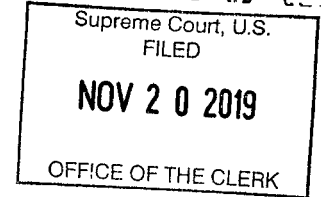


case no. 19-6888

IN THE SUPREME COURT OF THE  
UNITED STATES



pro se. DONALD BRIAN WINBERG  
petitioner

jointly with

pro se. KARLIEN RICHEL WINBERG  
petitioner

vs.

UNITED STATES GOVERNMENT  
respondant

Appeal by defendant's:  
judgment and sentence was imposed  
in violation of the law.

(28 U.S.C. § 2255)

ON JOINT PETITION  
FOR WRIT FOR CERTIORARI TO THE TENTH DISTRICT  
COURT OF APPEALS FOR THE STATE OF  
COLORADO

pro se. DONALD BRIAN WINBERG 40433-013  
FEDERAL PRISON CAMP  
P.O. BOX 6000  
SHARIDAN OR 97378

with

pro se. KARLIEN RICHEL WINBERG 40434-013  
FEDERAL PRISON CAMP  
P.O. BOX 2149  
BRYAN TX 77805

husband and wife

QUESTION:  
PRESENTED FOR REVIEW

1. Is a farmer committing "fraud" (18 U.S.C. §1343) when he sells his "future goods" crop (UCC §2-105) on a "future goods" contract, and accepts a deposit, He plants the crop, but the crop dies in a state wide drought., and there is only 10% of the crop supplied? Can the government indict the farmer and claim that this was a scheme intended to defraud with fraudulent pretenses, imprison the farmer and force their children into adoption?

18 U.S.C. §1343 mandates that this is illegal.

UCC §2-105 mandates that this practice is not illegal.

2. Is prosecutorial misconduct achieved and warrant §2255 denial/reversal, When the prosecuting and arresting FBI officer's investigation verifiably arose from an ex-congressman's sinister plan to terminate his \$2,000,000 civil judgment through corruption and political influence, got this same FBI agent to indict and imprison the judgments beneficiaries?

3. Is it prosecutorial misconduct in the Tenth circuit, when the FBI arranges suggestive circumstances leading to the witnesses identifying particular person as perpetrating a crime. (18 U.S.C. §1343)

4. Is it ineffective assistance of counsel when counsel's economic power compels the defendant to sign a plea agreement involuntarily, is §2255 reversal warranted?

LIST OF PARTIES

pro se DONALD BRIAN WINBERG 40433-013  
FEDERAL PRISON CAMP  
P.O. BOX 6000  
SHARIDAN OR 97378

jointly with

pro se KARLIEN RICHEL WINBERG 40434-013  
FEDERAL PRISON CAMP  
P.O. BOX 2149  
BYRON TX 77805  
(husband and wife)

v

UNITED STATES GOVERNMENT for the  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT  
BYRON WHITE UNITED STATES COURTHOUSE  
1823 STOUT STREET  
DENVER CO 80257

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The conviction of the Petitioner's was in the United States Circuit Court for the Tenth District of Colorado, was not reported, and is not included in this petition, as the Petitioner's do not have possession of this document. and is not in the appendix. \*

The original conviction of the Petitioner's was appealed to the United States Appeals Court for the Tenth District of Colorado, on Direct appeal, which affirmed the conviction in all respects in an opinion, and was reported, but also not in the appendix. \* Can be found for, of whom are filing a joining petition,

DONALD BRIAN WINBERG @ 646 Fed. Appx. 632 (2016) U.S. App. LEXIS 8468, D Colo. Tenth Circuit.

KARLIEN RICHEL WINBERG @ 667 Fed.Appx. 707 (2016) U.S. App. LEXIS 13277, D Colo. Tenth Circuit.

The decision of the United States District Court for the Tenth District of Colorado for the Petitioner's section §2255 motion is not reported, but is included forthwith at page # 1 of the appendix.

The opinion of the Court of Appeals is not reported, but is included forthwith at page # 1 of the appendix.

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\* The Petitioner's are Federal inmate's in prison. Their convictions order and all of their legal papers to this point were confiscated by prison transference officials. The United States Court of Appeals refused to furnish copies or transcripts to the Winberg's after a formal request was timely filed for. The refusal letter from the Court can be found in the Appendix at page #

A pro se litigant in prison should not be held to a rule that is outside their control to fulfill. see: Federal Rules of Civil Procedure Rule 8, and see: Hanes v Kerner 404 U.S. 519, 21 (1972)

## JURISDICTION STATEMENT

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on September 4, 2019. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. §1257, and the Supremacy clause found under Article VI of the United States Constitution,

## CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The fifth and Fourteenth Amendments of the United States Constitution provides: "Protection of life, liberty, and property"

The Sixth Amendment of the United States Constituion provides: "Protections of the rights of the accused"

The Statute under which the Petitioner's were prosecuted was 18 U.S.C. §1349, Conspiracy to commit wire fraud in conjunction with 18 U.S.C. §1343.

The Statute under which the Petitioner's sought post conviction relief was 28 U.S.C. §2255.

The Winberg's are in federal custody seeking remedies included in their motions and petitions.

## FEDERAL CUSTODY: REMIDIES ON MOTION ATTACKING SENTANCE

The Winberg's are prisoners in custody under sentence of a court established by Congress and claim the right to be released upon grounds that the plea, incarceration, judgment, and sentence was imposed in violation of the Constitution and the laws of the United States, and is subject to collateral attack, on petition. A prisoner may move the court which imposed the sentence to vacate, set aside, or correct the sentence.



"Unless the motion and records of the case conclusively show that the prisoner is entitled to no relief, The court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing therein, determine the issues and make findings of the fact and conclusions of laws with respect thereto"  
"If the court finds that the judgment was rendered without jurisdiction, or that the sentence was imposed was not authorized by law or otherwise open to collateral attack or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, The court shall vacate and set aside and shall discharge the prisoner or resentence him/her or grant a new trial or correct the sentence as may appear appropriate." §2255.

#### STATEMENT OF THE CASE

Winberg's plead guilty to two counts of conspiracy to commit wire fraud. (Doc 110) \* \*\* Winberg's were indicted under 18 U.S.C. §1349 and 18 U.S.C. §1343. Winberg's were sentenced to 87 months imprisonment. (Doc 145) \* \*\* Winberg's filed a timely §2255 motion with the district court. A primary (Doc 214), and an amended §2255 motion as directed by the court also timely. (Doc 216). Winberg's motion was replied to by the government. (Doc 220). Winberg also filed a rightfully allowed memorandum of law in support of §2255 motion. (Doc 228) The court denied

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\* These papers were also confiscated by prison transfer officials. and were also not supplied by the United States Court of Appeals when formally requested for. The refusal letter is included in the appendix at page #      from the court. Violating Bounds v Smith.

\*\* Using Donald's docketing sequence of record.

Winberg's §2255 motion (Doc 236) and entered a final judgment (Doc 240). Winberg's filed a timely notice of Appeal. (Doc 242) The Winberg's made all of these filings in forma pauperis. The Winberg's filed jointly as the Winberg's are husband and wife asking for identical relief from the court. The Winberg's filed an Appellant's combined opening brief and application for a certificate of appealability. (Doc \*) are not included in the appendix page # --- . The appeals court denied the Winberg's appeal and entered an Order denying Certificate of Appealability, and is included in the appendix page # . The Winberg's are now filing for a Writ for certiorari, jointly.

#### RELEVANT FACTS CONCERNING THE CASE

The Winberg's indictment and superceding indictment included 18 counts of wire fraud and two counts of conspiracy to commit wire fraud. ( of which the Winberg's are in dispute of.) The indictment claims that "Winberg solicited, across multiple states and over several years, numerous large-scale purchases or sales of hay, corn and other crops without intending to pay or deliver". In 2015 the Winberg's plead guilty to two charges of conspiracy to commit wire fraud in exchange for dismissal of the other charges. The Winberg's each were sentenced to 87 months imprisonment and ordered to pay \$1.5 million in restitution.

The Winberg's filed a §2255 motion with the court, \* claiming their plea agreement was subject to collateral attack. The Winberg's §2255 made five ~~primary~~ claims: (1) Selective prosecution resulting in a miscarriage of justice. (2) Plea was a product of coercion arising

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\* The Document numbers previously to Doc 214 were the ones confiscated. and are not included in the appendix, As previously mentioned. There are no Doc # supplied by the Appeals Court.

from ineffective assistance of counsel. (3) Ineffective assistance of counsel. (4) ~~C~~Brady violations (5) ~~C~~Crawford violations.

"SUBSTANTIAL SHOWING" WHY THE LOWER COURT IS WRONG

The District and Appeals court contemporaneously dismissed and ignored all of Winberg's §2255 claims, arguing only that Winberg's plea agreement included a binding waiver which foreclosed on any and all of Winberg's claims and Appeals.

Winberg's plea agreement specifically states in verbatim "This waiver provision, however, will not prevent the defendant's from seeking relief otherwise available if... (2) There is a claim that the defendant's were denied the effective assistance of counsel" and "(3) There is a claim of prosecutorial misconduct.

The plea agreement states only that the Winberg's need only make a claim in which they have formally made. The government made no further concessions to these facts in the plea agreement.

The government also claims that the plea hearing colloquy included questions in open court that the government uses to enforce its conclusions, In dismissing Winberg's §2255 motion.

The Winberg's argue that this was before Winberg's got to prison where they were introduced to a prison law library where they were able to study finally for themselves the underlying laws and principles of the laws and the indictment verbiage, the nature of the charges and the responsibilities of the courts and the defendant's attorney. The Winberg's have discovered that their constitutional rights have been violated by ineffective assistance of counsel, prosecutorial misconduct, and are in prison while they can prove actual innocence. Because accepting responsibility as the Winberg's attorney told them to do, Is not the same as actual guilt to a crime, Which is required ~~for a~~

for the crime to have been committed. "That wrongdoing must be conscious to be criminal" see: Elonis v United States, 192 LED2D 1 (2015), criminal law §6.

Both courts made the defense that the Winberg's did not make a substantial showing of the denial of a constitutional right" 28 U.S.C. §2253 (c)(2), "in order to obtain a Certificate of Appealability," 28 U.S.C. §2253 (c)(1)(B). "That a reasonable jurist could debate whether... The Petitioner's claims should have been resolved in a different manner" and that the issues presented were adequate to deserve encouragement to proceed further" see Slack v McDaniel 529 U.S. 473, 484 (2000). The court neglects the fact that "To obtain a certificate does not require a showing that the appeal will succeed, and Federal Courts of Appeals should not demonstrate entitlement to relief" see: Welch v United States 136 S.Ct. 1257, 194 LED2D 387.

The Winberg's claim that they are making a showing and even a substantial showing of a violation of a constitutional right through their motions and petitions, including ineffective assistance of counsel, actual innocence, that specific criminal intent is not present, prosecutorial misconduct, and that the Winberg's were led into a plea with a plea waiver without properly being counseled on the merits of the indictment, wire fraud statutes, and criminal precedent. Which are all constitutional rights which are protected and yet have been violated and denied by the Court of Appeals.

The Winberg's intend to show that the Tenth circuit Court of Appeals "has entered a decision in conflict of Appeals on the same important matter that has already been decided in other Appeals courts including the Supreme Court" see: Rules of the Supreme Court Rule 10.1 (c). "And is of national importance" because the court has abused its discretion in denying the Petitioner's.

--INTRODUCTION--  
INEFFECTIVE ASSISTANCE OF COUNSEL

When the Winberg's were indicted we had to look up Indictment and wire fraud in the dictionary. We knew absolutely nothing about criminal law. We had only one person that we could talk to and that was our attorney. We wanted to ask him, how could this happen? What does it mean to be charged with a crime? and, what defenses are required to defend against it? We did not have much money and did not know how we could afford one. The couple of visits that Donald had with him (Karlien had no visit with any attorney) in the detention center, all Mr Sullivan (our attorney) wanted to talk about was billing issues of how he was to be paid, and nothing about the case before us, He only wanted to leave shortly after he got there claiming he had other appointments he had to get to. what he did tell us was to "accept responsibility and to not upset the court!" We did not know what else to do. We were scared, we were traumatized, atized, overwhelmed, and lost in a world we did not understand. We learned that our attorney abandoned us to the prosecution, then went to lunch. He failed to do the due diligence that a complex wire fraud case demanded. We found ourselves accepting responsibility for the loss, off which we are not arguing, this fact, but we are also going to prison with our children being forced into adoption. without being able to say a word in our defense or asking any attorney if we were guilty or not of our true conduct. Our attorney never asked, and we never was able to tell him what happened.

Winberg's attorney failed to do his due diligence as required; Winberg was forced to be their own apprenticeship into the statute 18 U.S.C. §1343, and too words like "intent" which is required for the accused to be guilty or convicted of this crime" see: 97 LED 2d 863- (wire) mail fraud. Winberg took his acquired understanding of how the

laws are interpreted by the United States Code and the United States Supreme court, and challenged these laws against Winberg's first hand knowledge, actual actions, actual accounts and factual historically correct occurrences. When Winberg was done with this study, Winberg discovered many violations of the law. Winberg took his conclusions and filed a 28 U.S.C. §2255 motion, claiming ineffective assistance of counsel, and prosecutorial misconduct, claiming that the Winberg's are innocent of the accusations asserted in the indictment and that their constitutional rights were violated. Winberg's newly discovered evidence shows and proves that Winberg's attorneys advice was clearly wrong, and caused the Winberg's to be prejudiced when their evidence clearly and convincingly shows that there was a constitutional error that if it did not occur the Winberg's would not have been convicted. see; Cause and Prejudice Rule: 120 L ED 2d 991.

#### HISTORY: count 1

Don grew up on his Fathers and Uncles large commercial farms and dairies, growing, buying, selling and transporting farm crops. Don started participating on the farm at 10 years old. When Don entered into a contract with Faucette and Pratt, (the indictments count 1 victims) Don was forty years old, by this time Don had been in the farming, growing, buying, selling and transportation of farm crops for over 20 years. In 2011.

Winberg obtained approximately 3200 acres of farmland in Reeves County Texas. Don signed a contract to purchase 1000 acres from Felt. Rented 1000 acres from Denny and 420 acres from Shiflet also under contract. Winberg planted approximately 1650 acres of alfalfa and corn to fulfill his contract with Faucette and Pratt. Faucette and Pratt advance Winberg money for the production of the

alfalfa and corn crops to be grown on these farms with the intention of these crops grown to be given to Faucette and Pratt in exchange. Winberg has receipts for 110% of the money that Faucette and Pratt gave to the Winberg's in the form of fuel, water, power, equipment, labor, land, and seed, equal to the amount issued of its issuer spent in the intention intended of its issuer and that is for the production of alfalfa and corn. In 2012.

Other records of the existence of this crop is filed in the Reeves County and Pecos County USDA offices in Texas. and professional personnel that all confirms that Winberg was farming in Texas.

#### DROUGHT

The Winberg's traded their blood, sweat, tears and all of their money and effort into the production of this crop. The hardest thing to do is to tell his contractees that there is no crop to give them, that it died from a lack of water in a drought. The frustration, humiliation, and disappointment, can not be described when all of your dreams and promises are destroyed. The Question arises, How do I pay these gentlemen back? How am I going to support my family? and What am I going to do now that I am broke? We could not pay rent on our house. We were forced to move into a garage for shelter. Selling tools for food, electricity and cheap rent. Does this sound like the life style of one who took money without the intention of paying it back, living in a garage with limited food. The state of Texas confirmed that this was a catastrophic drought as well as the National weather Service, USDA, and the Federal crop Insurance company. Also FBI agent Dalstrum thought that it was a good strategy to have the victims in court tell the judge that the Winberg's

should lose their parental rights to their children because the Winberg's had their children living in a garage. I challenge any of them to do better in the same condition. It's horrible.

### § ACTUAL INNOCENCE

Should farmers go to prison for wire fraud because their crops die in a multi-state catastrophic drought. (explained in 7 U.S.F.R. §402) Because they advertised and represented prospective farm crops that they intended to grow and supply on the internet and used the telephone system. Because of this advertising and loss of crop caused the Winberg's to fail to return the money advanced by (Faucette and Pratt) and or a farm crop, they should be charged and incarcerated? It is not a misrepresentation to claim that you can produce farm crops when you can produce them, when they die in a drought? Is this an intention to defraud? The Supreme Court held that " anything that counts as "fraud" and is done with wrongful intent is "actual fraud" see; Husky v Ritz 136 S.Ct. 1581, and Neal v Clark 95 U.S. 704, 24 L. ED 2d 586. "The Supreme Court expressly" held that a scheme or artifice to defraud is a necessary element of mail fraud. 18 U.S.C.S. §1341" see: [97 L. ED 2d 863]. 18 U.S.C. §1341 provisions]. "The absence of specific intent to defraud is a complete defense to a charge of mail fraud" see: United States v Dunn 961 F.2d (10th cir 1992). and "Federal mail and wire fraud claims require specific intent to defraud" see: Wilson v Meeks 98 F.2d. 1247 (10th cir 1996). Having your crop die in a drought is not a scheme to defraud! When The Winberg's intent was to produce the best crop of alfalfa and corn that they could. If indicting farmers for wire fraud is the new procedure in Colorado, then it won't be long before every farmer in America is



criminally charged and are sent to prison because all farmers have fallen victim to a loss of crop potential because of drought conditions. Than at this time crop insurance companies can also be charged as running a crime syndicate.

"The Supreme Court concluded that the Frazier-Lemke Act of 1934 was enacted as an emergency measure by Congress to aid debtor farmers and ~~and~~ was intended by congress to deprive State Courts of the power and jurisdiction to continue or maintain, in any manner, foreclosure proceedings against debtor farmers" [163 L ED 2d 1241].

"The Federal Crop Insurance Corporation is a government owned corporation created as an agent within the Department of Agriculture by the Federal Crop Insurance act of 1938, 47 U.S.C. §1503." "It's purpose is to improve economic stability of agriculture through a sound system of crop insurance" 7 U.S.C. §1502. The FCIC is empowered "To insure producers of agriculture commodities against losses to their commodities from a variety of natural hazards;" (such as drought)". This act was "inacted to protect farmers from crop losses," crop losses like the one the Winberg's experienced. If Congress intended to protect farmers, Why is Colorado incarcerating these same farmers? By accusing them of committing wire fraud simply because their crop ~~crop~~ died and they pre-advertised it on the internet.

The Supreme Court held in United States v Remund 330 U.S. 539, 91 L ED 1082. "That Federal agriculture legislation's purpose was for emergency food and crop loans made by the Farm Credit Administration under the authority of the Federal Crop Insurance act, is to give releif to distressed farmers." "The prime purpose of these acts was restore the credit of the farmers and to give effect to 7 U.S.C. §1501 which," " includes a catastrophic risk protection plan under section 508(B) of that act" Which includes drought losses.

Alfalfa farmers are not eligible for crop insurance because the Federal Crop Insurance Corporation does not have a provision for alfalfa. But ~~that does not mean~~ that does not mean that alfalfa farmers are criminals that need to serve time in prison when they lose their crops and are not insured.

The government claims that the Winberg's "solicited across multi state's numerous large-scale purchases or sales of hay and corn without intending to pay or deliver". In this case Winberg gave their attorney multiple apple boxes containing business records for the proceeding years to this cases forwisen. Records of upto thousands of semi truck and trailer loads of farm crops successfully bought, sold, and transported across this entire country without any fraud. These records and the for mentioned drought is contrary to the accusations of the government. In Kennedy v Commissioner Ric TC 74149 33 coh Tcm 655 (116 TC 255 (1974)) held that " Conviction for crop failure in criminal court was not included as a risk to crop failure"

If Winberg's attorney would have done his due diligence than he would have discovered that a crop loss due to a catastrophic drought is excusable against criminal liability.

The 8th Amendment, [Cruel and Unusual Punishment Clause] of the Constitution states in Triestman v United States 124 F 3d 361 (1997 CA2) " Incarceration of innocent persons violates the 8th Amendment, Therefore, such person must have recourse to the judicial system even where it would appear to bar petition for collateral relief"

#### VICTIMS OF REAL ESTATE FRAUD: FELT

Donald signed a contract with Felt for 1000 acres of farmland in 2011 for the intention of growing a crop of alfalfa and corn on this

property for Faucette and Pratt. Felt represented that he was the owner of this property intending to sell it. About six months later the Winberg's discovered that Felt did not own this farmland that he sold the Winberg's, nor did he have a licence to sell property, that was not his, nor did he have the permission from the rightfull owners of the property to sell, nor did the property owner know that Felt had sold it. The Winberg's had bought stolen property from Felt, unknowingly! The property owner showed up on the property asking, "What are you doing on my property?" Upon an investigation at the records department at the Reeves County Courthouse the Winberg's discovered that this man was telling the truth and that Felt's name was nowhere to be found. Instantly the Winberg's hired an attorney and filed a law suit in San Angelo Texas.

Felt was trying to do some kind of scheme where he could sell the property for more, than buy it for less, to pocket the difference..

Felt (1) Represented that the property was his to sell. (2) He, Induced the Winberg's to enter into a contract. (3) The Winberg's relied upon Felt's representation to be the truth when Winberg entered into the contract. (4) That caused the injury. see: Tex. Bus & Com. code Ann §27.01 (a)(1) (2002). If it was not for Felt's misrepresentation the Winberg's would not have entered into a contract with Felt. The Winberg's would have purchased a property early enough in the season, like the Winberg's did with the Felt farm and would've planted a crop timely, to insure a better result. As was the intention.

Felt's fraud cost the Winberg's approximately \$800,000 in losses. Faucette's and pratt's claim against Winberg is approximately \$900,000. It is easy to see where Faucette's and Pratt's money is, it is in Felt's fraudulent pocket. If the FBI would have followed the money trail they would have discovered that Faucette' and Pratt's

money directly and indirectly went into Felt's bank account, through the Banks transaction system. And yet the Winberg's were indicted and went to prison for this money. Why?! Still to this day Faucette's and Pratt's money is in Felt's pocket. Why?! Still to this day Faucette and pratt do not know that their money is in Felt's pocket.

Felt's attorney understanding that there would possibly be criminal charges accompanying Felt's fraud, when the Winberg's filed the law suit against the two of them in district court, was desperate to settle with the Winberg's and pleaded with Felt to do the same, anything to prevent the criminal charges that accompany real estate fraud. Finally, Felt began to start the settlement process, But, suddenly, Felt changed his mind claiming that "FBI agent Dalstrum had contacted him and changed his mind about settling" with the Winbergs.

FBI agent Dalstrum used his authority and the power of his office to tamper and obstruct Winberg's access to the courts, preventing the Winberg's from recovering these losses from Felt and returning these funds to Faucette and Pratt.

The Fourteenth Amendment, with the Supreme Court Observed that, "One intent of the equal protection clause was that persons within states jurisdiction should have like access to the courts for the protection of their person and property, For prevention and redress of wrongs and the enforcement of contracts." "States are prohibited from denying to any person equal protection of the laws" see: [100 L.ED:2d 947] And yet FBI agent Dalstum denied the Winberg's of these rights. Why?!

The victim want to know where the money is. Dalstrum never told them where the money is or that Felt was wanting to pay it back at one point. Why?!

#### ABUSE OF POWER "SHIFLT"

In 2011-2012 leased 420 acres form Shiflet and planted 220 acres

of alfalfa of which all drought killed except approximately 10%, of which 1/3rd was given to Shiflet for the lease, and the 2/3rds was to be delivered to GD/L in New Mexico which is one of the dairies that gave Faucette money for alfalfa. When Winberg's truck driver was loading this alfalfa to go to GD/L he was arrested by the Reeves County police department, claiming that "FBI agent Dalstrum had instructed them not to let Winberg move any alfalfa out of this county". Winberg's were told "not to go back to the property or they would be arrested for trespassing". Again FBI agent Dalstrum denied Winberg of access to his property, a Fourteenth Amendment violation. WHY?!

If Winberg could have delivered this alfalfa to GD/L it would have seriously demoralized Dalstrum's case against the Winberg's.

This alfalfa was worth approximately \$100,000 if Winberg would have delivered this alfalfa and would have regained the \$800,000 from Felt the total would have been \$900,000, Nearly the full amount that Faucette and Pratt is claiming to have lost.

Why! would FBI Dalstrum intrude into a civil matter?

#### UNJUST ENRICHMENT "FAUCETTE"

GD/L and other dairies in New Mexico in 2012 wanted to go to the authorities complaining about Faucette and the Ponzi scheme that they had uncovered against Faucette. Winberg had given Faucette nearly 30 semi truck and trailer loads of alfalfa bound for these New Mexico dairies but Faucette would reroute the trucks to other locations. GD/L wanted a copy of Winberg's paperwork that showed where these loads were delivered, and when. That is why Winberg's were to deliver the Shiflet alfalfa directly to GD/L personally because GD/L and other dairies had repossessed this money from Faucette's use. The Dairymen claimed that Faucette had collected approximately "\$2,500,000 from GD/L and others with nothing given

back in return."

In this criminal case against the Winberg's, Faucette was awarded appoxamately \$900,000, and in a civil litigation that Faucette filed against Winberg was piggybacked on this criminal case was awarded \$3,000,000, (The amount that the dairymen ... claimed to have given Faucette.) A total of nearly \$4,000,000. None of this money awarded to Faucette belongs to Faucette, it all belongs to the dairy men. If the United States government gives any money to Faucette it will be "money laundered" money, and fraud on the United States Government. The first time that Winberg met Faucette, Faucette claimed to have "a friend that was an FBI agent that protected them from litigations," Is this persons name Dalstrum? He also clears Faucette from civil suits.

The Winberg's attorney should have disqualifed Faucette as a credible witness as multiple people would have claimed that they were defrauded by Faucette, and the fact that Faucette is claiming money that does not belong to him, and has not told the victims or the court who this money actually belongs to.

All of this information was given to the Winberg's attorney, but he refused to do his due diligece and talk to the Winberg's and refused to read Winberg's outline detailing this case. Before

#### HISTORY: COCCOUNT "2" LTD

In 2014 the Winberg's started buying alfalfa from farmers in multiple states and was selling this alfalfa to dairymen in Texas. For the period of six months Winberg bought, sold and transported appoxamately 8,000 tons or 340 semitrucks and trailer loads of alfalfa, worth \$2,000,000 in sales and \$1,800,000 in purchasing and transportation, to 8 different dairy/buyers. LTD started revcieving more alfalfa than they could afford to

pay for, The Winberg's promptly repossessed about half of the alfalfa. The Winberg's were forced to sell this alfalfa on discount to another buyer for a quick sale as the Winberg's were close to being 30 days late on paying their own supplier. The repo sale yielded \$160,000 and LTD was able to pay \$88,000. The Winberg's promptly made an appointment with their bank and had talked to a couple of the suppliers about our intentions of sending them this money, a total of \$238,000.

When the Winberg's arrived at the bank, the bank informed us that "the FBI had been there and that they would be refusing our business."

When the Winberg's were arrested by the FBI the Winberg's handed the FBI \$150,000 and LTD gave the FBI the \$88,000. totaling \$238,000.

LTD still owes the Winberg's and their suppliers \$250,000 for alfalfa that they have not paid for yet. Winberg has signed "Bills of Ladings" from LTD proving they recieved this alfalfa. The suppliers are still owed \$210,000, this \$250,000 would have easily paid the suppliers in full. Plus LTD is liable for the repossession costs, LTD's negligence cost the Winberg's appoxamately \$200,000 in provable losses.

Donald told FBI agent Dalstum in 2015 that LTD still owes all this money and offered to help Dalstrum recover this money for the suppliers. Dalstrum stated that he was going to "double our sentence in prison with these new charges!" And refused the Winberg's offer.

The suppliers at the sentancing hearing told the judge that they "wanted to know where their alfalfa was or the money for it!"

Dalstrum never told the suppliers where their money was, nor did he tell them that Winberg offered to get it for them, Why?!

#### STALLINGS

The Winberg's were awarded a \$2,000,000 judgment against an ex-congressman named Stallings, for title fraud and extortion. (in 2010)

in District court in Idaho. In order to evade this judgment Stallings incorporated his powerful and corrupt friends in the county courthouse to somehow get the judge to sell our judgment on the courthouse front steps. The highest bidder paid \$2500 for our lawsuit than walked into the courthouse and dismissed our judgment. Stallings than had his friends harass and torment the Winberg's with search warrants and false arrests, that were all dismissed and found to have no merit.

The Winberg's relocated to Texas for a while in order to withdraw from Bingham County Idaho's jurisdiction and thier abuse. In which after just a few months our house, shop, and yard full of farm equipment in Idaho was burglarized, with a substantial amount of loss, including titled vehicles. A few months later the County sold our house in a sham of a Sheriff sale, using a civil case that the Winberg's had won. The Winberg's nor the County recovered any of Winberg's stollen property nor did the Winberg's get their house back.

FBI agent Dalstrum showed up in Texas claiming to be from Idaho, and eventually indicted the Winberg's in Colorado, There is direct evidence that Dalstrum spent a conciderable amount of time in Bingham County Idaho, to support Winberg's claims that Dalstrum was included in the retaliation against the Winberg's.

Stallings threatened the Winberg's that he would destroy the Winberg's world if the Winberg's did not dismiss their judgment against him. We lost our house, we lost our freedom, and we lost our children. He done exactly what he said he would do. This is not right!

When the new sheriff was elected some time later, Sheriff Rollens fired most of the staff in the courthouse claiming he was cleaning up corruption.

Nearly all of the officials are Elks Club members,



## ARGUMENT: PROSECUTORIAL MISCONDUCT

In the Winberg's §2255 Winberg's claim prosecutorial misconduct as a right not waived under authority of 28 U.S.C. §2255. 28 U.S.C. §2253 (c)(2) requires a "substantial showing of the denial of a constitutional right". Winberg's prosecutorial misconduct claim is based on the fact that prosecution failed to disclose exculpatory information pertaining to the credibility of its principle witness and investigator. That mainly, Faucette was conducting a Ponzi-scheme and fraud on the court, and Dalstrums investigation is tainted with corruption and racketeering, and the " use of false information in order to obtain a conviction," "a violation of the Fourteenth Amendment and a due process violation, which is not justifiable" see: [40 L ED 886] "Deprivation of due process and fair trial rights based on pretrial prosecutorial misconduct was neither unripe nor moot following Petitioners guilty plea where petitioner may have pleaded guilty because he felt that trial was impossible, as a result of prosecutorial misconduct to obtain a fair trial" see: Powers v Coe (1984 CA@ CONN) 728 F.d 97.

The Winberg's claim that their arrests were done unlawfully, unreasonable, and contrary to the law. "The Fourth Amendment limits the exercise of federal powers" and "guarantees citizens the absolute right to be free from unreasonable searches and seizures carried out by virtue of the federal authorities" see: Bivens v Six unknown Feds. 29 LED@D 619. " An agent acting unconstitutionally in the name of the United States possesses a far greater capacity for harm than an individual exercising no authority other than his own leaves no safety for the citizen." see: Amos v United States 65 LED 654 and Classic v United States 85 LED 1368.

The proceeding 10 pages establish prejudice against the Winberg's

that undermined the integrity of the proceedings as to warrant §2255 relief, requiring an evidentiary hearing based on, see: Dansker v United States 54 LEd2d 805.

"For a successful claim of "Prosecutorial Misconduct" one must prove an improper or illegal act involving an attempt to avoid required disclosure or to persuade a jury or court to wrongly convict a defendant to assess an unjustified punishment". See: [47 LEd2d 975] (Due Process). Winberg's history and specifics formentioned show multiple prosecutorial misconduct and due process violations of (1) a preconceived verdict was disclosed before the inquiry. (2) Prosecution based its investigation on partisan purposes instead of evidence. (3) Prosecution tampered with evidence by inserting themselves, into illegally changing the outcome, and corruptively changing the perception of the witnesses. (4) and obstructed justice of legal proceedings according to established rules and principles for the protection and enforcement of private rights.

In Maine v Moulton (1985) 88 LEd2d 481, The Supreme court held that "whenever law-enforcement personnel asserts an alternative, legitimate reason for their investigation invites abuse by law enforcement" In Moore v Illinois (1977) 54 LEd2d 424 The Supreme Court held that, "Due process protects the accused against the unreliability of tainted evidence obtained through unnecessarily suggestive procedures"; and; "Recognized that due process is violated when law enforcement arranges suggestive circumstances leading to witness identifying particular person as perpetrating a crime"; see: Perry v New Hampshire (2012) 181 LEd2d 694. 42 U.S.C. §1981, "Equal rights under the law (c) are protected against impairment under color of the law" The Supreme court held that "due process is violated when the victim would identify the defendant whether or not he committed the crime, when law enforcement repeatedly claims to the victim, This is your man" see; Foster v

California 22 ELD2d 402 (1969). and the Supreme court held that knowledge from an unreasonable search cannot subsequently be used as a basis for furnishing probable cause" see: [28 LED2d 978], (Probable cause).

For a successful claim of "Selective Prosecution," at least two elements must be demonstrated (1) persons similarly situated have not been prosecuted, and (2) decision to prosecute was intended to prevent an exercise of a fundamental right" see: United States v Schoolcraft 107 LED2d 543 (1989). These elements are met when Winberg's were charged with a crime of fraud, stating that Winberg did not "intend to pay or deliver a farm crop," when in fact it died in a drought and can prove that they are victims of real estate fraud when no other farmers who experienced a drought or fell victim of real estate fraud were criminally indicted, and by obstructing Winberg's access to the courts with Felt and LTD.

"To establish "Prosecutorial Vindictiveness" defendant must show that prosecutor acted animus toward the defendant and that defendant would not have been prosecuted but for that animus," see: United States v Johnson 540 U.S. 897 (2001) Animus is proven with the obstruction in Felts case, in stopping Winberg's delivery of the Shiflet alfalfa, in preventing Winberg's from paying their suppliers than misleading them as to Winberg's true intentions, plus multiple more demonstrations.

To establish "Retaliatory Prosecution" one must show "an actual connection between (1) the retaliatory animus and (2) a subsequent injury. see: Bivens v Six unknown Agent 29 LED2d 619, The animus is Winberg's law suit against Stallings created the ill will and the Winberg's were sent to prison as a result of this animus.

"Prosecutorial Misconduct" has at least three elements, selective, vindictive and retaliatory, see [47 LED2d 975] (Due Process).

Proof of selective, vindictive and prosecutorial misconduct is

sufficiency for dismissal of an indictment" see: [166 LEEd2d 0].  
Winberg's claims and arguments meet all Supreme court elements that  
warrant §2255 relief.

#### INEFFECTIVE ASSISTANCE OF COUNSEL: ARGUMENT

Winberg paid Liberty Law Group \$40,000 for criminal attorney representation for both Don and Karlien for this case. This price included all hearings, trials, and sentencing, by contract signed. Liberty Law Group we found out after we were arrested was from we think Illinois and they contracted with Sullivan and Worsching in Colorado to represent the Winberg's. We did not know this. The Supreme Court held that "a conflict of interest inheres whenever an accused is represented by attorney who was hired and paid by a third party" see: [152 LED2d 1121] The third party in this context is Liberty Law. The Winberg's are not educated as to how much money federal attorney's are to be compensated, and did not know if \$40,000 was adequate. When the Winberg's were arrested they handed all of the money that they had to the FBI.

The Supreme Court held in Strickland v Washington (1984) 80 LED2d 674. "To show deficient performance of his counsel, defendant must establish, (1) That counsel's representation fell below objective standards of reasonableness, and (2) There is a reasonable probability that trial results would have been different" (A) Sullivan was distracted from Winberg's case, was more concerned with more important duties; Such as "how he was going to get paid," "How much he was to be paid," and that his next client is "waiting in the next visitation cell," "our hour is over" (B) Sullivan refused to talk to Winberg about any specifics to the case and refused to read any of Winberg's hand written outlines detailing the specifics of the case, failing to formulate any strategy

balanced against tactic's as required in "Strickland"

Sullivan refused Winberg his asked for investigator because Sullivan refused to do any kind of investigatorial work at all for the reasons of compansation to himself and others that could be involved stating that "you can not afford an investgater", which also means that the Winberg's could not afford Sullivan as an investigator niether, violating 18 U.S.C. §3006A "(Right of Indigent Defendant)" "To aid in obtaining services of investigation or expert" (6 ALR Fed 1007); and Winberg's due process rights afforded under the Fourth Amendment of the Constitution.

The question arises, Is what Sullivan did Attorney tactics or stratagy? If Sulivans stratagy was to do as little as possible in this case than Sulivans tactic worked for the benifit of Sullivan. But for the Winberg's an investigator would have been benificial to the extent of, ... (a) did Winberg's conduct represent fraud, (b) do the victims recognize what had occured as fraud, (c) was there affidavids coerced by the FBI. (d) to obtain affidavids from Faucettes ponzi-scheme victims. (e) collecting Felt's opinion as to why he refused to settle with the Winberg's after Dalstrum talked to him (f) ask Shiflet why he would risk a law suit from the Winberg's by refusing Winberg's their 2/3rds alfalfa crop, and what Dalstrum said to him to accomplish this? (g) Winberg's evidense to Winberg's drought defense representing, Winberg actually planted these crops and the severity of the drought to others similarly situated farmers. (h) to collect similarly situated victims of LTD's failures to pay other supplyer. (i) The coalation between Dalstrum and Stallings, the actual roots of the investigation and any and all malfeasance (j) official misconduct (k) color of law and/or office violations.

(1) and any and all impeachment evidence concerning Faucatte, and Dalstrum as credible witnesses. (m). plus: there is the likelyhood that an investigator would have uncovered other unforeseen evidence collected that neither Winberg or Sullivan had thought of. By Sullivan refusing to talk to the Winberg's or to read Winberg's outline, Sullivan made the conscientious discision to be the judge and jury of Winberg without a trial. Sullivan spent no time with Karlien, Worsching spent 15 minutes with Karlien before change of plea hearing. The Supreme court held that "The court has a duty to investigate any such conflict on the accused's right to effective assistance of counsel under the Federal Constitutions Sixth Amendment" see [152 ELD2d 1121](Counsel Conflict). Winberg's ineffective assistance of counsel claims are justified because (1)"counsel's performance was deficient, and (2) that deficiency prejudiced the Winberg's", see: Woods v Donald (2015) 191 LED2d 464. Sullivan and Worsching failed to (1)"actively represent the Winberg's and (2) that created the conflict, and failure of counsel's performance" Mickens v Taylor (2002) 152 ELD 2d 291.

An investigator would have had the superior powers to find exculpatory evidence pertinent to Winberg's defense, By Sullivan denying Winberg his asked for investigator and telling Winberg that he could not have one or get one, obstructed Winberg's due process rights. to effective counsel."Failure by accused's counsel to provide advice may form basis of a claim of ineffective assistance of counsel" see: Libretti v United States (1995) 133 ELD2d 271. In Yarborough v Gentry (2003) 157 ELD2d 1 (1)"Counsels actings were not supported by reasonable strategy, and (2) Error was prejudicial," and is included in Roe v Flores- Ortega (2000).145 ELD2d 985. and Lockhart v Fretwell (1993) 112 ELD2d 180.

The Supreme Court held in Bell v Cone (2002) that "counsel  
- 160 LED2d 881-  
is responsible to subject prosecutions case to meaningful adversal  
testing"; Winbergs asks the court, How can Sullivan had subjected Winberg's  
case to meaningful adversal testing when Sullivan would not talk about  
the Winberg's case, or read their case outline? The Supreme court  
held in Cronic v. United States 80 ELD2d 657, "That the five factors  
that are relevant in evaluating a lawyer's effectiveness is (1) Time  
afforded counsel for investigation and preperation, (2) The experiance  
of counsel, (3) Gravity of the charge, (4) Complexity of possible defe-  
nse, (5), Accessibility of Witness to counsel." Winberg's counsel  
applied no time to any investigation and only prepared for a plea  
of guilty regarless of the particulars, Sullivan claimed to only  
have worked on one other fraud case, that also resulted in a plea deal.  
Winberg's charge gravitated accross Idaho, To Texas some 1500 miles  
apart which included drought, fraud, multiple witness to be attended to,  
multiple allegid victims, prosecutorial misconduct, investigatorial  
misconduct, vindictive prosecution, corruption, repossed alfalfa,  
tampering accusations, and two defendants that can not afford to pay  
for his services, which also answers the complexity question, and  
accessability to any type of witnesses that would necessatate multiple  
hours of travel time and man hours. and "A defendant's rights should  
not hinge on counsel's assertions that he or she is of the opinion that  
there is no merit in any defense to the indictment!" [LED Digest  
Criminal Law 46.10].

Winberg's claims of ineffective assistance of counsel meet  
the elements expressed in "Strickland" of (1) "counsel's representation  
was deficient in multiple specifics and (2) this deficiency prejudiced  
the defendants"

If the Winberg's attorney would have done his due diligence and talked to and listened to the Winberg's testimony he would have discovered that he should have moved the court for dismissal of the indictment based on Fed. Rul. Crim. Proc. Rule 12 (Pre Trial Motions) (b)(3)(A)(iv) for "Selective or Vindictive Prosecution". Winberg's counsel should have raised this issue before any plea agreement or trial preparations. "When "investigating officers" are overly involved in the defendant's allegedly criminal conduct, or The prosecution has engaged in unethical conduct, or has manifested bad faith by suppressing exculpatory material" see: Kelly v United States 707 F2d 1460 (D.C. cir 1983). Winberg was denied by their own attorney the chance to claim that the government is bringing a case that is constitutionally forbidden for multiple reasons. This alone shows cause for the Winberg's prejudice claims requirements. The Winberg's did not learn about this rules availability until Don found it in a prison library computer nearly five years after it was needed. In Garza v Idaho 203 LED2D 77, The Supreme Court held "That it is unfair to require pro se defendants to identify the issues they should have raised at trial when accompanied with effective assistance of counsel". Winberg's evidence shows that counsel could have found possible cognitive problems had he looked. Winberg's "counsel mischaracterized and omitted key facts and improperly ignored to weigh evidence, that resulted in an "unreasonable application" of precedents" see: Wiggins v Smith 156 ELD2d 471 (2003).

Sullivan's actions and behavior was more than mere negligence, but rather virtual abandonment. His neglect is inexcusable thus vitiates the attorney client relationship that undermine general policy.

"Defendants should not be given an additional hurdle to clear



just because their rights were violated at some earlier stage in the proceedings, by ineffective counsel," see: LED Digest §46.10.

"Prisoners can relitigate their appellate claims through collateral challenges couched as ineffective assistance of counsel claims" see: Garza.

#### SUBSTANTIAL SHOWING: ARGUMENT

The Tenth Circuit ~~and~~ Court of Appeals denied the Winberg's §2255 petition, claiming that the Winberg's did not make a "substantial showing of the denial of a constitutional right," §2253(c)(2). However, "This standard is met when reasonable jurists, could debate whether, or agree that, petition should have been resolved differently" see: Welch v United States (2016) 194 ELD2d 387, or, "That the procedural ruling is wrong," see: Gonzalez v United States 596 F.3d 1228.

(2004) The Supreme Court held in "Welch" that "Obtaining certificate of appealability does not require a showing that appeal will succeed, and Federal Court's of Appeals should not decline application merely because it believes applicant will not demonstrate entitlement to relief." This Supreme Court also held in Medellin v Pretke (2005) 161 LED2d 982, That "The Tenth Circuit opinion on substantial showing restriction has been debated and reversed multiple times in the Supreme Court, but yet the Tenth Circuit repeatedly deny appeals using this hurdle as not crossed by appellant seeking review or relief when a constitutional right has been allegedly denied, The statute only asks that the claim be alleged not proven." The Supreme Court claimed in "Gonzalaz" that " A reasonable jurist could debate that the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Winberg is asking the Supreme Court for the same

jurisprudence, interpretation and understanding in their petition.

The Supreme Court states in Tharpe v Sellers 199 ELD2d 424, To reach the standard of showing, to receive a certificate of appealability, this court's opinion was that the defendant, first, must show prejudice to overcome procedural default. Second, A showing reaching cause. Also quoting "Tharpe", "The defendant would have to show a substantial injurious effect or influence that caused a violation of the defendant's constitutional rights"

First: No jurist could argue that the Winberg's crops died in a drought and that they were victims of real estate fraud in count 1. And, that they were not fully compensated for the alfalfa that the Winberg's delivered to LTD in count 2. In both situations the suppliers and independents were also victimized by these factors, These points are enough alone to spark a debate in any jurist in direct conflict to the Tenth Circuit's accusations that the Winberg's "did not intend to pay or deliver". When Winberg's can show records that Winberg paid and delivered up and until their injuries were incurred.

Second: No jurists could argue that Winberg had a \$2,000,000 judgment in a law suit that included Stallings in Idaho, and the fact that Dalstrum is also claiming to be from Idaho, who's pursuit against the Winberg started within a few months after the Winberg's fled Idaho. The fact that Ex-Congressman Stallings could get the Winberg's judgment against Stallings sold on the courthouse step and dismissed, and to get the FBI to imprison the Winberg's is obstruction of justice and misprison of felony.

These two factors alone are enough to show that the court was wrong in dismissing the Winberg's appeal.

Third no reasonable jurist knowing these facts could debate that the Winberg's were denied effective assistance of counsel,

and prosecutorial misconduct, that resulted in the Winberg's constitutional protected right being violated.

These constitutionally protected rights violations include the  
The right to be secure in our person, house, paper, and effects against unreasonable searches and seizures, and a warrant was served without probable cause. a Fourth Amendment violation. Winberg was deprived of life, liberty, and property, without due process of law, a Fifth and Fourteenth Amendment violation. The Winberg's were denied the assistance of effective counsel, A Sixth Amendment violation. The Winberg's were denied access to the court, A Seventh Amendment violation. The Winberg's were inflicted to cruel and unusual punishment, An Eighth Amendment violation. And many more.

Quoting:"Tharpe" The Winberg's "would have to show a substantial injurious effect or influence that caused a violation of Winberg's constitutional rights" Given all of the facts that the Winberg's have asserted in this petition, proclaiming innocence and corruption, How can anyone assume that Winberg's counsel was effective? NO jurist should be able to debate that Winberg's counsel's influence had an injurious effect on the Winberg's.

Winberg has shown that "The case as a whole has specific issues, And also makes a substantial showing of the denial of a constitutional right.

#### PLEA WAIVER: ARGUMENT

The Tenth Circuit Court of Appeals claims that the Winberg's waived thier right to "any collateral attack pursuant to their prosecution, conviction, or sentance on an appeal" (order denying COA., at 4) but on the same page and included in the Winberg's plea agreement are three exceptions to these waivers that the Tenth circuit

chooses to ignore or pretend that they do not exist. These exceptions are (1) retroactive change in guidelines. (2) a claim that the defendant was denied the effective assistance of counsel, and (3) a claim of prosecutorial misconduct. The Winberg's confirmed in open court that they understood this waiver, unfortunately it is the Tenth circuit that misunderstands this agreement. Because the fact that the Winberg activated two of these exceptions, the Tenth circuit now wants to pretend that these two exceptions now do not exist, or that there is some sort of procedural hurdle to achieve, except by the Tenth circuit with all of their authority is in violation, or breach of contract by not accepting a consequence of the agreement signed by all parties.

The Appeals court also defends their position with the plea hearing colloquy, where the Winberg's stated in open court that they "were satisfied with the representation of their counsel." This argument still does not change the fact that the Winberg's did not waive their right to these three exceptions. These three exceptions were also agreed upon in the plea colloquy. The Tenth circuit uses no Supreme Court authority or citation for this procedure. and yet the Winberg's can quote a Supreme Court citation that claims that the Tenth Circuit "has been overly restrictive and debated and reversed multiple times," by the Supreme Court on this same matter. see: "Medellin"

At the plea colloquy the Winberg's were only happy with their attorney only until they learned of his failures.

The Winberg's invoke, and state a claim of ineffective assistance of counsel and prosecutorial misconduct!

Claim -- "Is an assertion of an existing right" see: Blacks Law (10th edition 2011)

The Winberg's commence, initiate, and demand's this right afforded

them under the authority of the plea agreement, the plea hearing colloquy and the Constitution of the United States, that allows collateral attacks when these exceptions are claimed.

The Appeals Court states that the Winbergs rights were knowingly, and voluntarily waived. ( at 5).

The quandary with the courts argument is that the Winberg's were only happy with their attorney's performance until, the Winberg's learned of his neglect, incompetence, and abandonment of the Winberg's, as previously stated in this petition. The Winberg's are not lawyers. and do not know what to do in this situation but listen and do what their counselor tells them to do. Therefore the Winberg's should not be treated as if they are supposed to know what the wire fraud statutes actually mean, and the difference between acting in good faith and intentional criminal fraud. This is why the Winberg's put their faith in their attorney and reluctantly plead guilty, without knowingly, understanding or the awareness to be well informed to criminal fraud terminology, translations, and characterization, because without this education, the Winberg's statements and assertions in court could not be voluntary, but a product of the influence of their attorney's negligence. Because if the Winberg's were never taught to understand the situations with proper information, as a result the Winberg's were unable to make their interpretations intelligently. Because if the Winberg's would have been well enough informed the Winberg's would have insisted upon going to trial.

Sullivan would not talk to the Winberg's about the case or read the Winberg's hand written outline defining the history of the case. Before advising the Winberg's to plead guilty, stating "that you do

not want to upset the court"; "This plea hearing is not the place to bring up argument"; "When you pay me I will read your outline"; and "You need to accept responsibility"

The Winberg's do accept responsibility to all losses and still to this day intend to pay any and all unpaid suppliers.

The Winberg's wanted to accept responsibility, but are not guilty of criminal activity, as the Winberg's learned on their own in a prison library, that they did not have criminal intent to commit a crime,

The Supreme Court held in Garza v Idaho 203 LED2d 77, "That defendants retain the right to challenge whether the waiver itself was knowing and voluntary"; Furthermore, "Why would any defendant ever want to knowingly waive their right to appeal, unless they were coerced, because a defendant never waives his right to effective counsel" and The Supreme Court clearly indicated that "the government must live up to its part of the bargain, and failure to do so will entitle the defendant who has entered a guilty plea under the bargain some sort of relief"; see: [50 LED2D 876]. Plea Agreements].

The Supreme court held in Cronic v United States 8 LED2d 657, That " Even the broadest appeal waivers do not deprive a defendant of all appellate claims. Accordingly, when an attorney performed deficiently in failing to educate his client. Prejudice is presumed with no further showing from defendant of the merits of his underlying claims" and in [59 LED2d 1141] The Supreme Court stated that "Plea bargains are essentially contracts, as with any type of contract, The language of appeal waiver vary widely, with some waivers clauses leaving many types of claims unwaived"

The Supreme Court held that " defendant's guilty plea, is entered without due process of law where defendant did not receive adequate offence, where he was not informed that intent to cause the crime

is an element of the offense, hence plea was involuntary" see: Henderson v Morgan 49 LED2d 108. The Supreme Court held in, Brady v United States 25 ELD2d 747, that " in order to meet the due process requirement that a guilty plea is intelligently made, the accused must have an understanding of the nature of the charges"; also in Brady, Brady v United States 25 ELD2d 747. The question of knowing, intelligent and voluntary was addressed in, Patterson v Illinois 101 LED2d 261,"(1) Such a waiver is valid only when it reflects an intentional relinquishment or abandonment of a known right or privilege, (2) The accused must know what he or she is doing, so that the choice is done with eyes open, (3) Has the accused been made sufficiently aware of the Questioning, and possible consequences of a decision and, (4) Be sufficiently aware of the relevant circumstances". The Winberg's repeatedly claim that their attorney abandoned them before the process started, which left the Winberg's blinded to the answers to the Questions required to make an intelligent, knowing and voluntary decision.

The Tenth Circuit can not show that the Winberg's "counsel satisfied constitutional minimums," see: Iowa v Tover 158 LED2d 209.

"When the Court assumes the accused has made a decision voluntary, knowingly, and intelligently, The court is taking for granted that the accused's rights are not being violated, but assumption is fictitious and pretended reality," see: [101 LED2d 1017] Waiver of Rights..

The Supreme Court held in United States v Broce 102 LED2d 927, that " the plea cannot be truly voluntary unless the defendant possesses and understanding of the law in relation to the facts" and in Tollett v Hendeson 36 LED2d235 The Supreme court held that, Ineffective assistance of counsel is incompatant in failing to look into composition of grand jury"

The Winberg's were not allowed to talk to or communicate to the victims because they were told "not to upset the court by doing so". Because if the Winberg's would have been allowed to talk to them they would have been told the truth and not the tampered presumption of the truth by the FBI, fabricated to induce rage from the victims against the accused. The Winberg's would have told them that their money was in Felts fraudulent pocket and in LTD's forbidden pocket. And how to get it, through Winbergs paperwork of record. What is most important to any victim? The repair! The Winberg's are not monsters!

This court (Tenth) "let us come together and pray that righteousness of equal justice be restored to God that we may have honesty, honor, and respect, and to have freedom from corruption and quash the evil forces out of our system which has inundated our justice system through political influence and personal connections" see: O'Neill v Jaramillo Lexis 17143 (10th cir 2013).

One of the reasons that the FBI may have intruded into the Winberg's civil court actions in Texas may be because of 18 U.S.C. § 1331, stating: that "The district courts shall have original (Texas) jurisdiction of all civil actions arising under the constitution, laws, and treaties" They had to get the civil cases squashed in order to re-jurisdictionize them to Colorado authority....

The Supreme Court held in [97 ELd2d 863] (Mail Fraud) that "Defendants had to act with specific intent to defraud was a requirement to be guilty of 18 U.S.C. §1343" that "Intent to defraud appeared to be much closely connected with the "scope" of the scheme or artifice to defraud" Scope- means "the extent of the minds grasp"

The Winberg's mind was on producing a crop of alfalfa and corn. The fact that it died in a drought was not in the Winberg's mind. The Winberg's neither intended for their to be a drought or to



loose everyone's money including all of their own for if this was in the Winberg's mind than the Winberg's are their own victim.

The Winberg's evidence combined with the Winberg's drought, Felt, Stallings and LTD defenses would put a doubt in any jurists mind as to the Winberg's guilt.

~~The Winberg's have proclaimed their innocence from the beginning.~~

#### NEED FOR: SUPREME COURT INTERPRETATION

The need for a uniform interpretation of federal law and issue in this case is justified to prevent innocent farmers from going to prison ~~for~~ and forcing their children into adoption. This is not the intention of our founding father, congress and the will of the people and violates the Constitutions foundation.

This is a compelling reason that is important to public interest that the national law and the people would be best served if the Supreme Court resolved this issue or settled it's growing debate.

This case raises a genuine and substantial question of Constitutional law that matters. In some ways the Supreme Court has previously decided parts of this conflict except that the Judicial review of the Supreme Court's previously decided precedents have gone ignored or unconsidered in the Tenth Circuit and it's Court of Appeals, Which is so far out of the normal of Judicial standards that this Supreme Court has attempted to correct.

The Supreme Court is requested to exercise its supervisory power to instruct the lower court, for the lower court has departed from the accepted and usual course of judicial proceedings and asks for guidance as this case raises "substantial Questions" that would fill critical precedential void in the proceedings.

## SIMILAR SITUATED FARMERS WERE NOT INDICTED

The government claims that the Winberg's "made multiple large scale purchases and sales of farm crops without intending to to pay or deliver!"

There were two contracts written in consideration of count I Faucette and Pratt, with the Winberg's.

Both contract were for "Future Goods" to be grown on a Winberg farm. UCC §2-105(2), mandates that "Future goods means goods that will come into being, such as those yet to be manufactured, goods that are not both existing and identified. any purported present sale of "future goods" or any interest in them operates as a contract to sell". U.C.C. 2-105 (1) mandates that "Goods" " means all things which are movable at the time of identification to the contract for sale". U.C.C. 2-107 mandates that "Goods" "also include growing crops" "or crops to be planted" "which includes "alfalfa" are bought and sold under this article". U.C.C. 2-106, (1) "A contract for sale includes both present sale of goods and a contract to sell goods at a future time". U.C.C. 2-501 gives buyers an "Insurable interest in future goods". (c) "When the crops are planted, or become growing crops". Faucette and Pratt had full authority to insure their interests in the Winberg's crops. and U.C.C. 2-706 mandates that a "contract for "future goods" is a contract for goods before they come into existence".

The Winberg's, Faucette's, and Pratts were all under the agreement that these farm crops were to be grown on Winberg's farms and were considered "future goods" to be transferred to them upon harvest of these crops. These facts were explicitly agreed upon by all parties. that these contract were for "growing future goods crops" contracts. And identified by all parties as farm crops that did not exist untill they were grown on the Winberg's farm.

18 U.S.C. 1343 (Wire Fraud) states that to be guilty of wire fraud that there must be "an intent to devise any scheme or artifice to defraud... by means of false, pretenses, representations or promises". The Winberg's made no representation that these crops were anything else but crops to be grown on the Winberg's farms for "future goods" farm crops. There is no misunderstanding to the fact that these crops would have to be grown on Winberg's farm in the future and be harvested to exist. There is no scheme or artifice to defraud when all parties agree upon an explicit understanding that these are all "future goods" and no intent is present when the Winberg's can produce land contracts for growing these crops, including receipts for seed, water, power, tractors, labor, and eye witnesses that include neighbors, and professionals, and the crops existence is well known and confirmed in the local USDA office.

A "future goods" contract is not illegal and is not against the laws of this country. The Tenth circuit claims that it is, because the contract was not fulfilled, or that the Winberg's must have misrepresented that farm crops exist even though they have not been planted yet, which conflicts with "future goods" mandates.

The Tenth circuit is in conflict of the United States Supreme Court precedent and other Federal Courts and mandated statutes in Colorado.

The Tenth Circuit in Kansas, stated "A future farm goods contract can be made at any time and in any manner explicitly agreed upon by all parties," see: Bucyrus Grain v Effetz (10th cir 1987). Lexis 8193. Sunbelt grain was not criminally indicted for failing to supply on a "future goods" contract, worth \$2.7 million. see: Whitham Farms v Sunbelt Grain 406 B.R. 918 (10th cir 2009) in Kansas.

## THIS SUPREME COURTS GUIDENCE IS WARRANTED

Why! Are farmer who experiance crop losses due to conditions such as a uncontroled drought, be forced into actual handcuffs, be sent to prison and their children forced into adoption?

Unfortunately, in this country of protections to farmers, some of these farmers do have these things happen to them, because they are not able to pay their prospective investors, suppliers, or dependants. When these originatores of funds that goes into these farms are not repaid or compansated in some way, for their losses are angry in not being able to recover their interests, they turn to the Federal government and claim that "because their investments are not compansated for, that they must have been victims of fraud". This action by the investing parties enable themselves protections from "their" investores, or litigations and tax credits, because they can conveniently cry that they were victims of fraud. Unfortunately these practices may help insure the originatores of these funds, but the result to the farmer is catastrophie and a total loss to life, liberty, and property.

Congress enacted many farm protection acts including a catastrophie protection plan, to protect farmers. But yet the FBI and the federal government are investigating and incarcerating these same farmers as criminals, when congress also claims that these same farmers are victims.

These acts inacted by congress are to protect farmers, but does not prevent the FBI and Federal government from incarcerating these farmers when originatores conveniently cry that they were given a false promise. or a misrepresentation that farm crops always produce.

because a farmer claims that he can supply or produce a farm crop, and accepts money on a "future goods" contract, acquires the farmland, plants the seeds, tends to the farms needs, but yet the cared for crop dies of drought or natural causes and not from neglect. Thus violating the intentions of congress and the Federal Crop Insurance Act, (7 U.S.C.S. §1501)

Farmer Donald and Karlien Winberg were indicted with a maxamum possible sentance of 40 years. and were sentanced to 7.3 years in prison. Their youngest daughter was born in prison, and taken from from her mother after two hours of her birth and included with a total of seven children forced into adoption. No where in statute 18 U.S.C.s §1343 does the penalty include the loss of parental rights. and, all because the Winberg's claimed to be able to supply and or produce a crop of alfalfa and corn, that eventually died in a drought, because the Winberg's represented that they could.

The FBI told the Winberg's suppliers, and originatores that they were victims of Winberg's fraud, in order to secure a conviction against the Winberg's. These victims are not only victims of the Winberg's alleged crime but are also victims of the Federal government over achiving FBI agents and overzelious prosecutors who choose arrest quotas and conviction rates over the repair of the victims losses, and in some instances cause far more damage than if they would of left ,well enough alone. The reason that the United States citizens have civil court remedies is so that an impartial fact finder can try to alieviate the pain, of injuries and repair damage caused by seen or unforeseen events, without government overreach, and intrusion. There are many reasons why the American people distrust their government, the dishonsty, and the lack of integrity are two of the many factores.

### LIBERAL REQUEST

The Winberg's ask the court to "construe the Winberg's filings liberally" as the Winberg's "are not represented by counsel"; see Haines v Kernr 404 U.S. 519-21 (1972). And are petitioning as pro se litigants. The attorney's for the District and appeals courts are all attorneys and have been able to recognize multiple flaws in the Winberg's motions and petitions. Colorado attorney's are no match for Michael Jorden, therefore it is easy to understand that the Winberg's are no match for an seasoned life long attorney.

### RELIEF SOUGHT

The Winberg's ask this court for relief from thier Judgment, sentence, and if possible thier indictment. The Winberg's seek relief and ask for either an Certificate of Appealability, Evidentury hearing, and/or thier sentence vacated and set aside. The Winberg's ask for their freedom and the return of thier children. The Winberg's ask this court for protection and relief from the Tenth Circuit's unique departure from decisions of this court and other, This courts guidance is warranted.

This petition for a Writ of Certiorari should, therefore be granted.

Respectfully Submitted:

11/20/19  
Date

Donald Brian Winberg  
Donald Brian Winberg

Karlien Richel Winberg  
Karlien Richel Winberg