehoods, even capitalizing on the Court's confusion.

Initially representing the contents of the indictment, the Government's key witness, Agent Wilcox, described events which bare no resemblance to fact. In just one example, she described Mayer attending and signing documents for a closing at 5005 Troydale Road, and introduced that closing package to evidence. Mayer asked counsel to object. He refused and so Mayer wrote to the Court, clarified the issue, and explained counsel's unwillingness to do so. Despite the truth, the Government proceeded with its narrative, despite testimony to the contrary and simply regurgitated its version in Mayer's direct appeal knowing it to be entirely false. Mayer's appellate lawyer said it's irrelevant as with the other fifty plus inaccuracies Mayer pointed out. Trial evidence by the buyer and title agent attending the closing was that Mayer didn't attend or sign closing documents. The government appellate counsel in Mayer's direct appeal states Mayer attended the closing and signed documents, and therefore, is the furtherance of a new species of Giglio, "Giglio 2.0".

This Court should grant a writ of certiorari to examine the responsibilities of court officials who knowingly represent false facts to the Court. Put another way, at what point must an officer of the court accept personal responsibility or does the baton of immunity extend from prosecutor to prosecutor in that ultimately the only real risk is "oops, my bad" in today's modern vernacular and justice system?

REASONS FOR GRANTING THE WRIT

ARGUMENT V

CONTRARY TO THE ELVENTH CIRCUIT'S OPINION, WHEN PROSECUTORS EXPLAIN CHARGES IN CLOSING ARGUMENTS AND USE VERBIAGE, "THAT IS WHY IT MATTERS," THE PROSECUTOR MUST BE TAKEN AT HER WORD AND THE STATEMENT OF, "WHY IT MATTERS," MUST BE MATERIAL.

The Eleventh Circuit contends materiality is not significant in the Giglio context without suppression. However, the Eleventh Circuit does not address prosecutors' closing arguments which layout the significance of trial fraud in this case. Prosecutors' closing statements specify the importance in law of a lender's FDIC insured status. Prosecutors lay out their case in relation to counts and specifically state, that is why it matters the lender, Green Point Mortgage, is FDIC insured. Going further,the prosecutor explains how the FDIC insured status makes the lender a financial institution under the law and how that addresses the complicated elements of the law for the charged counts.

Mayer subsequently filed a Rule 33(b)(1) motion providing proof the lender wasn't FDIC insured. The Eleventh Circuit claims the lack of the FDIC insurance is irrelevant to the jury's findings, claiming it was not new evidence because it was discoverable at trial, whether material or not, and therefore not exculpatory.

This Court set forth the appropriate framework for testing the materiality of false statements in United States v. Gaudin, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995):

> Deciding whether a staement is "material" requires the determination of at least two subsidiary questions of purely historical fact: (a) "what

statement was made?" and (b) "what decision was the agency trying to make?" The ultimate question: (c) "whether the statement was material to the decision" requires applying the legal standard of materiality... to these historical facts.Id. at 512. A material statement must have "'a natural tendency to influence, or [be] capable of influencing the decision [2012 U.S. App. LEXIS 18] of the decisionmaking body to which it was addressed.'" Id. at 509 (quoting Kungys v. United States, 485 U.S. 759, 770, 108 S. Ct. 1537, 99 L. Ed. 2d 839 (1988)) (emphasis added and alteration in original).

AUSA Riedel made clear in her closing statement that GPM was FDIC insured and that it mattered because she claimed it made GPM a financial institution. The jury instruction (Doc. 94 at 14) required the jury to agree the Government has proved the "affect" of a financial institution.

This Court should grant this petition to consider whether when prosecutor's closing arguments specify "why it matters" if 1) they must be taken at their word and 2) if "why it matters" is material to jurisdiction or otherwise, then proof of the material issue being false must require a conviction to be overturned.

REASONS FOR GRANTING THE WRIT

ARGUMENT VI

CONTRARY TO THE ELEVENTH CIRCUIT'S OPINION, A DISTRICT COURT CANNOT IGNORE FEDERAL RULES OF PROCEDURE AND EVIDENCE, STRIKE INCONVENIENT MOTIONS FROM THE RECORD, WITHOUT PROVIDING A THOUGHTFUL RESPONSE, AND WHEN PRESENTED WITH ALLEGATIONS OF PROSECUTORIAL MISCONDUCT THROUGH FRAUD TO ASSERT JURISDICTION, THE COURT MUST BE COMPELLED TO LOOK PAST THE MERE CLOTHES OF A MOTION BY A PRO SE LITIGANT TO SEEK TRUTH.

Mayer filed a joint motion for reconsideration of the district court's denial of his motion, sanctioned under Fed. Rule of Crim. Proc. 33(b)(1), and for judicial notice citing Federal Rule of Evidentiary Procedure 201(c)(2). The district court had denied Mayer's motion for a new trial claiming the issue of what was new evidence was unclear. Mayer's notice of judicial facts would have made any confusion as to new evidence crystal clear.

While Mayer's motion for judicial notice and rehearing was pending, Mayer filed a second motion in the district court to supplement his earlier filed motion. While both motions were pending, Mayer filed his notice of appeal. Citing the notice of appeal, the district court erroneously claimed it no longer had jurisdiction, denied Mayer's pending motions, and ordered them struck from the record. Mayer asked the district court to reverse its ruling and restore his motions to the record on the basis the Court misunderstood the rules of procedure. Fed. Rule of App. Proc. 4(b)(3)(B) states:

> "A notice of appeal filed after the court announces a decision, sentence, or order - but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) - becomes effective upon the later of the following:
>
> (i) the entry of the order disposing of the last such remaining motion; or
>
> (ii) the entry of the judgment of conviction.

Fed. Rule of App. Proc. 4(b)(3)(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion."

In response, Mayer appealed and initially filed a writ of mandamus seeking either the appellate directing the district court to comply with Mayer's F.R.E.P. 201(c)(2) motion, or in the alternative, for the appellate court to provide the adjudication of facts Mayer had requested. The Court denied Mayer's petition and subsequently addressed the district court's denial of Mayer's motion as unnecessary in that the requested adjudication was meaningless. The Court opinion completely ignores the striking of Mayer's motions.

The Eleventh Circuit Court of Appeals should have directed the district court to provide Mayer with the relief he sought, or in the alternative, provided Mayer with the judicial notice as requested.

"Rule 201. Judicial Notice of Adjudicative Facts
(1) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
(c) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
(d) Timing. The court may take judicial notice at any stage of the proceeding."

The district court's compliance with the Federal Rules of Criminal Procedure is a question of law subject to de novo review. See United States v. Medina, 161 F. 3d 867, 874 (5th Cir. 1998). See, e.g., Rolen v. City of Brownfield, 182 F. App'x 362, 365 (5th Cir. 2006) (requiring compliance with Federal Rules of Civil Procedure); United States v. Wilkes, 20 F. 3d 651, 653 (5th Cir. 1994) (requiring compliance with the Federal Rules of Appellate Procedure).

The taking of judicial notice under Fed. R. Evid. Proc. 201(c)(2) is specifically designed to preclude a party from introducing contrary evidence in a case. See United States v. Jones, 29 F. 3d 1549, 1553 (11th Cir. 1994) which states, "[A] party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed." Fed. R. Evid. 201(e). "[T]he effect of taking judicial notice under Rule 201 is to preclude a party from introducing contrary evidence and in effect, directing a verdict against [the contrary party] as to the fact noticed."

Mayer met the criteria for seeking a writ of Mandamus and contrary to the Eleventh Circuit's perfunctory denial, Mayer's petition should have been granted.

The All Writs Act permits the Appellate Court to issue a writ of mandamus to compel a [855 F. 3d 1263] district court to perform a particular duty within its jurisdiction. 28 U.S.C. § 1651(a); see also Fed. R. App. Proc. 21; Cheney v. U.S. Dist. Court for D.C., 542 U.S. 367, 380, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004). The writ is a "'drastic and extraordinary' remedy," Cheney, 542 U.S. at 380 (citations omitted), that is available only "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so," Allied Chem. Corp. v. Daiflon,

Inc., 449 U.S. 33, 35, 101 S. Ct. 188, 66 L. Ed. 2d 193 (1980). Mayer's right to the issuance of the writ of mandamus was necessarily clear and indisputable because the District Court clearly abused its discretion.

The District Court may not stirke motions from the record without cause and particularly when such motions highlight fraud on the court.

The District Court's decision to arbitrarily strike Mayer's motions filed under Docket No's 224 and 231 cannot be explained as the fair administration of justice. The inconvenient reality that these motions provided proof of a premeditated fraud on the Court to falsely assert jurisdiction maybe the inconvenient offspring of an ill conceived alliance but none the less the motions were entirely valid.

The abuse of discretion by the District Court and the subsequent willful blindness by the Eleventh Circuit Court of Appeals in ignoring the issue is a flagrant disregard of Mayer's due process rights under the Fifth and Fourteenth Amendment. The Court struck Mayer's motions without explanation, without reason and in contradiction to Mayer's rights to the fair administration of justice.

A Court must look past the mere clothes of a motion from a pro se litigant and examine the substantive nature of the issue particularly when issues of jurisdiction and fraud upon the Court are raised however, inartfully plead.

This Court unanimously held in Estelle v. Gamble, 429 U.S. 97 (1976) and in Haines v. Kerner, 404 U.S. 519, 30 L. Ed. 2d. 652, 92 S. Ct. 594 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears" "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id., at 520-521, 30 L. Ed. 2d. 652, 92 S. Ct. 594, quoting Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d. 80, 78 S. Ct. 99 (1957). The Eleventh Circuit itself has stated: "Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." Tannenbaum v. United States, 148 F. 3d 1262, 1263 (11th Cir. 1998). These include pro se appellate briefs. Harris v. United Auto Ins. Group, Inc., 579 F. 3d 1227, 1231 n.2 (11th Cir. 2009). See also United States v. Jordon, 915 F. 2d 622, 624-24 (11th Cir. 1990).

Mayer has followed Federal Rules of Crim. and Appellate procedure. The District Court in not only denying Mayer relief by the incorrect interpretation of Fed. Rules of Appellate Proc. further obscured the blatant issue of a Giglio violation by striking the motions from the record.

The District Court's order denying Mayer relief alternates between an idea of not having jurisdiction to having jurisdiction but does not address a reason for striking Mayer's motion.

In Leggett v. Officer Glady's Lafayette, (5th Cir. 2015) U.S. Court of Appeals No. 14-10247 the Court denied an abuse of discretion claim in the striking of a motion for failure to provide a certificate of service citing Victor F. v. Pasedena Indep. Sch. Dist., 793 F. 2d 633, 635 (5th Cir. 1986), and United States v. Jett, 48 F. 3d 530 (5th Cir. 1995). However Mayer complied with the rules of service and Mayer's motions were timely filed. The Appellate has offered no reasoned response to its denial of Mayer's petition for a writ of Mandamus or in the alternative Mayer's motion for judicial notice.

The District Court's response in striking Mayer's motion followed by the Appellate's one word response of "denial" effectively denied Mayer his due process rights, See Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990)("The due process clause also encompasses ... a guarantee of fair procedure."); Joint Anti-Facist Refugee Comm. v. McGrath, 341 U.S. 123, 164, 71 S. Ct. 624, 95 L. Ed. 817 (1951)(Frankfurter, J., concurring)(explaining that due process requires that procedures provided must "not [be] a sham or pretence" (internal quotation marks omitted).

The Appellate Court should have looked closer at Mayer's petition, See Binford v. United States, 436 F. 3d 1252, 1256 n.7 (10th Cir. 2006).

CONCLUSION

For the aformentioned reasons stated herein, Petitioner Stephen Mayer proceeding pro se respectfully prays this Court issues a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted this 30th day of May, 2019 in accordance with 28 U.S.C. §1746 by depositing a copy of this petition and appendix in the prison mail box system with pre-paid postage for onward transmission via the USPS.

By: _____

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