

# APPENDIX

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UNITED STATES DISTRICT COURT

FILED

WESTERN DISTRICT OF TEXAS

2010 JUN 16 P 2:51

SAN ANTONIO DIVISION

CLERK, US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

v.

ROBERT BROOKS (1)  
CHERYL BROOKS (2)  
RICHARD HOWARD (3)  
YVONNE SALAZAR QUINTANILLA (4)  
NIESHA MANUEL (5)  
TAMATHA BUCKHOLT (6)  
STACY OWENS (7)  
GERALDINE WILLIAMS (8)  
CESAR GONZALES (9)  
CEDRIC LESTER (10)  
CASEY VAUGHAN (11)  
JOSEPH COOPER (12)  
VADIM GAZANCHIYANTS (13)  
GEORGE AUTOBEE (14)  
DEBORAH ALLEN (15)  
MAURICIO BETES (16)  
STEPHEN BROTT (17)  
RICK RUSSELL (18)  
ANTHONY LOREK (19)  
CLAUDE VAUGHAN (20)  
GLYNNWOOD BOWMAN (21)  
STANLEY ROOS (22)

CRIMINAL NO.

INDICT

SA 10CR0536

FB

INDICTMENT

[Violations: 18 U.S.C. § 1349, Conspiracy;  
18 U.S.C. § 1341 Mail Fraud; 18 U.S.C.  
§ 2, Aiding & Abetting]

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment:

I. PERSONS AND ENTITIES

1. Defendant ROBERT BROOKS was a resident of Dallas, Texas, and the husband of Defendant Cheryl Brooks. He was the *de facto* principal of Relocation Studio, Texas

Residential Properties, and Upscale Realty, entities in whose names he bought and sold real estate. He provided the start up funds for, and controlled, Pro Processing, which prepared mortgage applications and Progressive Title & Abstract, a real estate title company engaged in the business of real estate closings and settlements. He provided start up funds for Bronco Mortgage and Supreme Mortgage Group, each of which were mortgage brokers.

2. Defendant CHERYL BROOKS was a resident of Dallas, Texas, and the wife of Defendant Robert Brooks.

3. Defendant RICHARD HOWARD was a resident of McKinney, Texas, and an attorney at law. He was a principal of Progressive Title & Abstract.

4. A person known to the Grand Jury, but Identified herein only as L.C., was a resident of San Antonio, Texas, and operated Supreme Mortgage Group. Supreme Mortgage Group, LLC, (Supreme Mortgage) a San Antonio, Texas, entity engaged in the business of arranging residential mortgage loans for customers with various mortgage lenders.

5. Defendant YVONNE SALAZAR QUINTANILLA was a resident first of San Antonio, Texas, and later Dallas, Texas. She was a principal of Pro Processing, and was a senior processor. As a mortgage processor, she put together mortgage files for review by underwriters.

6. Defendant NIESHA MANUEL was a resident of Dallas, Texas, and an employee of Pro Processing. As a mortgage processor, she put together mortgage files for review by underwriters.

7. Defendant TAMATHA BUCKHOLT was a resident of Dallas, Texas, and an employee of Pro Processing. As a mortgage processor, she put together mortgage files for review by underwriters.

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8. Defendant STACY OWENS was a resident of Dallas, Texas, and the branch manager and an escrow officer at Equity Title of Texas. Her duties included the preparation of the HUD-1 Settlement Statement and conducting real estate transaction closings.
  9. Defendant GERALDINE WILLIAMS was a resident of Dallas, Texas, and the branch manager and an escrow officer at Progressive Title & Abstract. Her duties included the preparation of the HUD-1 Settlement Statement and conducting real estate transaction closings.
  10. Defendant CESAR GONZALES was a resident of Dallas, Texas, and an escrow officer at Progressive Title & Abstract. His duties included the preparation of the HUD-1 Settlement Statement and conducting real estate transaction closings.
  11. Defendant CEDRIC LESTER was a resident of Dallas, Texas, and an appraiser trainee who worked under the supervision of a State Certified Appraiser.
  12. Defendant CASEY VAUGHAN was a resident of Houston, Texas, and a State Certified Appraiser.
  13. Defendant JOSEPH COOPER was a resident of San Antonio, Texas, and a real estate agent.
  14. Defendant VADIM GAZANCHIYANTS was a resident of Las Vegas, Nevada, and a property manager working on behalf of Defendant Robert Brooks.
  15. Defendant GEORGE AUTOBEE was a resident of San Antonio, Texas.
  16. Defendant DEBORAH ALLEN was a resident of Bulverde, Texas, and at various times worked for Adkins Financial Group and Defendant Cheryl Brooks.
  17. Defendant MAURICIO BETES was a resident of Inglewood, California.
  18. Defendant STEPHEN BROTT was a resident of Los Angeles, California.

19. Defendant RICK RUSSELL was a resident of Marina Del Rey, California.
20. Defendant ANTHONY LOREK was a resident of Lancaster, California.
21. Defendant CLAUDE VAUGHAN was a resident of Dixon, California.
22. Defendant GLYNNWOOD BOWMAN was a resident of Valley Village, California.
23. Defendant STANLEY ROOS was a resident of Los Angeles, California.
24. JPMorgan Chase Bank, NA (Chase Bank) was a federally insured bank whose deposits were insured by the Federal Deposit Insurance Corporation (FDIC).
25. Wells Fargo Bank, (Wells Fargo) was a federally insured bank whose deposits were insured by the Federal Deposit Insurance Corporation (FDIC).
26. Countrywide Bank, FSB (Countrywide) was a federally insured bank whose deposits were insured by the Federal Deposit Insurance Corporation (FDIC). Countrywide Bank, FSB merged with Bank of America on or about April 27, 2009.
27. AmericaHomeKey, WMC Mortgage Corporation, Taylor Bean & Whitaker, Freedom Mortgage Corp, GMAC Mortgage, LLC, Option One Mortgage Corporation, Long Beach Mortgage, AMPRO Mortgage, and Triam, LLC, dba AMF were companies engaged in the business of mortgage lending nationwide. Triam, LLC, dba AMF was located in Austin, Texas.
28. Equity Title of Texas, was a title company engaged in the business of real estate closings and settlements.
29. Adkins Financial Group was an entity located in San Antonio, Texas, engaged in the business of arranging residential mortgage loans for customers with various mortgage lenders.

30. Supreme Mortgage Group, LLC, was an entity located in San Antonio, Texas, engaged in the business of arranging residential mortgage loans for customers with various mortgage lenders.

31. Bronco Mortgage was an entity located in Houston, Texas, engaged in the business of arranging residential mortgage loans for customers with various mortgage lenders.

32. Alethes dba Amerinet was an entity located in Austin, Texas, engaged in the business of arranging residential mortgage loans for customers with various mortgage lenders.

COUNT ONE  
[18 U.S.C. § 1349]

1. The Introduction to this Indictment is incorporated herein as if fully restated.
2. From on or about May 17, 2005, to on or about February 21, 2008, in the Western District of Texas, the Northern District of Texas, and elsewhere, the Defendants,

ROBERT BROOKS,  
CHERYL BROOKS,  
RICHARD HOWARD,  
YVONNE SALAZAR QUINTANILLA,  
NIESHA MANUEL,  
TAMATHA BUCKHOLT,  
STACY OWENS,  
GERALDINE WILLIAMS,  
CESAR GONZALES,  
CEDRIC LESTER,  
CASEY VAUGHAN,  
JOSEPH COOPER,  
VADIM GAZANCHIYANTS,  
GEORGE AUTOBEE,  
DEBORAH ALLEN,  
MAURICIO BETES,  
STEPHEN BROTT,  
RICK RUSSELL,  
ANTHONY LOREK,  
CLAUDE VAUGHAN,

GLYNNWOOD BOWMAN,  
and  
STANLEY ROOS,

and others known and unknown to the Grand Jury did willfully and knowingly combine, conspire, confederate and agree together and with each other, and with other persons, to devise a scheme to defraud one or more federally insured financial institutions, and other mortgage companies, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and to cause the use of the mails and interstate wire transfers for the purpose of executing and attempting to execute their fraudulent scheme, contrary to Title 18, United States Code, Sections 1341, 1343, 1344 and 2.

THE OBJECT OF THE CONSPIRACY

2. It was the object of the conspiracy to obtain money from mortgage proceeds through the use of a simultaneous purchase at or about fair market value and sale at an artificially inflated price, known as a "land flip" or "property flip".

MANNER AND MEANS

The conspiracy and scheme to defraud were accomplished through the following means:

3. Defendants ROBERT BROOKS and CHERYL BROOKS engaged in the business of buying and simultaneously selling condominium units (condos) and conventional residences, otherwise known as "flipping."

4. Defendant ROBERT BROOKS directly or with the assistance of others located residential property which was for sale.

5. Defendant ROBERT BROOKS and others recruited persons to act as nominee buyers of the properties.

6. Defendant ROBERT BROOKS told the nominee buyers that mortgages would be arranged for them, that no fees or down payment would be required from them, that they would receive a large sum of money (\$10,000 plus) at the real estate closing for their participation, that all closing costs would be paid, that monthly mortgage payments for the first twelve months of the mortgage would be paid with funds set aside at the time of closing, and that occupancy, use, and subsequent re-sale of the properties would be handled by Defendant ROBERT BROOKS.

7. Defendant ROBERT BROOKS paid appraisers or in some instances appraiser trainees, and specifically Defendants CEDRIC LESTER, and CASEY VAUGHAN, for inflated real estate appraisals which would support the amount of mortgages which Defendant ROBERT BROOKS and various others were fraudulently attempting to obtain.

8. Defendants ROBERT BROOKS and CHERYL BROOKS engaged Supreme Mortgage Group, Adkins Financial Group, Bronco Mortgage, and Alethes dba Amerinet, to obtain mortgage loans for condo purchaser/nominees and several conventional residence purchaser/nominees.

9. Defendants ROBERT BROOKS and CHERYL BROOKS engaged Defendants YVONNE SALAZAR QUINTANILLA, NIESHA MANUEL, and TAMATHA BUCKHOLT, as loan processors to prepare mortgage loan applications for the nominees which contained false and fictitious information and material omissions necessary to get the mortgage loans approved, such as bank statements that materially overstated or completely fabricated applicant bank balances. Other falsities included income, assets, liabilities, employment, marital status, and intended occupancy of the properties.

10. Defendants ROBERT BROOKS, CHERYL BROOKS, JOSEPH COOPER,



VADIM GAZANCHIYANTS, GEORGE AUTOBEE, DEBORAH ALLEN, MAURICIO BETES, STEPHEN BROTT, RICK RUSSELL, ANTHONY LOREK, CLAUDE VAUGHAN, GLYNNWOOD BOWMAN falsified information on mortgage loan applications.

11. Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, NIESHA MANUEL, TAMATHA BUCKHOLT, MAURICIO BETES, STEPHEN BROTT, RICK RUSSELL, ANTHONY LOREK, CLAUDE VAUGHAN, and STANLEY ROOS caused moneys to be temporarily deposited into nominees' bank accounts to make it appear the nominees had sufficient funds on hand to qualify for the mortgage loan being sought. These moneys were returned to Defendant CHERYL BROOKS or forwarded to yet another nominee's account once the nominee's bank had completed a verification of deposit to be submitted to the mortgage lender.

12. Defendants ROBERT BROOKS and YVONNE SALAZAR QUINTANILLA caused changes to be made on commitments for title insurance documents that were prepared by the title companies closing the real estate purchases. The original commitment for title insurance documents listed the actual developer/seller of the real estate as the owner of record. Prior to submitting the commitment documents to the mortgage underwriters as a part of the loan application package, the name of the actual developer/seller was "whited out" and replaced with Relocation Studio, Texas Residential Properties, or Upscale Realty. These deceptions concealed from mortgage lenders the fact that Defendant ROBERT BROOKS was simultaneously buying and selling the real estate in "flip" transactions and concealed the true market values of the real estate from the mortgage lenders. Defendants GERALDINE WILLIAMS and CESAR GONZALES caused commitments for title insurance documents to be falsified by stating that

Upscale Realty was the owner of the property for the subsequent sale when in fact it had not yet purchased the property.

13. Defendant ROBERT BROOKS used the proceeds from the purported sales to various nominees to pay for his initial purchase of the real estate, to pay closing costs for both his purchase and sale to the nominee, to pay the nominee's down-payment, to pay the nominee for the nominee's participation, and to pay the mortgage for the first 12 months, after which each mortgage went into default.

OVERT ACTS

To effect the purpose and objects of this conspiracy and the scheme to defraud, the following overt acts, among others, were committed in the Western District of Texas, the Northern District of Texas, and elsewhere:

14. On or about May 17, 2005, Defendants ROBERT BROOKS and RICHARD HOWARD conducted a simultaneous closing or "flip" in connection with ##04 Westchester Court, McKinney, Texas.

15. On or about March 27, 2006, Defendants ROBERT BROOKS, CHERYL BROOKS, GERALDINE WILLIAMS, and VADIM GAZANCHIYANTS conducted a simultaneous closing or "flip" in connection with ##16 Serenity Lane, Heath, Texas.

16. On or about August 28, 2006, Defendants ROBERT BROOKS and GERALDINE WILLIAMS, and L.C. conducted a simultaneous closing or "flip" in connection with #18 High Point, Dallas, Texas.

17. On or about September 29, 2006, L.C. caused a nominee to sign a Uniform Residential Loan Application.

MF  
(18) On or about October 3, 2006, Defendant STACY OWENS sent documents via UPS to L.C.

19. On or about October 2, 2006, Defendants ROBERT BROOKS, CHERYL BROOKS, STACY OWENS, and CEDRIC LESTER, and L.C. conducted a simultaneous closing or "flip" in connection with ###37 Dixon Branch Drive, Dallas, Texas.

20. On or about September 13, 2006, Defendants JOSEPH COOPER and GEORGE AUTOBEE, signed a residential sales contract.

21. On or about September 19, 2006, Defendant GEORGE AUTOBEE signed a Uniform Residential Loan Application.

22. On or about October 4, 2006, Defendants JOSEPH COOPER and GEORGE AUTOBEE, signed a HUD-1 Settlement Statement.

23. On or about October 4, 2006, Defendants ROBERT BROOKS, CHERYL BROOKS, STACY OWENS, JOSEPH COOPER, and GEORGE AUTOBEE, and L.C. conducted a simultaneous closing or "flip" in connection with #20 Charlotte Court, Heath, Texas.

24. On or about October 4, 2006, Defendants ROBERT BROOKS, RICHARD HOWARD, STACY OWENS, and CEDRIC LESTER, and L.C. conducted a simultaneous closing or "flip" in connection with ##70 Marcie Lane, Rockwall, Texas.

25. On or about November 17, 2006, Defendants ROBERT BROOKS, STACY OWENS, and CEDRIC LESTER, and L.C. conducted a simultaneous closing or "flip" in connection with Condo 7202 located in Dallas, Texas.

26. On or about November 17, 2006, Defendants ROBERT BROOKS, STACY

OWENS, and CEDRIC LESTER, and L.C. conducted a simultaneous closing or "flip" in connection with Condo 7203 located in Dallas, Texas.

27. On or about January 26, 2007, Defendants ROBERT BROOKS, STACY OWENS, and CEDRIC LESTER, and L.C. conducted a simultaneous closing or "flip" in connection with ###12 Mounts Run, Dallas, Texas.

28. On or about January 18, 2007, Defendant GEORGE AUTOBEE signed a Uniform Residential Loan Application.

29. On or about January 18, 2007, Defendant GEORGE AUTOBEE signed a HUD-1 Settlement Statement.

30. On or about January 22, 2007, L.C. sent documents via Lone Star Overnight to Defendant STACY OWENS.

31. On or about January 26, 2007, Defendants ROBERT BROOKS, STACY OWENS, CEDRIC LESTER, JOSEPH COOPER, and GEORGE AUTOBEE, and L.C. conducted a simultaneous closing or "flip" in connection with Condo 7103 located in Dallas, Texas.

32. On or about February 26, 2007, Defendants ROBERT BROOKS, RICHARD HOWARD, STACY OWENS, and GLYNNWOOD BOWMAN conducted a simultaneous closing or "flip" in connection with a house on Pintail Point, Heath, Texas.

33. On or about February 27, 2007, Defendants ROBERT BROOKS, STACY OWENS, CESAR GONZALES, and JOSEPH COOPER conducted a simultaneous closing or "flip" in connection with Condo 1107 located in Dallas, Texas.

34. On or about March 8, 2007, Defendants ROBERT BROOKS, STACY OWENS,

GERALDINE WILLIAMS, and VADIM GAZANCHIYANTS conducted a simultaneous closing or "flip" in connection with Condo 4102 located in Dallas, Texas.

35. On or about March 30, 2007, Defendants ROBERT BROOKS, RICHARD HOWARD, STACY OWENS, and JOSEPH COOPER conducted a simultaneous closing or "flip" in connection with Condo 5102 located in Dallas, Texas.

MF (36) On or about June 15, 2007, Defendants YVONNE SALAZAR QUINTANILLA, NIESHA MANUEL, and TAMATHA BUCKHOLT caused documents to be sent via DHL Express to the nominee buyer in Bulverde, Texas.

37. On or about June 15, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, STACY OWENS, and GERALDINE WILLIAMS conducted a simultaneous closing or "flip" in connection with Condo 1103 located in Dallas, Texas.

38. On or about June 18, 2007, Defendant ROBERT BROOKS signed a HUD-1 Settlement Statement.

39. On or about July 5, 2007, Defendants ROBERT BROOKS, NIESHA MANUEL, TAMATHA BUCKHOLT, STACY OWENS, and GERALDINE WILLIAMS conducted a simultaneous closing or "flip" in connection with Condo 1203 located in Dallas, Texas.

40. On or about July 6, 2007, Defendants ROBERT BROOKS, YVONNE SALAZAR QUINTANILLA, STACY OWENS, GERALDINE WILLIAMS, and CASEY VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 5206 located in Dallas, Texas.

MF (41) On or about July 9, 2007, Defendant STACY OWENS sent documents via UPS to

the mortgage lender in Austin, Texas.

42. On or about July 9, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, STACY OWENS, TAMATHA BUCKHOLT, GERALDINE WILLIAMS, CASEY VAUGHAN, and CLAUDE VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 3105 located in Dallas, Texas.

43. On or about July 18, 2007, ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, TAMATHA BUCKHOLT, STACY OWENS, and CASEY VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 3206 located in Dallas, Texas.

44. On or about July 18, 2007, Defendant STACY OWENS sent documents via UPS to AFM in Austin, Texas.

45. On or about July 26, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, STACY OWENS, TAMATHA BUCKHOLT, and CASEY VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 5208 located in Dallas, Texas.

46. On or about July 31, 2007, ROBERT BROOKS, CHERYL BROOKS, NIESHA MANUEL, STACY OWENS, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, and CLAUDE VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 6206 located in Dallas, Texas.

47. On or about July 10, 2007, Defendant DEBORAH ALLEN faxed photocopies of her Texas driver's license and social security card to Defendant YVONNE SALAZAR QUINTANILLA.

48. On or about August 17, 2007, Defendant DEBORAH ALLEN signed a Uniform Residential Loan Application in connection with Condo 1104 located in Dallas, Texas.

49. On or about August 17, 2007, Defendant DEBORAH ALLEN signed a Uniform Residential Loan Application in connection with Condo 1101 located in Dallas, Texas.

50. On or about August 20, 2007, Defendant DEBORAH ALLEN sent documents via Lone Star Overnight from Bulverde, Texas, to Defendant CESAR GONZALES.

51. On or about August 21, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, NIESHA MANUEL, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, and DEBORAH ALLEN conducted a simultaneous closing or "flip" in connection with Condo 1104 located in Dallas, Texas.

52. On or about August 22, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, NIESHA MANUEL, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, and DEBORAH ALLEN conducted a simultaneous closing or "flip" in connection with Condo 1101 located in Dallas, Texas.

53. On or about August 21, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, CESAR GONZALES, CASEY VAUGHAN, and DEBORAH ALLEN conducted a simultaneous closing or "flip" in connection with Condo 5204 located in Dallas, Texas.

54. On or about August 30, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, CESAR GONZALES, and CASEY VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 1105 located in Dallas, Texas.

55. On or about September 4, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, GERALDINE WILLIAMS, CESAR

GONZALES, and CASEY VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 2103 located in Dallas, Texas.

56. On or about September 5, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, NIESHA MANUEL, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, and VADIM GAZANCHIYANTS conducted a simultaneous closing or "flip" in connection with Condo 3106 located in Dallas, Texas.

57. On or about September 7, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, and VADIM GAZANCHIYANTS conducted a simultaneous closing or "flip" in connection with Condo 7204 located in Dallas, Texas.

58. On or about October 30, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, CESAR GONZALES, and CASEY VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 1201 located in Dallas, Texas.

59. On or about November 2, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, GERALDINE WILLIAMS, and CASEY VAUGHAN conducted a simultaneous closing or "flip" in connection with Condo 7110 located in Dallas, Texas.

60. On or about November 6, 2007, the closing documents for Condo 7110 were sent via DHL Express to Wells Fargo Home Mortgage.

61. On or about November 7, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, GERALDINE WILLIAMS, CASEY VAUGHAN, MAURICIO BETES, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 4101 located in Dallas, Texas.



62. On or about November 7, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, GERALDINE WILLIAMS, CASEY VAUGHAN, MAURICIO BETES, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 6208 located in Dallas, Texas.

63. On or about December 20, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, GERALDINE WILLIAMS, CESAR GONZALES, RICK RUSSELL, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 7101 located in Dallas, Texas.

64. On or about December 20, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, GERALDINE WILLIAMS, CESAR GONZALES, STEPHEN BROTT, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 5108 located in Dallas, Texas.

65. On or about December 26, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, NIESHA MANUEL, GERALDINE WILLIAMS, CESAR GONZALES, RICK RUSSELL, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 5105 located in Dallas, Texas.

66. On or about December 26, 2007, Defendant GERALDINE WILLIAMS, sent the closing documents for Condo 5105 via FedEx to Countrywide Bank, FSB, in Austin, Texas.

67. On or about December 26, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, NIESHA MANUEL, TAMATHA BUCKHOLT, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, STEPHEN BROTT, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 5104 located in Dallas, Texas.

68. On or about December 31, 2007, Defendant DEBORAH ALLEN sent closing documents for Condo 4205 from Bulverde, Texas, via American Airlines Priority Parcel Service to Defendants ROBERT BROOKS, YVONNE SALAZAR QUINTANILLA, and GERALDINE WILLIAMS in Dallas, Texas.

69. On or about January 2, 2008, Defendants ROBERT BROOKS, CHERYL BROOKS, GERALDINE WILLIAMS, CASEY VAUGHAN, JOSEPH COOPER, and DEBORAH ALLEN conducted a simultaneous closing or "flip" in connection with Condo 4205 located in Dallas, Texas.

70. On or about January 16, 2008, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, NIESHA MANUEL, TAMATHA BUCKHOLT, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, STEPHEN BROTT, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 6201 located in Dallas, Texas.

71. On or about February 5, 2007, Defendants ROBERT BROOKS, CHERYL BROOKS, YVONNE SALAZAR QUINTANILLA, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, ANTHONY LOREK, GLYNNWOOD BOWMAN, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 4106 located in Dallas, Texas.

72. On or about February 21, 2008, Defendants ROBERT BROOKS, CHERYL BROOKS, GERALDINE WILLIAMS, CESAR GONZALES, CASEY VAUGHAN, ANTHONY LOREK, and STANLEY ROOS conducted a simultaneous closing or "flip" in connection with Condo 7205 located in Dallas, Texas.

All in violation of Title 18, United States Code, § 1349.

COUNT TWO  
[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One are incorporated herein as if fully restated as the scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises devised by the Defendants.

2. On or about October 4, 2006, the Defendants,

ROBERT BROOKS,  
CHERYL BROOKS,  
STACY OWENS,  
and  
CEDRIC LESTER,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered by a private and commercial interstate carrier, to wit: UPS, according to the directions thereon, from Flower Mound, Texas, in the Northern District of Texas, to Supreme Mortgage Group in San Antonio, Texas, in the Western District of Texas, items relating to the closing for ###37 Dixon Branch Drive, Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

COUNT THREE  
[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One are incorporated herein as if fully restated as the scheme to defraud and obtain money and

property by means of false and fraudulent pretenses, representations, and promises devised by the Defendants.

2. On or about January 22, 2007, in the Western District of Texas, the Defendants,

ROBERT BROOKS,  
STACY OWENS,  
CEDRIC LESTER,  
JOSEPH COOPER,  
and  
GEORGE AUTOBEE,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered by a private and commercial interstate carrier, to wit: Lone Star Overnight, according to the directions thereon, closing documents for Condo 7103 located in Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

COUNT FOUR  
[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One are incorporated herein as if fully restated as the scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises devised by the Defendants.

2. On or about June 15, 2007, the Defendants,

ROBERT BROOKS,  
CHERYL BROOKS,  
YVONNE SALAZAR QUINTANILLA,  
NIESHA MANUEL,  
TAMATHA BUCKHOLT,

and  
STACY OWENS,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered by a private and commercial interstate carrier, to wit: DHL Express, according to the directions thereon, from Dallas, Texas, in the Northern District of Texas, to Bulverde, Texas, in the Western District of Texas, closing documents for Condo 1103 located in Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

COUNT FIVE  
[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One are incorporated herein as if fully restated as the scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises devised by the Defendants.

2. On or about July 9, 2007, the Defendants,

ROBERT BROOKS,  
YVONNE SALAZAR QUINTANILLA,  
STACY OWENS,  
GERALDINE WILLIAMS,  
and  
CASEY VAUGHAN,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be

delivered by a private and commercial interstate carrier, to wit: UPS, according to the directions thereon, from Flower Mound, Texas, in the Northern District of Texas, to Austin, Texas, in the Western District of Texas, closing documents for Condo 5206 located in Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

COUNT SIX

[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One are incorporated herein as if fully restated as the scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises devised by the Defendants.

2. On or about July 18, 2007, the Defendants,

ROBERT BROOKS,  
CHERYL BROOKS,  
YVONNE SALAZAR QUINTANILLA,  
TAMATHA BUCKHOLT,  
STACY OWENS,  
and  
CASEY VAUGHAN,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises; did knowingly cause to be delivered by a private and commercial interstate carrier, to wit: UPS, according to the directions thereon, from Flower Mound, Texas, in the Northern District of Texas, to Austin, Texas, in the Western District of Texas, closing documents for Condo 3206 located in Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

COUNT SEVEN  
[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One are incorporated herein as if fully restated as the scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises devised by the Defendants.

2. On or about August 20, 2007, the Defendants,

ROBERT BROOKS,  
CHERYL BROOKS,  
YVONNE SALAZAR QUINTANILLA,  
NIESHA MANUEL,  
GERALDINE WILLIAMS,  
CESAR GONZALES,  
CASEY VAUGHAN,  
and  
DEBORAH ALLEN,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered by a private and commercial interstate carrier, to wit: Lone Star Overnight according to the directions thereon, from Defendant DEBORAH ALLEN in Bulverde, Texas, in the Western District of Texas, to Dallas, Texas, in the Northern District of Texas, closing documents for Condo 1104 located in Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

COUNT EIGHT  
[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One

are incorporated herein as if fully restated as the scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises devised by the Defendants.

2. On or about December 26, 2007, the Defendants,

ROBERT BROOKS,  
CHERYL BROOKS,  
YVONNE SALAZAR QUINTANILLA,  
NIESHA MANUEL,  
GERALDINE WILLIAMS,  
CESAR GONZALES,  
RICK RUSSELL,  
and  
STANLEY ROOS,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered by a private and commercial interstate carrier, to wit: FedEx, according to the directions thereon, from Dallas, Texas, in the Northern District of Texas, to Countrywide Bank, FSB, in Austin, Texas, in the Western District of Texas, a federally insured financial institution, the closing documents for Condo 5105 located in Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

COUNT NINE  
[18 U.S.C. §§ 1341 & 2]

1. The Introduction to this Indictment and Manner and Means portion of Count One are incorporated herein as if fully restated as the scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises devised by the



Defendants.

2. On or about December 31, 2007, in the Western District of Texas, the Defendants,

ROBERT BROOKS,  
CHERYL BROOKS,  
GERALDINE WILLIAMS,  
CASEY VAUGHAN,  
JOSEPH COOPER,  
and  
DEBORAH ALLEN,

aided and abetted by each other, and by others known to the Grand Jury, for the purpose of executing the above-described scheme to defraud and obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered by a private and commercial interstate carrier, to wit: American Airlines Priority Parcel Service, according to the directions thereon, closing documents for Condo 4205 located in Dallas, Texas.

In violation of Title 18, United States Code, §§ 1341 & 2.

**NOTICE OF UNITED STATES OF AMERICA'S DEMAND FOR FORFEITURE**

[Title 18 U.S.C. §§ 1341, 1349 and subject to forfeiture pursuant to  
Title 18 U.S.C. § 981(a)(1)(C), made applicable to criminal forfeiture by  
Title 28 U.S.C. § 2461(c) *see* Rule 32.2, Fed. R. Crim. P.]

I.

Forfeiture Statutes Relating to Mail Fraud  
[ Title 18 U.S.C. §§ 1341, 1349]

As a result of the foregoing criminal violations as set forth in Counts One through Nine, which are punishable by imprisonment for more than one year, the United States gives notice that it intends to forfeit, but is not limited to, the below listed properties from Defendants Robert

Case 5:10-cr-00304 Document 1 Filed 01/21/11 Page 1 of 1

Brooks and Cheryl Brooks. Said Defendants shall forfeit all right, title and interest in said properties to the United States pursuant to Rule 32.2, Fed.R.Crim.P., and Title 18 U.S.C. § 981(a)(1)(C), made applicable to criminal forfeiture pursuant to Title 28 U.S.C. § 2461, which states the following:

**Title 18 U.S.C. § 981.**

(a)(1) The following property is subject to forfeiture to the United States:

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section...of this title or any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

**Title 28 U.S.C. § 2461.**

(a) Whenever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.

This Notice of Demand for Forfeiture includes but is not limited to the property described below in Paragraphs II and III.

**II.**

**Personal Properties**

\$64,000.00 in Funds Received from D&M Leasing, as Proceeds from the Sale of a 2006 Aston Martin, VIN: SCFBB03B26GC02844, Registered to Robert & Cheryl Brooks;

\$30,405.31, More or Less, contained in Merrill Lynch Account Number 425-07290, in the name of RC Brooks LLC, Located at Merrill Lynch, San Antonio, Texas;

\$32,524.00, More or Less, contained in Merrill Lynch Account Number 425-13474, in the Name of Robert Brooks and Cheryl Brooks, at Merrill Lynch, San Antonio, Texas; and

One 2007 21' Liberator Boat, Hull #AAI49789H607, and One Boat Trailer, License Plate #: 41ZHFP, VIN: AD717707 registered to Upscale Realty LLC.

III.  
Money Judgment

As a result of the foregoing criminal violations as set forth in Counts One through Nine, Defendants Robert Brooks, Cheryl Brooks, Richard Howard, Yvonne Salazar Quintanilla, Niesha Manuel, Tamatha Buckholt, Stacy Owens, Geraldine Williams, Cesar Gonzales, Cedric Lester, Casey Vaughan, Joseph Cooper, Vadim Gazanchiyants, George Autobee, Deborah Allen, Mauricio Betes, Stephen Brott, Rick Russell, Anthony Lore, Claude Vaughan, Glynnwood Bowman, and Stanley Roos shall forfeit to the United States, pursuant to Rule 32.2, Fed.R.Crim.P., and Title 18 U.S.C. § 981(a)(1)(C), made applicable to criminal forfeiture pursuant to Title 28 U.S.C. § 2461, the following described Money Judgment:

A sum of money equal to One Million Dollars and no cents (\$1,000,000.00), representing the amount of proceeds obtained directly or indirectly as a result of the violations set out in the above-described Counts and for which Defendants Robert Brooks, Cheryl Brooks, Richard Howard, Yvonne Salazar Quintanilla, Niesha Manuel, Tamatha Buckholt, Stacy Owens, Geraldine Williams, Cesar Gonzales, Cedric Lester, Casey Vaughan, Joseph Cooper, Vadim Gazanchiyants, George Autobee, Deborah Allen, Mauricio Betes, Stephen Brott, Rick Russell, Anthony Lore, Claude Vaughan, Glynnwood Bowman, and Stanley Roos are jointly and severally liable.

IV.  
Substitute Assets

If any of the properties and/or money judgment described above, as a result of any act or omission of Defendants Robert Brooks, Cheryl Brooks, Richard Howard, Yvonne Salazar Quintanilla, Niesha Manuel, Tamatha Buckholt, Stacy Owens, Geraldine Williams, Cesar Gonzales, Cedric Lester, Casey Vaughan, Joseph Cooper, Vadim Gazanchiyants, George Autobee, Deborah Allen, Mauricio Betes, Stephen Brott, Rick Russell, Anthony Lore, Claude Vaughan, Glynnwood Bowman, and Stanley Roos:

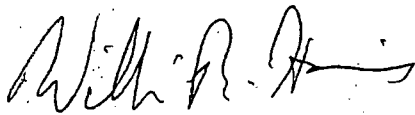
- Case 3:10-cr-00001 Document 1-1
- a. cannot be located upon the exercise of due diligence;
  - b. has been transferred or sold to, or deposited with, a third person;
  - c. has been placed beyond the jurisdiction of the Court;
  - d. has been substantially diminished in value; or
  - e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States of America to seek forfeiture of any other property, to include the above-described properties of said Defendants Robert Brooks and Cheryl Brooks, up to the value of said properties and/or money judgment, as substitute assets pursuant to Title 18 U.S.C. § 982(b)(1), (See Title 21 U.S.C. § 853(p)) and Rule 32.2, Fed.R.Crim.P.

A TRUE BILL.

  
FOREPERSON OF THE GRAND JURY

JOHN E. MURPHY  
United States Attorney



WILLIAM R. HARRIS  
Assistant United States Attorney

FILED

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

2012 JUL 11 PM 1:17

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXASBY [Signature]  
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

ROBERT BROOKS (1)

and

CHERYL BROOKS (2)

CRIMINAL NO. **SA 12CR 666 06**  
INDICTMENT[Violations: Aiding False Tax  
Return, 26 U.S.C. § 7206(2);  
Filing False Tax Returns, 26  
U.S.C. § 7206(1)]

## THE GRAND JURY CHARGES:

COUNT ONE  
[26 U.S.C. § 7206(2)]

On or about October 21, 2008, in the Western District of Texas, the Defendant,

ROBERT BROOKS,

did willfully aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Internal Revenue Service of a joint U.S. Individual Income Tax Return, Form 1040, of himself and his wife, for the calendar year 2007. The return was false and fraudulent as to a material matter in that it reported on Line 17 Schedule E income in the amount of \$200,991, whereas, as the Defendant then and there well knew, he and his wife had Schedule E income well in excess of that amount.

In violation of Title 26, United States Code, Section 7206(2).

COUNT TWO  
[26 U.S.C. § 7206(1)]

On or about October 21, 2008, in the Western District of Texas, the Defendant,

CHERYL BROOKS,

did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, of herself and her husband, for the calendar year 2007, which was verified by a written declaration that it was made under the penalties of perjury, and which the Defendant did not believe to be true and correct as to every material matter. That joint U.S. Individual Income Tax Return, Form 1040, which was filed with the Director, Internal Revenue Service Center, at Austin, Texas, was false and fraudulent as to a material matter in that it reported on Line 17 Schedule E income in the amount of \$200,991, whereas, as the Defendant then and there well knew, she and her husband had Schedule E income well in excess of that amount.

In violation of Title 26, United States Code, Section 7206(1).

COUNT THREE  
[26 U.S.C. § 7206(2)]

On or about October 27, 2008, in the District of Utah, the Defendants,

ROBERT BROOKS  
and


CHERYL BROOKS,

did willfully aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Internal Revenue Service of a U.S. Return of Partnership Income, Form 1065, of Upscale Realty, LLC, for the tax year April 10, 2007, to December 31, 2007. The return was false and fraudulent as to a material matter in that it reported on Line 20 Other Deductions in the amount of \$798,855, whereas, as the Defendants well knew, included in that amount was a \$475,000

"management fee" to a corporation partly owned by Defendant Robert Brooks which had not in fact been paid.

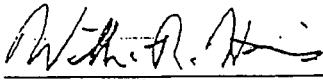
In violation of Title 26, United States Code, Section 7206(1).

A TRUE BILL.

  
FOREPERSON OF THE GRAND JURY

ROBERT PITMAN  
United States Attorney

By:



WILLIAM R. HARRIS  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

v.

ROBERT BROOKS

CRIMINAL NO. SA 10 CR 536 (1) FB  
CRIMINAL NO. SA 12 CR 666 (1) FB

GOVERNMENT'S CONSOLIDATED RESPONSE TO  
DEFENDANT'S MOTIONS FOR POST-CONVICTION RELIEF  
PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 2255

COMES NOW the United States of America, by and through its undersigned counsel, and in opposing the Defendant's Motions for Post-Conviction Relief states as follows:

I. Procedural Status

The Defendant was charged in two separate indictments which were consolidated for trial. The Indictment in Criminal No. SA 10 CR 536 (1) FB charged the Defendant, along with 21 other individuals, to include his wife, with one count of conspiracy in violation of Title 18, United States Code, Section 1349, and eight counts of use of common carriers engaged in interstate commerce to execute a scheme to defraud various mortgage lenders and to obtain money and property from them by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1341. These charges will be referred to herein as the "mortgage fraud" or "mail fraud" counts. The Indictment in Criminal No. SA 12 CR 666 (1) FB charged the Defendant with two counts of aiding and assisting the preparation and presentation to the Internal Revenue Service of false and fraudulent tax returns, in violation of Title 26, United States Code, Section 7206(2). These charges will be referred to herein as the "tax" counts. Defendant proceeded to a consolidated trial of both indictments before the Honorable Fred Biery, United States District Judge, and was found guilty of the mortgage fraud conspiracy, seven of the



substantive mail fraud counts<sup>1</sup> and both of the tax counts. The Court sentenced the Defendant to a total of 135 months on each of the mortgage fraud counts to be served concurrently with each other, and to 36 months on each of the tax counts, to be served concurrently with each other, and to be served concurrently with the 135 months for the mortgage fraud counts. The Defendant was also sentenced to serve concurrent terms of supervised release, specifically 5 years on each of Counts One, Seven, and Eight, and 3 years on the remaining counts of conviction in the mortgage fraud case, and 1 year on each count in the tax case. With the exception of the vacation of Count Three on appeal, Defendant's convictions and sentences were affirmed on direct appeal.

The Defendant now seeks post-conviction relief through two separate motions, one filed in the mortgage fraud case, and the other filed in the tax case. The United States will address each in turn, but for the reasons stated herein, they should each be denied.

## II. The Mortgage Fraud Counts

In seeking to vacate his mortgage fraud convictions and sentencing, the Defendant argues that the Court lacked jurisdiction due to the United States' failure to prove that the victim mortgage companies were "financial institutions" within the meaning of Title 18, United States Code, Section 20<sup>2</sup>, insured by the Federal Deposit Insurance Corporation (herein "FDIC"). The Defendant argues that this is an essential element of the mortgage fraud counts. The Defendant is mistaken.

<sup>1</sup> One mail fraud count (Count Six) was dismissed at the close of the Government's case due to lack of evidence of the use of a common carrier engaged in interstate commerce to transport the documents in question. On direct appeal, the United States conceded there was insufficient evidence to support the guilty verdict as to Count Three.

<sup>2</sup> The portion of Section 20 relevant to the instant case is subsection one:  
As used in this title, the term "financial institution" means—  
(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act).

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The Defendant was charged in Count One with conspiracy in violation of Title 18, United States Code, Section 1349, which provides: "Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy." [As charged in the Indictment, the conspiracy was "to devise a scheme to defraud one or more federally insured financial institutions, and other mortgage companies,"] and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and to cause the use of the mails and interstate wire transfers for the purpose of executing and attempting to execute their fraudulent scheme, contrary to Title 18, United States Code, Sections 1341, 1343, 1344 and 2." Sections 1341, 1343, 1344 and 2 are, respectively, mail fraud<sup>3</sup>, wire fraud, bank fraud, and the agency statute. [This is considered a "multi-object" conspiracy. It is well established that although multiple objects may be alleged conjunctively, the government need only prove one of the multiple objects to sustain a conviction for conspiracy.] *Griffin v. United States*, 502 U.S. 46 (1991). [The jury in the instant case was instructed that the conspiracy was to commit mail fraud in violation of Section 1341.] The jury charge given in this case is attached as Exhibit A. The jury was instructed that the essential elements for this conspiracy are:

*First:* That the defendant and at least one other person made an agreement to commit the crime of mail fraud as charged in the Indictment;

*Second:* The defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

<sup>3</sup> Actually titled "Frauds and Swindles" which proscribes the use of "any private or commercial interstate carrier" in addition to the Postal Service, in executing fraud schemes.

*Third:* That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the indictment, in order to accomplish some object or purpose of the conspiracy.

[ Pattern Jury Instructions, § 2.15A (Conspiracy to Commit Offense) Criminal Cases, United States Fifth Circuit District Judges Association, 2015, modified (written for Title 18, United States Code, Section 371, but applicable to Title 18, United States Code, Section 1349). ]

Counts Two, Four, Five, and Seven through Nine charged substantive mail fraud counts in violation of Section 1341. That statute provides in relevant part:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, \* \* \*, for the purpose of executing such scheme or artifice or attempting so to do, \* \* \*, knowingly causes to be delivered by mail or such carrier according to the direction thereon, \* \* \*, any such matter or thing, shall be fined under this title<sup>4</sup> or imprisoned not more than 20 years, or both. If the violation \* \* \* affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

The Court instructed the jury that the essential elements to find a violation of this statute are:

*First:* That the defendant knowingly created a scheme to defraud, that is to obtain money from mortgage proceeds through the use of a simultaneous purchase at or about fair market value and sale at an artificially inflated price, known as a "land flip" or "property flip";

*Second:* That the defendant acted with a specific intent to defraud;

*Third:* That the defendant mailed something or caused another person to mail something through the United States Postal Service or a private or commercial interstate carrier, for the purpose of carrying out the scheme, to wit:

[Details of each carrier, property and mortgage lender for each respective count]

<sup>4</sup> \$250,000 (footnote added).

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*Fourth:* That the scheme to defraud employed false material representations; and

*Fifth:* That the scheme affected a financial institution in Count Two and Count Eight. The parties have stipulated for purposes of Count Two that Supreme Mortgage Group (sic) in San Antonio, Texas is a financial institution. The parties have also stipulated for purposes of Count Eight that Countrywide Bank, FSB is a financial institution.

Pattern Jury Instructions, § 2.56 (Mail Fraud) Criminal Cases, United States Fifth Circuit District Judges Association, 2015, modified.

In fact, the only relevance of a victim being a financial institution is for the enhanced punishment of 30 years' imprisonment versus 20, \$1 million fine versus \$250,000, and five years of supervised release versus three. Under the *Apprendi* line of cases<sup>5</sup>, the United States must plead and prove the status of a victim as a financial institution in order for the enhanced punishments to be imposed. This is relevant in the instant case only as to the order of five years' supervised release for Counts One, Seven, and Eight as rest of the sentence imposed – 135 months and no fine fall well below the base statutory punishment of 20 years and a \$250,000 fine. Thus, while the United States was only required to prove that any given mortgage company was a “financial institution” insured by the FDIC in order to enhance punishment, it was not required to do so in order to establish federal jurisdiction. Federal jurisdiction in this case was established through the Commerce Clause<sup>6</sup> via the use of common carriers engaged in interstate commerce to execute the scheme. Further, the Defendant is mistaken in his assertion that the United States failed to prove that any of the lenders were financial institutions. As noted in the jury charge and indeed in

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<sup>5</sup> *Apprendi v. New Jersey*, 530 US 466 (2000)

<sup>6</sup> United States Constitution, Article I, Section 8, Clause 3.

Defendant's Motion, the parties stipulated that the mortgage lenders ... Counts Two and Eight<sup>7</sup> were financial institutions. It is axiomatic that a stipulation is treated as a proven fact. *See, e.g., United States v. Caldwell*, 586 F.3d 338, 343 (5<sup>th</sup> Cir. 2009) ("When one party stipulates to a disputed fact, the stipulation conclusively proves that fact.")

Inasmuch as the Court had jurisdiction, and each of the essential elements were found by the jury to have been proven beyond a reasonable doubt, Defendant is not entitled to the relief he seeks. His Motion to vacate the mortgage fraud convictions and sentences should therefore be overruled.

### III. The Tax Counts

The Defendant argues that his convictions and sentence for the tax counts should be set aside due to the ineffective assistance of both his trial and appellate counsel.<sup>8</sup> In support, he cites five overlapping or repetitive grounds, which will be addressed in turn.

#### A. The Standard of Review

The Sixth Amendment to the Constitution of the United States guarantees the right to effective assistance of counsel in criminal prosecutions. *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003). To obtain the relief he seeks, the Defendant must prove both (1) that trial counsel's performance "fell below an objective standard of reasonableness", *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984), and (2) that counsel's deficient performance prejudiced the Defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding. *Id.*, at 691-92. Failure to satisfy either prong of the test is fatal to a claim of ineffective assistance of counsel. *Id.*, at 697.

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<sup>7</sup> Counts One and Seven were not mentioned, and the Court did not impose the enhanced sentence of 5 years' supervised release as to Count Two. If the Defendant is entitled to any relief at all, it is only to have his supervised release on Counts One and Seven reduced from five years to three.

<sup>8</sup> Stephen H. Gordon, Esquire, and Kerrisa Chelkowski, Esquire, respectively.

1. The Introduction to this Indictment is incorporated herein as if fully restated.
2. From on or about May 17, 2005, to on or about February 21, 2008, in the Western District of Texas, the Northern District of Texas, and elsewhere, the Defendants,

ROBERT BROOKS,

and others known and unknown to the Grand Jury did willfully and knowingly combine, conspire, confederate and agree together and with each other, and with other persons, to devise a scheme to defraud one or more federally insured financial institutions, and other mortgage companies, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and to cause the use of the mails and interstate wire transfers for the purpose of executing and attempting to execute their fraudulent scheme, contrary to Title 18, United States Code, Sections 1341, 1343, 1344 and 2.

#### THE OBJECT OF THE CONSPIRACY

2. It was the object of the conspiracy to obtain money from mortgage proceeds through the use of a simultaneous purchase at or about fair market value and sale at an artificially inflated price, known as a "land flip" or "property flip."

#### MANNER AND MEANS

- The conspiracy and scheme to defraud were accomplished through the following means:
3. Defendants ROBERT BROOKS and CHERYL BROOKS engaged in the business of buying and simultaneously selling condominium units (condos) and conventional residences, otherwise known as "flipping."
  4. Defendant ROBERT BROOKS directly or with the assistance of others located residential property which was for sale.
  5. Defendant ROBERT BROOKS and others recruited persons to act as nominee buyers of the properties.

6

INDICTMENT

United States v. Robert Brooks(J), SA-10-CR-536-RB

#### COUNT ONE:

#### CONSPIRACY TO COMMIT MAIL FRAUD 18 U.S.C. § 1349

Title 18, United States Code, Section 1349, makes it a crime for anyone to conspire to use the mails in carrying out a scheme to defraud.

The defendant is charged with conspiring to use the mails and interstate wire transfers for the purpose of executing and attempting to execute a fraudulent scheme, to wit: obtain money from mortgage proceeds through the use of simultaneous purchase at or about fair market value and sale at an artificially inflated price, known as a "land flip" or "property flip."

A "conspiracy" is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member becomes the agent of every other member.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

*First:* That the defendant and at least one other person made an agreement to commit the crime of mail fraud as charged in the Indictment;

*Second:* The defendant knew the unlawful purpose of the agreement and joined in it;

*Third:* That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the Indictment, in order to accomplish some object or purpose of the conspiracy.

9

JURY INSTRUCTIONS

APR 20 2016

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

## 38

Appeals, *see* 28 U.S.C. § 2244(b); consequently a § 2255 movant must present all his claims in his first § 2255 motion or risk losing such claims. **This Court grants Defendant twenty-one (21) days to withdraw the motion, amend it so that it contains all his § 2255 claims, or advise this Court he wishes to proceed with his original Motion without amendment.** *See Castro v. U.S.*, 540 U.S. 375, 383, 124 S. Ct. 786, 157 L. Ed. 2d 778 (2003). If Defendant fails to respond to this Order, his Motion will be dismissed for failure to prosecute and failure to comply with the Orders of this Court pursuant to Fed. R. Civ. P. 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997).

Defendant's Motion for Directed Verdict (Entry # 1303), requesting this Court grant Defendant's § 2255 Motion for the Government's failure to respond, is **DENIED**. The Government is not required to respond to a § 2255 motion until ordered by this Court, *see* Rule 4(b) of the Rules Governing § 2255 Proceedings, and this Court has not ordered the Government to respond.

**It is so ORDERED.**

**SIGNED** this 20th day of April, 2016.

  
**FRED BIERY**  
**UNITED STATES DISTRICT JUDGE**



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT of TEXAS  
SAN ANTONIO DIVISION**

**UNITED STATES of AMERICA,**

**Plaintiff-Respondent,**

**VS.**

**ROBERT BROOKS, BoP Reg. # 63355-280,**

**Defendant-Movant.**

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**Civil Actions  
Nos. SA-16-CA-557-FB &  
SA-16-CA-558-FB**

**Criminal Case  
Nos. SA-10-CR-536(1)-FB &  
SA-12-CR-666(1)-FB**

**MEMORANDUM DECISION**

Before the Court are Defendant Robert Brooks's 28 U.S.C. § 2255 Motions to Vacate Federal Sentence (Case 10-CR-536(1) Docket Entry Numbers 1313 & 1315; Case 12-CR-666(1) Docket Entry Numbers 149 & 152) and the Government's Consolidated Answer (Case 10-CR-536(1) Docket Entry Number 1319; Case 12-CR-666(1) Entry # 154). Defendant Brooks also filed a Motion for Directed Verdict, Motion for Reconsideration, and Motion for Summary Judgment in Case No. SA-10-CR-536(1)-FB (Docket Entry Numbers 1322, 1331 & 1335), presenting the same issue as in his § 2255 motion, which this Court construes as supplements to his § 2255 motion.

**I.**

Defendant Brooks was convicted in 2013 following a jury trial in Case No. SA-10-CR-536(1)-FB of conspiracy to commit mail fraud in violation of 18 U.S.C. §§ 1349, 1341 and 2, and six counts of aiding and abetting mail fraud in violation of 18 U.S.C. §§ 1341 and 2, and was sentenced to concurrent 135 month terms on each offense. The same jury convicted Mr. Brooks of two counts of aiding and abetting tax fraud in violation of 26 U.S.C. § 7206(2), and he was sentenced to concurrent 36 month terms for each offense. Mr. Brooks's sentences in the two cases were concurrent. The Fifth Circuit Court of Appeals vacated one of the mail fraud counts for insufficient evidence, but his remaining convictions were affirmed, and the Supreme Court denied his cert.

Case 1:12-cr-00000 Document 1-1  
petition. *United States v. Brooks*, No. 13-50592 (5th Cir., Jan. 15, 2015), *cert. denied*, No. 14-9410 (U.S., June 8, 2015).

The evidence at trial established from May 2005 through February 2008, Defendant Brooks and his co-conspirators were involved in a complex mortgage fraud scheme where they defrauded various mortgage lenders of more than \$15,000,000. Defendant Brooks and his conspirators - who included employees of Mr. Brooks's companies, appraisers, brokers, and underwriters - perpetrated this fraud by engaging in "property flips," a scheme where properties were purchased at fair market value and then resold almost simultaneously to "straw" purchasers at grossly inflated values to generate an inflated mortgage loan. The scheme required submitting false information - including bogus appraisals, and documents misrepresenting the intentions, financial commitment, and credit-worthiness of the straw purchasers - to the mortgage lenders. The witnesses at trial included many of the straw purchasers and defendant's co-conspirators, as well as representatives of the defrauded mortgage lenders. The evidence also showed that in 2007, defendant caused to be filed a false and fraudulent tax return that understated his income and claimed a non-existent business deduction.

## II.

Section 2255 provides for relief where:

the sentence was imposed in violation of the Constitution or laws of the United States, or . . . the court was without jurisdiction to impose such sentence, or . . . the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack . . .

Relief in a proceeding collaterally attacking a sentence under § 2255 is limited to situations involving "transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice." *United States v. Guerra*, 94 F.3d 989, 995 (5th Cir. 1996).

Rule 2 of the Rules Governing § 2255 Proceedings requires that the motion set forth the grounds for relief and "state the facts supporting each ground." Section 2255 requires that the district court grant an evidentiary hearing on a movant's claims "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." A hearing is not required on claims based on unsupported generalizations, *United States v. Guerra*, 588 F.2d 519, 521 (5th Cir. 1979), *cert. denied*, 450 U.S. 934 (1981), conclusory or speculative claims, *United States v. Martinez*, 181 F.3d 627, 628 (5th Cir. 1999) (vague and conclusory allegations not sufficient to trigger a hearing or response from the government); *United States v. Fishel*, 747 F.2d 271, 273 (5th Cir. 1984) (conclusory and speculative allegations not sufficient to warrant a hearing), or claims decided on direct appeal, *United States v. McCollom*, 664 F.2d 56, 59 (5th Cir. 1981), *cert. denied*, 456 U.S. 934 (1982).

**- Mail Fraud Counts in Case No. 10-CR-536(1) -**

Mr. Brooks contends there was no showing the allegedly defrauded mortgage companies were federally insured "financial institutions" as defined by 18 U.S.C. § 20, and thus the District Court had no jurisdiction and the evidence was insufficient to support his mail fraud convictions in Case No. 10-CR-536(1). This issue is procedurally barred and without merit.

This Court is precluded from addressing issues addressed expressly or implicitly by the Court of Appeals. *See United States v. Clark*, 816 F.3d 350, 361 (5th Cir. 2016). On direct appeal the Fifth Circuit Court of Appeals held that the evidence was sufficient to support defendant's convictions, and thus expressly or implicitly determined that all the elements of the offenses were established.

Case 7:12-cr-00001 Document 1-1 Filed 01/11/13 Page 43 of 50

In any event, this issue is without merit. Defendant Brooks's convictions pursuant to §§ 1349 and 1341 did not require proof the mortgage companies were federally insured "financial institutions" because such is not an element under either § 1349 or § 1341.

Section 1349 states that "[a]ny person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy." The jury was charged that the object of the alleged conspiracy was mail fraud. Section 1331, defining mail fraud, provides in relevant part:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting so to do, . . . knowingly causes to be delivered by mail or such carrier according to the direction thereon, . . . any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation . . . affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Neither §§ 1349 or 1341 require proof that the fraud victim was a "financial institution." See *United States v. Mendoza*, 4 F. App'x 94, 97-98 (2nd Cir. 2001); *United States v. Ali*, 508 F.3d 136, 146 (3d Cir. 2007); *United States v. Winingear*, 422 F.3d 1241, 1246 (11th Cir. 2005). Proof that a fraud victim was a "financial institution" was required only for the application of the enhanced penalty in the last sentence under § 1341, *see id.*; however in defendant's case this applied only to Counts Two and Eight of the Indictment, and it was stipulated that Supreme Mortgage Group in San Antonio as alleged in Count Two, and Countrywide Bank, FSB, as alleged in Count Eight are "financial institutions." \*

[Federal jurisdiction was established through the commerce clause because the evidence showed the fraudulent scheme utilized interstate common carriers.] See *United States v. Marek*, 238 F.3d 310, 318 (5th Cir.), *cert. denied*, 534 U.S. 813 (2001). [Therefore there is no basis for defendant's

contention this Court was without jurisdiction to address the mail fraud counts or the evidence was insufficient to support such counts.]

- Tax Fraud Counts in Case No. 12-CR-666(1) -

Mr. Brooks contends that his tax fraud convictions resulted from ineffective assistance of counsel.

To establish ineffective assistance of counsel, a defendant must show counsel's performance was deficient, i.e. counsel's performance was not professionally reasonable, and counsel's deficient performance prejudiced the petitioner, i.e. "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687-94, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). There is a strong presumption counsel's conduct falls within the wide range of reasonable professional assistance or sound trial strategy. *Id.* at 689. In order to demonstrate prejudice, a defendant must show not only that had counsel acted in a different manner a new trial would have been granted, but also that, as a result of counsel's incompetence, the trial was rendered fundamentally unfair or unreliable. *Lockhart v. Fretwell*, 506 U.S. 364, 369-70, 113 S. Ct. 838, 112 L. Ed. 2d 180 (1993).

- i -

Defendant first contends that his counsel was ineffective for failing to object to joinder of the tax fraud and mail fraud cases, and to improper venue as the alleged offenses occurred in Dallas in the Northern District, and witnesses that would have been available in Dallas were not available in the Western District.

Venue was proper in the Western District of Texas because several of the mortgage lenders were located in the Western District. Moreover, defendant agreed to waive venue because the

Government agreed to Mr. Brooks's continued release on bond and his self-surrender. Consolidation of the two cases also benefitted the defendant because it increased the likelihood that the mail fraud and tax fraud cases would be grouped under the Sentencing Guidelines and that the sentences would be imposed concurrently. Defendant's claim that he had witnesses willing to testify in Dallas, who would not have been willing to testify in San Antonio, is unavailing because pursuant to a subpoena such witnesses could have been required to testify in San Antonio.

Defendant also claims that in a separate trial he "would have been able to testify regarding the Tax Fraud Counts without having to answer questions on the Mail Fraud Counts." The Government would have been permitted pursuant to FED. R. EVID. 404(b) to cross-examine Mr. Brooks about the mail fraud transactions to show his motive, intent, preparation, plan, knowledge, and absence of mistake.

- ii -

Defendant next claims that counsel was ineffective for failing to object to the indictment which failed to allege the overt acts in support.

An indictment is constitutionally sufficient if it enumerates each element of the offense, notifies the defendant of the charges, and provides him with a double jeopardy defense against future prosecutions. *See Hamling v. United States*, 418 U.S. 87, 117, 94 S. Ct. 2887, 41 L. Ed. 2d 590 (1974). An indictment provides fair notice if it states the specific facts and circumstances surrounding the offense in sufficient detail to inform a defendant of the charges. *See id.* at 117-18.

Count One of the Indictment charged Defendant Brooks with aiding and abetting the wilful filing of a false and fraudulent Form 1040 Tax Return for 2007 in violation of § 7206(2) that understated his income. Count Two charged Defendant Brooks with aiding and abetting the wilful

filing of a false and fraudulent 2007 Tax Return that claimed a \$475,000 deduction for a "management fee" that was not paid in violation of § 7206(2).

The Indictment provided sufficient notice of the charges and the factual basis for the charges. An objection to the Indictment would have been futile. *See Koch v. Puckett*, 907 F.2d 524, 527 (5th Cir. 1990) ("counsel is not required to make futile motions or objections").

- iii -

Defendant next claims counsel was ineffective for failing to object to the jury instruction which failed to adequately provide that defendant's acts must be knowing and wilful. This claim is without merit. The jury charge instructed the jury on the elements of the alleged offenses, the defendant was presumed innocent, the Government had to prove its case beyond a reasonable doubt, and repeatedly admonished that the defendant could be found guilty as charged only if he acted intentionally, knowingly, and willfully.

- iv -

Defendant claims his counsel was ineffective for failing to raise a defense of good faith reliance on his accountants. Defendant did not testify, and there was no other evidentiary basis for this claim. In any event, the jury charge included an instruction on good faith, and defense-counsel, without an evidentiary basis for doing so, argued to the jury that defendant acted in good faith.

For each of defendant's alleged instances of ineffective counsel, defendant either fails to show counsel's performance was deficient or he was prejudiced by counsel's performance, and thus defendant has no basis for an ineffective assistance of counsel claim. *See Strickland v. Washington*, 466 U.S. at 687-94. In any event, in light of the substantial evidence against defendant, any counsel errors did not affect the jury's verdict and thus were harmless. *See Brecht v. Abrahamson*, 507 U.S. 619, 637-38, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993) (a federal habeas court may not grant relief

on trial errors unless petition demonstrates the error "had a substantial and injurious effect or influence in determining the jury's verdict").

Defendant's § 2255 claims are without legal merit, are refuted by the record, or are conclusory; therefore he is not entitled to § 2255 relief or a hearing. *See United States v. Martinez*, 181 F. 3d at 628; *United States v. Fishel*, 747 F. 2d at 273.

### III.

[Accordingly, Defendant Brooks' § 2255 Motions to Vacate Federal Sentence (Case 10-CR-536(1) Docket Entry Numbers 1313, 1315, 1322, 1331 & 1335; Case 12-CR-666(1) Docket Entry Number 152) are **DENIED** and these § 2255 cases are **DISMISSED WITH PREJUDICE**.] All other pending motions are **DENIED** as moot, and this case is now **CLOSED**. Defendant's § 2255 Motions fail to make "a substantial showing of the denial of a federal right," or a substantial showing this Court's procedural rulings are incorrect as required by FED. R. APP. P. 22, *see Slack v. McDaniel*, 529 U.S. 473, 483, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000), and therefore this Court **DENIES** defendant a certificate of appealability. *See* Rule 11(a) of the Rules Governing § 2255 Proceedings.

It is so ORDERED.

SIGNED this 4th day of August, 2017.

  
FRED BIERY  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT of TEXAS  
SAN ANTONIO DIVISION

UNITED STATES of AMERICA,

Plaintiff-Respondent,

VS.

ROBERT BROOKS, BoP Reg. # 63355-280,

Defendant-Movant.

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Civil Actions  
Nos. SA-16-CA-557-FB &  
SA-16-CA-558-FB

Criminal Case  
Nos. SA-10-CR-536(1)-FB &  
SA-12-CR-666(1)-FB

**J U D G M E N T**

The Court has considered the Judgment to be entered in the above styled and numbered cause.

Pursuant to this Court's Memorandum Decision of even date herewith,

**IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that Defendant Robert Nicholas Brooks's 28 U.S.C. § 2255 Motions to Vacate Federal Sentence are **DENIED** and these § 2255 cases are **DISMISSED WITH PREJUDICE**. Motions pending, if any, are **DENIED** as moot, a certificate of appealability is **DENIED**, and this case is now **CLOSED**.

It is so ORDERED.

SIGNED this 4th day of August, 2017.

  
FRED BIERY  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT of TEXAS  
SAN ANTONIO DIVISION

UNITED STATES of AMERICA,

Plaintiff-Respondent,

v.

ROBERT NICHOLAS BROOKS,

Defendant-Mover.

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Civil Action  
No. SA-16-CA-557-FB

Criminal Case  
No. SA-10-CR-536(1)-FB

ORDER

Defendant Robert Nicholas Brooks' Motions for Reconsideration and Amendment of Judgment pursuant to FED. R. CIV. P. 59(e) and 60(b) (Docket Entry Numbers 1349 & 1355), seeking reconsideration of this Court's Order denying and dismissing his 28 U.S.C. § 2255 Motion to Vacate Federal Sentence, construed as successive § 2255 motions, are **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction because the Court of Appeals has not authorized defendant to file a successive § 2255 motion. *See* 28 U.S.C. § 2244(a)(3)(A); *United States v. Hernandez*, 708 F.3d 680, 681-82 (5th Cir. 2013) (explaining that a motion for reconsideration re-asserting a § 2255 claim on the merits or presenting a new claim is in effect a successive § 2255 motion).

Construing the motions in the alternative as a FED. R. CIV. P. 59(e) motion to alter or amend judgment or a FED. R. CIV. P. 60(b) motion for relief from judgment challenging this Court's procedural rulings in denying and dismissing his § 2255 motion, the motions are **DENIED** for the reasons stated in this Court's Memorandum Decision (Docket Entry # 345). Defendant failed to identify an error of law or fact or other grounds warranting amendment or reconsideration of judgment.

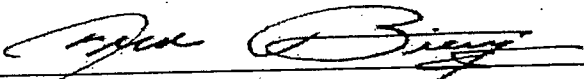
Defendant's Motion to proceed In Forma Pauperis (IFP) (Docket Entry #1351) to appeal this Court's denial and dismissal of his § 2255 Motion is **DENIED** for the reasons stated in this Court's Memorandum Decision (Docket Entry #1345). Defendant's § 2255 motion and appeal fail to present a "good faith" non-frivolous issue as required by 28 U.S.C. § 1915(a)(3) for leave to proceed IFP on appeal. *See Coppedge v. United States*, 369 U.S. 438, 445, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

Defendant's pro se Motion to Correct Judgment Pursuant to FED. R. CRIM. P. 36 (Docket Entry #1350) is **DENIED** because defendant failed to identify a clerical error requiring correction.

All other pending motions are **DENIED** as moot.

It is so ORDERED.

SIGNED this 27th day of December, 2017.

  
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FRED BIERY  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT of TEXAS  
SAN ANTONIO DIVISION

UNITED STATES of AMERICA,

Plaintiff-Respondent,

v.

ROBERT NICHOLAS BROOKS,

Defendant-Movant.

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Civil Action  
No. SA-16-CA-558-FB

Criminal Case  
No. SA-12-CR-666-FB

O R D E R

Defendant Robert Nicholas Brooks' Motions for Reconsideration and "for Independent Action" pursuant to Fed. Rs. Civ. P. 59(e) and 60(b) (Docket Entries ## 160 & 166), seeking reconsideration of this Court's Order denying and dismissing his 28 U.S.C. § 2255 Motion to Vacate Federal Sentence, construed as successive § 2255 motions, are **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction because the Court of Appeals has not authorized defendant to file a successive § 2255 motion. *See* 28 U.S.C. § 2244(a)(3)(A); *U.S. v. Hernandez*, 708 F.3d 680, 681-82 (5th Cir. 2013) (explaining that a motion for reconsideration re-asserting a § 2255 claim on the merits or presenting a new claim is in effect a successive § 2255 motion).

Construing the motions in the alternative as a Fed. R. Civ. P. 59(e) motion to alter or amend judgment or a Fed. R. Civ. P. 60(b) motion for relief from judgment challenging this Court's procedural rulings in denying and dismissing his § 2255 motion, the motions are **DENIED** for the reasons stated in this Court's Memorandum Decision (Docket Entry # 158). Defendant failed to identify an error of law or fact or other grounds warranting reconsideration of judgment.

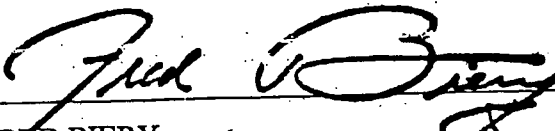
Defendant's Motion to Proceed In Forma Pauperis (IFP) (Docket Entry #163) to appeal this Court's denial and dismissal of his § 2255 Motion is **DENIED** for the reasons stated in this Court's

Memorandum Decision (Docket Entry #158). Defendant's § 2255 motion and appeal fail to present a "good faith" non-frivolous issue as required by 28 U.S.C. § 1915(a)(3) for leave to proceed IFP on appeal. *See Coppedge v. U.S.*, 369 U.S. 438, 445, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

All other pending motions are **DENIED** as moot.

It is so ORDERED.

SIGNED this 5th day of January, 2018.

  
FRED BIERY  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

ROBERT NICHOLAS BROOKS,

Defendant-Movant.

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SA-16-CA-557-FB (HJB)

SA-10-CR-536(1)-FB

ORDER

Before the Court is *pro se* Defendant-Movant's' Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. (Docket Entry 1309.) [This matter was referred to the undersigned by the Honorable Fred Biery on June 13, 2016.]

Defendant-Movant has filed an identical single § 2255 motion to vacate addressing two separate criminal cases: SA-10-CR-536-FB and SA-12-CR-666-FB. In case number SA-10-CR-536, [Defendant-Movant was convicted by jury of conspiracy to commit wire, mail, and bank fraud in violation of 18 U.S.C. §§ 1349, 1341, 1343, and 1344, and seven counts of aiding and abetting a] mail fraud scheme in violation of 18 U.S.C. §§ 1341 and he was sentenced to 135 months. In the other case number, SA-12-CR-666, Defendant-Movant was convicted by jury of two counts of aiding and abetting the filing of false tax returns and he was sentenced to 36 months.

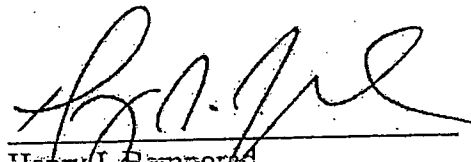
Rule 2(d) of the Rules Governing § 2255 Cases provides, "[a] moving party who seeks relief from more than one judgment must file a separate motion covering each judgment." A single motion challenging multiple judgments is confusing because it is not clear which claim is being raised to which conviction.

Defendant-Movant's two criminal cases are unrelated, were tried separately, and separate judgments were entered. Additionally, Defendant-Movant's current motion to vacate is approximately 100 pages. Excessive page length tends to obfuscate rather than clarify the issues resulting in the possible risk that an issue or argument may be overlooked.

Accordingly, it is hereby **ORDERED** that, withing twenty-one (21) days from the date of this Order, Defendant-Movant must file two separate amended § 2255 motions; one addressing case number SA-10-CR-536-FB, and another one addressing SA-12-CR-666-FB. In each of these two amended motions to vacate, Defendant-Movant must indicate on the first page which criminal case he is challenging in that motion. It is **FURTHER ORDERED** that Defendant-Movant's two amended § 2255 motions must be no more than thirty-five (35) pages in length, not including exhibits. Exhibits must be clearly marked.

If Defendant-Movant fails to comply with this Order, his motions may be dismissed for failure to prosecute and failure to comply with the Orders of this Court pursuant to Federal Rule of Civil Procedure 41(b). Cf. *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997).

**SIGNED** on July 22, 2016.

  
Henry J. Bemporad  
United States Magistrate Judge

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 17-50323  
USDC No. 5:10-CR-536-1  
USDC No. 5:16-CV-557



A True Copy  
Certified Aug 16, 2017

In re: ROBERT NICHOLAS BROOKS,

*John W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

Petitioner

Petition for a Writ of Mandamus to the  
United States District Court for the  
Western District of Texas, San Antonio

Before REAVLEY, SOUTHWICK, and COSTA, Circuit Judges.

PER CURIAM:

Robert Nicholas Brooks, federal prisoner # 63355-280, has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED.

Brooks was convicted of conspiracy to commit mail fraud, mail fraud, and tax fraud. United States v. Brooks, 590 F. App'x 435, 436 (5th Cir. Jan. 15, 2015). In 2016, Brooks filed two pro se motions pursuant to 28 U.S.C. § 2255, one raising claims of ineffective assistance of counsel (date-stamped as filed on August 24, 2016) and one asserting that the indictment should have been dismissed for lack of jurisdiction (date-stamped as filed on September 1, 2016). He also filed a motion seeking a directed verdict on the latter motion (date-stamped as filed on December 8, 2016), and a motion seeking reconsideration of a motion for acquittal under Rule 29 of the Federal Rules of Criminal



Procedure, again asserting a lack of jurisdiction (date-stamped as filed on February 14, 2017). The Government filed responses to his § 2255 motions on November 2, 2016, and to his motion seeking reconsideration of his Rule 29 motion on February 6, 2017.

In his petition, Brooks asks this court to order the district court to vacate his conviction based on his claims of lack of jurisdiction. However, the mandamus remedy is an extraordinary one, which we grant only in the clearest, most compelling cases. A party seeking mandamus relief must show both that he has no other adequate means for achieving the requested relief and that he has a clear and indisputable right to mandamus relief. *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). Brooks's arguments regarding jurisdiction are currently before the district court. If the district court rules against Brooks, he will have an appellate remedy. "Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus." *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

To the extent that Brooks seeks habeas relief from this court in the first instance, we decline to grant it. Even if circuit judges retain authority to entertain an original habeas corpus petition pursuant to 28 U.S.C. § 2241, which is unclear in light of the Antiterrorism and Effective Death Penalty Act of 1996, *see Felker v. Turpin*, 518 U.S. 651, 660-61 & n.3 (1996), any such authority rests in the hands of individual circuit judges, not the court of appeals itself, *see Zimmerman v. Spears*, 565 F.2d 310, 316 (5th Cir. 1977). Each member of this panel declines to exercise original jurisdiction remaining in individual circuit judges. *See id.*

The petition for a writ of mandamus is DENIED. The motion to expedite is DENIED as moot.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT



No. 17-50735

A True Copy  
Certified order issued Sep 10, 2018

UNITED STATES OF AMERICA,

*Stacy W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

Plaintiff-Appellee

v.

ROBERT NICHOLAS BROOKS,

Defendant-Appellant

Appeal from the United States District Court  
for the Western District of Texas

ORDER:

Robert Nicholas Brooks, federal prisoner # 63355-280, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion, challenging his convictions for conspiracy to commit mail fraud, mail fraud, and tax fraud, in violation of 18 U.S.C. §§ 1349 and 1341 and 26 U.S.C. § 7206(2), and his resulting 135-month sentence. To obtain a COA, he must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which in turn requires him to show that reasonable jurists would find the district court's decision to deny relief debatable or wrong, *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or "that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

If his COA brief is liberally construed, Brooks presents the following claims: (1) the district court lacked jurisdiction over the mail fraud charges because there was no proof that the victim mortgage companies were federally insured financial institutions, (2) trial counsel was ineffective in failing to investigate impeachment evidence in the mail fraud case, (3) the Government violated *Brady*<sup>1</sup> when it suppressed the same impeachment evidence, (4) trial and appellate counsel were ineffective in failing to object to the restitution order in the mail fraud case, (5) counsel was ineffective for failing to assert that the trial court was the improper venue for the tax fraud charges, (6) counsel was ineffective in not calling his accountant to testify in support of his good faith defense to the tax fraud charges, and (7) trial and appellate counsel were ineffective in failing to challenge the jury instruction on good faith for failing to include reliance on the advice of an accountant. He additionally asserts that the district court violated his due process rights when it denied his § 2255 motion without first obtaining a report and recommendation from a magistrate judge and erred in failing to hold an evidentiary hearing.

Even with the benefit of liberal construction, Brooks does not brief any argument renewing the claims, raised in his § 2255 motion, that trial counsel was ineffective in failing to challenge the improper joinder of his two cases for trial, in not challenging the sufficiency of tax fraud indictment on the ground that it failed to allege an overt act, and in not investigating and calling Geraldine Williams and Stacy Owens as witnesses, and that appellate counsel was ineffective in failing to raise the issue of his good faith on direct appeal. Moreover, although he appealed the denial of his FED. R. CIV. P. 59(e) and 60(b) motions, Brooks briefs no argument challenging the district court's dismissal of those motions as successive and unauthorized. Consequently, he has

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<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

abandoned each of the claims. *See Hughes v. Johns*, 191 F.3d 607, 613 (5th Cir. 1999) (stating that arguments not briefed in a COA motion are deemed abandoned).

Brooks also appears to raise, for the first time in his COA motion, the following claims: (1) the mail fraud indictment was insufficient because it did not allege jurisdiction under the Commerce Clause, (2) trial and appellate counsel were ineffective in failing to argue that the jury instructions on the mail fraud counts constructively amended the indictment, (3) trial and appellate counsel were ineffective in failing to challenge the sufficiency of the mail fraud indictment on the ground that it did not allege how the use of the mail was essential or material to the furtherance of the conspiracy, (4) trial counsel was ineffective in agreeing to an incorrect factual stipulation, (5) trial and appellate counsel were ineffective in failing to argue that the evidence was insufficient to support his tax fraud convictions, (6) trial counsel was ineffective in failing to introduce wiretap evidence to bolster his good faith defense in the tax fraud case, (7) trial and appellate counsel were ineffective in failing to challenge the tax fraud indictment on the ground that it did not adequately allege each of the required elements, including jurisdiction, and (8) appellate counsel was ineffective in failing to appeal the tax fraud convictions on any ground. These newly raised claims will not be considered. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003) (stating that this court generally will not consider claims raised for the first time in an appellate COA motion).

As to the properly briefed and preserved claims, Brooks has not made the required showing. *See Slack*, 529 U.S. at 484; *Miller-El*, 537 U.S. at 327. He likewise fails to demonstrate that the district court erred in denying his § 2255 motion without first obtaining a report and recommendation from the

magistrate judge or that it abused its discretion in refusing to hold an evidentiary hearing. See *United States v. Raddatz*, 447 U.S. 667, 681-82 (1980); 28 U.S.C. § 636(b)(1); see also *United States v. Reed*, 719 F.3d 369, 373-74 (5th Cir. 2013).

Accordingly, the instant COA motion is DENIED. Brooks's motions for leave to proceed in forma pauperis on appeal, to supplement the record on appeal, and to vacate the district court's judgment are similarly DENIED.

/s/ Priscilla R. Owen  
PRISCILLA R. OWEN  
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 17-50735

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UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ROBERT NICHOLAS BROOKS,

Defendant - Appellant

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Appeal from the United States District Court  
for the Western District of Texas

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Before OWEN, WILLETT, and OLDHAM, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motion for certificate of appealability. The panel has considered appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**