INDEX OF APPENDIX

A) A copy of the Judgment of the U.S. Court of Appeals for the Third Circuit denying the Petitioner's Petition for Rehearing En Banc, dated 12/16/2019;

B) A copy of the Judgment of the U.S. Court of Appeals for the Third Circuit denying the Petitioner's Appeal from the Distinct Court's denial of his Motion for New Trial, 2019 U.S. App. Lexis 34734;

C) A copy of the Judgment of the District Court for the District for New Jersey denying the Petitioner's Motion for New Trial, 2019 U.S. Dist. Lexis 36021;

D) A copy of the District Court's Discovery Order, ECF No. 21, 05/21/2014;

E) A copy of the online article evidencing the arrest of the Government's Lead Investigator Special Agent Rick Patel prior to the trial in December 2014;

F) Copies of relevant pages of trial transcripts and the Petitioner's motions directly quoting trial transcripts as reproduced by the Government for the purposes of Supplemental Appendix (SA) submitted by the Government to the U.S. Court of Appeals for the Third Circuit;

G) The Government's Corrected Brief for Appellee, p. 23;

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1599

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 3-14-cr-00274-001)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS and FUENTES*, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

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* Hon. Julio M. Fuentes' vote is limited to panel rehearing.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Michael A. Chagares
Circuit Judge

Dated: December 16, 2019
SLC/cc: Mark E. Coyne, Esq.
Marijan Cvjeticanin, Esq.
Ricahrd J. Ramsay, Esq.

APPENDIX B

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1599

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
D.C. No. 3-14-cr-00274-001
District Judge: Honorable Michael A. Shipp

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
November 19, 2019

Before: CHAGARES, MATEY, and FUENTES, Circuit Judges.

(Filed: November 21, 2019)

OPINION*

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* This disposition is not an opinion of the full court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

CHAGARES, Circuit Judge.

Marijan Cvjeticanin was convicted of nine counts of mail fraud, in violation of 18 U.S.C. § 1341, based on a scheme to defraud clients through false billing practices. Cvjeticanin now appeals the District Court's denial of his two motions for a new trial. We will affirm.

I.

We write for the parties and so recount only the facts necessary to our decision.

Cvjeticanin worked as a paralegal and then as an attorney at a New York immigration law firm. As both a paralegal and as an attorney, Cvjeticanin was responsible for preparing applications for permanent residency for foreign citizen-employees of two corporate clients (including ADP) with operations in the United States. In order for corporate employers to apply for permanent residency for their foreign citizen-employees, they must demonstrate a need to hire a foreign worker for a specific position and show that there are no minimally qualified United States citizens available to fill those positions. To meet these requirements, employers must first engage in recruiting by placing print advertisements for the positions in the geographic locations where the positions are based. The law firm that employed Cvjeticanin used the services of third-party advertising agencies to place the required print advertisements.

The Second Superseding Indictment alleged that Cvjeticanin defrauded two of his law firm's corporate clients by, inter alia, convincing his law firm to replace its existing advertising agency with Flowerson Holdings, Inc., which was secretly owned and controlled by Cvjeticanin, and then billing the clients for hundreds of thousands of

dollars' worth of advertising placements that Flowerson and Cvjeticanin never placed. On June 29, 2015, the jury found Cvjeticanin guilty on all nine counts of mail fraud.

The District Court denied Cvjeticanin's motion for new trial, among other post-trial motions, and we affirmed. United States v. Cvjeticanin, 704 F. App'x 89, 94 (3d Cir. 2017), cert. denied, 138 S. Ct. 939 (2018), reh'g denied, 138 S. Ct. 1347 (2018).

In June 2018, Cvjeticanin moved again for a new trial in two separate motions, which the District Court denied, for the reasons set forth in the court's March 6, 2019 Memorandum Opinion. This timely appeal followed.

II.[1]

Proceeding pro se, Cvjeticanin challenges the District Court's denial of his two motions for a new trial on numerous distinct and overlapping grounds. Before discussing the merits of Cvjeticanin's motions, we first explain why many of the claims pressed in Cvjeticanin's second motion were untimely filed and why we will affirm the District Court's dismissal of the claims on that ground.

A.

Rule 33 permits defendants to seek vacatur of judgment and the granting of a new trial where "the interest of justice so requires." Fed. R. Crim. P. 33(a). However, Rule 33 sets strict time limits for filing such motions, and the time to file depends entirely on whether the motion is "grounded on newly discovered evidence[.]" Fed. R. Crim. P. 33(b)(1). While motions based "on newly discovered evidence must be filed within 3

[1] The District Court had jurisdiction under 18 U.S.C. § 3231, and we have appellate jurisdiction under 28 U.S.C. § 1291.

years after the verdict or finding of guilty[,]" a "motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty." Fed. R. Crim. P. 33(b)(1)–(2) (emphasis added).

After his June 29, 2015 conviction, Cvjeticanin waited almost three years to file his two motions for new trial. Thus, while both motions were potentially timely to the extent they were "grounded on newly discovered evidence[,]" the time to file on any other ground had long since elapsed. On appeal, Cvjeticanin contends for the first time that all of his claims involve newly discovery evidence. But this is rewriting history. Cvjeticanin's own second motion for new trial makes clear that it sought to raise a plethora of issues that were not based on newly discovered evidence. For example, while Cvjeticanin characterized the first motion as having been "exclusively based on newly found evidence and newly found perjuries[,]" he described the second motion by contrast as being "primarily based on due process concerns, particularly [the] Government's known introduction of perjured testimonies and various Brady violations." Supplemental Appendix ("SA") 920. To the extent that the second motion is not also "exclusively" based on newly discovered evidence, it is untimely by almost three years.

The second motion identifies thirteen separate grounds for a new trial, including eight alleged instances in which the Government "knowingly solicited or introduced . . . false and perjured testimonies" as well as five claimed Brady violations. SA 922.

Seven of the bases identified by Cvjeticanin lack any remotely credible explanation as to how or why they constitute newly discovered evidence and are thus

time-barred under Rule 33(b)(2).[2] For example, Cvjeticanin challenges the Government's failure to turn over impeachment material of a Government witness consisting of a publicly-available newspaper article that was originally posted online in December 2014—months before trial began—with no explanation whatsoever as to how the information constitutes newly discovered evidence.

We will therefore affirm the dismissal of these new trial claims for that reason.

B.

We now turn to the remaining claims raised by Cvjeticanin in both motions for new trial. These include primarily claims that newly discovered evidence proves Cvjeticanin's lack of intent to defraud the companies, and evidence that Government witnesses perjured themselves, in some cases with the knowledge of the Government.

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[2] These include the following claims:

- "Government Knowingly Solicited Mr. Weinberg's False Testimony Regarding Computer World Magazine Advertisements[.]" SA 941.
- "Government Solicited and Then Failed to Correct Steven Weinberg's Perjured Testimony Regarding His Knowledge Concerning Flowerson's Existence[.]" SA 955.
- "Government Knowingly Suppressed The Information That The Law Firm Of Wildes & Weinberg Changed Its Computer Servers In 2004 And Consequently Lost Its Ability To Produce Copies Of Critically Important 2002 And 2003 EMAILS[.]" SA 959.
- "Government . . . Suppressed . . . Information That, One Year Prior to The Trial, The Government's Lead Investigatory Agent . . . Was Arrested[.]" SA 962.
- "Government . . . Suppressed . . . Original And/Or Copies of Advertisements Voluntarily Provided To The Government By The Defendant[.]" SA 964.
- "Government . . . Suppressed Information From The Defense Regarding Any Aspects Of The Broadridge Investigation[.]" SA 966.
- "Government . . . Suppressed Information . . . That The Chain Of Evidence Was Irretrievably Broken[.]" SA 969.

"We review the District Court's denial of a motion for a new trial for abuse of discretion." United States v. Schneider, 801 F.3d 186, 201 (3d Cir. 2015). Where a Rule 33 motion is based on newly discovered evidence, the movant shoulders a "heavy burden," United States v. Brown, 595 F.3d 498, 511 (3d Cir. 2010), of proving five elements:

> (a) [T]he evidence must be in fact newly discovered, i.e.[,] discovered since trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

Schneider, 801 F.3d at 201–02 (quoting United States v. Quiles, 618 F.3d 383, 388–89 (3d Cir. 2010) (quotation marks omitted)).

The District Court concluded that Cvjeticanin's non-time-barred claims in the first motion failed to satisfy three of these prongs, determining that Cvjeticanin (1) failed to establish that the evidence was newly discovered, (2) failed to demonstrate that his trial counsel could not have discovered the evidence sooner with due diligence, and that (3) the evidence was not of such a nature that it would probably produce an acquittal at trial.[3]

Because the District Court did not abuse its discretion in denying Cvjeticanin's motions for new trial, we will affirm. While Cvjeticanin describes his (purportedly) newly-discovered evidence as exculpatory, we agree with the District Court that it was not of such nature as to probably produce an acquittal at trial. For example, Cvjeticanin

[3] Similarly, the District Court concluded that even putting aside the timeliness of Cvjeticanin's claims in the second motion, his arguments lacked merit.

contended in his first motion that his October 13, 2003 email to an ADP employee "clearly disclos[ed] that Flowerson [wa]s his (own) advertising agency[,]" therefore "clearly proving Government witnesses knowingly committed perjury which is both material and central to the Government's case[.]" SA 826–27. Similarly, Cvjeticanin maintained that because he referred to Flowerson in another email as "my agency[,]" he had "openly disclos[ed] his ownership and control over the Flowerson agency" to ADP. SA 827. Those characterizations of the emails are, to put it mildly, a stretch. Because businesses, including law firms, often have their own preferred vendors which they use by default unless a client prefers another option, Cvjeticanin's references to "my ad agency[,]" SA 891–92, were ambiguous at best and cannot be said to have "clearly" or "openly" disclosed anything about Cvjeticanin's secret interest in Flowerson.

Further, while Cvjeticanin believes the "newly discovered evidence" cited in his second motion to be exculpatory, the evidence that he believes undermines the trial testimony of Government witnesses[4] is merely impeachment evidence that leaves

[4] For example, the following:

- "Government . . . Solicited Steven Weinberg's False Testimony That He . . . Checked 'All' Advertisements In Various Public Libraries[.]" SA 925.
- "Government . . . Solicited Steven Weinberg's False Trial Testimony That ALL Applications Filed By The Defendant Were Fraudulent[.]" SA 933.
- "Government . . . Solicited Steven Weinberg's False Testimony That He Checked 2012 Star Ledger Advertisements[.]" SA 939.
- "Government . . . Solicited Steven Weinberg's False Testimony Regarding The Indictment Count Nine – Oleksii Prokopchuk Case[.]" SA 944.
- "Government . . . Solicited . . . Agent Patel's False . . . Testimony That He Checked And Reviewed 'Hundreds Of Newspapers' and 'A Whole Bunch Of Things[.]'" SA 949.

undisturbed the inculpatory, recorded statements made by Cvjeticanin to Steven Weinberg, his former employer. Accordingly, and in the context of the trial evidence considered by the District Court as a whole, this impeachment material is not "of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal," Schneider, 801 F.3d at 202. Because none of the newly-discovered evidence described by Cvjeticanin meets this standard, the District Court did not abuse its discretion in denying Cvjeticanin's motions for new trial.

III.

For these reasons, we will affirm the District Court's order denying Cvjeticanin's motions for new trial.

- "Government Solicited . . . False Testimony Of Steven Weinberg That He Filed 100 Applications And Personally Paid For The New Advertisements[.]" SA 952.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1599

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
D.C. No. 3-14-cr-00274-001
District Judge: Honorable Michael A. Shipp

Submitted Under Third Circuit L.A.R. 34.1(a)
November 19, 2019

Before: CHAGARES, MATEY, and FUENTES, Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of New Jersey and was submitted on November 19, 2019.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the Judgment of the District Court entered on March 6, 2019, is AFFIRMED. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: November 21, 2019

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
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PHILADELPHIA, PA 19106-1790
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November 21, 2019

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Marijan Cvjeticanin
Fort Dix FCI
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RE: USA v. Marijan Cvjeticanin
Case Number: 19-1599
District Court Case Number: 3-14-cr-00274-001

ENTRY OF JUDGMENT

Today, **November 21, 2019** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App.

P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/Laurie
Case Manager
267-299-4936

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA v. MARIJAN CVJETICANIN	Criminal Action No. 14-274 (MAS) **MEMORANDUM OPINION**

SHIPP, District Judge

This matter comes before the Court upon *pro se* Defendant Marijan Cvjeticanin's ("Defendant") post-trial motions, including: a Motion to Stay (ECF No. 142); Motion for Evidentiary Hearing, New Trial, and to Vacate Final Judgment ("Motion for New Trial I") (ECF No. 146); Motion to Dismiss or for New Trial ("Motion for New Trial II") (ECF No. 147); Motions to Expedite (ECF Nos. 145, 148, 150); and Motion to Correct PACER Entries (ECF No. 154). The United States of America (the "Government") opposed Defendant's Motion to Dismiss and Motions for a New Trial,[1] but did not oppose Defendant's Motions to Expedite and Motion to Correct PACER Entries. (ECF No. 159.) Defendant replied.[2] (ECF No. 161.) The Court, having carefully considered the parties' submissions, decides the matter without oral argument pursuant to Local Civil Rule 78.1, which is applicable to criminal cases under Local Criminal Rule 1.1. For the reasons stated below, Defendant's Motion to Dismiss, Motions for a New Trial, and Motions

[1] Although ECF No. 142 is entitled, "Motion to Stay," the document is best characterized as a Motion to Dismiss. Further, ECF Nos. 146 and 147 pertain to Defendant's request for a new trial. The Court, accordingly, refers to ECF No. 142 as a Motion to Dismiss, and ECF Nos. 146 and 147 as Motions for a New Trial.

[2] Defendant's Motion for Extension of Time to File Reply (ECF No. 160) is moot in light of his December 20, 2018 Reply (ECF No. 161). The Court, accordingly, administratively terminates Defendant's Motion for Extension of Time to File Reply. (ECF No. 160.)

to Expedite are denied. (ECF Nos. 142, 145, 146, 147, 148, 150.) The Court denies in part and grants in part Defendant's Motion to Correct PACER Entries. (ECF No. 154.)

I. Background

The underlying facts of this matter are known to the parties and will not be repeated herein. On June 29, 2015, Defendant was convicted by a jury on nine counts of mail fraud, based on a scheme to defraud clients through false billing practices. (ECF No. 70.) Following Defendant's conviction, Defendant filed several post-trial motions, including a Motion for a New Trial, which this Court denied. (ECF Nos. 77, 88, 90, 93.) The Third Circuit affirmed this Court's orders denying Defendant's Motion to Dismiss the superseding indictment, Motion for a New Trial, and restitution judgment. *United States v. Cvjeticanin*, 704 F. App'x 89 (3d Cir. 2017), *cert. denied*, 138 S. Ct. 939 (2018). Subsequently, Defendant filed the instant motions.

II. Legal Standard

Defendant moves pursuant to Federal Rules of Criminal Procedure 12(b)(2) and 33.[3] Rule 12(b)(2) provides, "A motion that the court lacks jurisdiction may be made at any time while the case is pending."[4] Rule 33 provides, in relevant part, "Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." A district court "can order a new trial only if it believes that there is a serious danger that a miscarriage of justice has occurred—that is, that an innocent person has been convicted." *United States v. Silveus*, 542

[3] All references to Rules hereinafter refer to Federal Rules of Criminal Procedure unless otherwise noted.

[4] The Court declines to address the Government's timeliness arguments in opposition to Defendant's Rule 12(b)(2) motion because the Government failed to cite precedential case law to support its contention that the term "pending" within Rule 12(b)(2) requires Defendant to have raised his motion during the pendency of the case. (Gov't Opp'n Br. 13, ECF No. 159.) The Court is further not persuaded by the Government's assertion that the Court should construe Defendant's Rule 12(b)(2) motion as a Rule 12(b)(3) motion. (*Id.* at 15.)

F.3d 993, 1004-05 (3d Cir. 2008) (internal quotation marks and citation omitted). "There are five requirements that must be met before a court may grant a new trial on the basis of newly discovered evidence . . . ." *United States v. Quiles*, 618 F.3d 383, 388 (3d Cir. 2010). Those requirements are:

> (a) the evidence must be in fact newly discovered, i.e. discovered since trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

Id. 388-389 (citation omitted). Defendant bears "a heavy burden in meeting these requirements." *United States v. Saada*, 212 F.3d 210, 216 (3d Cir. 2000) (internal quotation marks and citation omitted). Newly discovered evidence cannot be "evidence that a reasonably competent attorney allegedly *would have discovered* by means of pretrial investigation . . . ." *United States v. DeRewal*, 10 F.3d 100, 104 (3d Cir. 1993). Thus, "newly discovered evidence must be evidence that trial counsel *could not have discovered* with due diligence before trial." *Id.*

III. Analysis

In his Motion to Dismiss, Defendant argues the Court lacked jurisdiction to conduct the criminal trial because the federal mail fraud statute is unconstitutional, both facially and as applied. (*See, e.g.*, Def.'s Mot. to Dismiss at 2, ECF No. 142.) Citing case law and legislative history from as far back as the 1800s, Defendant's Motion recounts the historical origins of the federal mail fraud statute, and argues the law has been fraught with issues since its inception. (*Id.* at 4-13.) Defendant further presents a plethora of disjointed claims, many of which are unintelligible to the Court, arguing, among other things, lack of a clear scienter requirement; Congress's and courts' failure to satisfactorily define "fraud," and improper capture of innocent conduct. (*Id.* 14-30.)

Defendant's as applied arguments appear to revive his prior—failed—argument that he did not commit fraud, but merely breached his contract. (*Id.* at 30-36.) *See, e.g.*, *Cvjeticanin*, 704 F. App'x at 91 (holding Defendant's breach of contract argument was "frivolous"). Defendant also argues the federal mail fraud statute violates federalism and the Tenth Amendment. (Def.'s Mot. to Dismiss at 40-44.)

Defendant's Motions for a New Trial rely on allegedly newly discovered evidence. (Def.'s Mot. for New Trial I at 1-2, ECF No. 146; Def.'s Mot. for New Trial II at 4, ECF No. 147.) Among the several hundred pages of exhibits, Defendant submitted e-mail messages that he argues evinces that he disclosed to ADP that Flowerson was his personal advertising agency. (*See, e.g.*, Apps. B, D, ECF No. 146-2.) Defendant also submitted e-mail messages that he contends demonstrates his wife openly disclosed her married name and that he did not have a scheme to defraud. (*See, e.g.*, App. F, ECF No. 146-2.) Further, Defendant avers that the evidence demonstrates that the Government not only presented, but encouraged, perjured testimony at his trial. (*See, e.g.*, Mot. for New Trial I at 9-10; Mot. II at 4-6.)

Defendant's motions lack merit. Defendant's arguments regarding the constitutionality of the federal mail fraud statute are unpersuasive, and he fails to support his numerous, and often indiscernible, contentions with competent analysis or legal support. Further, Defendant's as applied argument fails, as this Court and the Third Circuit have already rejected it as frivolous. *See Cvjeticanin*, 704 F. App'x at 91. Defendant's arguments regarding federalism, the Tenth Amendment, and the separation of powers doctrine similarly fail as Defendant's conclusory allegations also lack competent legal analysis, and fail to undermine "[t]he federal government['s] . . . interest in protecting the United States mails from being used as an instrument of fraud." *United States v. Mariani*, 90 F. Supp. 2d 574, 579 n.1 (M.D. Pa. 2000).

Further, the Court finds Defendant failed to satisfy his "heavy burden" in establishing he is entitled to a new trial. *See Saada*, 212 F.3d at 216. Preliminarily, Defendant failed to establish that the evidence is, in fact, newly discovered. In fact, many of the e-mail messages Defendant sent were authored by either himself or his wife. Moreover, Defendant failed to demonstrate that his trial counsel could not have discovered the evidence sooner with due diligence, and Defendant's second Motion to Dismiss also wholly fails to address how the documents he submitted in support of his motion constitute new evidence.[5] Defendant also mischaracterizes the evidence, and the Court finds it is not of such a nature that it would probably produce an acquittal at a new trial. The Court, therefore, denies Defendant's Motions for a New Trial. The Court also denies Defendant's Motions to Expedite because Defendant's underlying motions lack merit.

Regarding Defendant's Motion to Correct PACER Entries, the Court grants Defendant's request to change the title of ECF No. 142 from "Motion to Stay" to "Motion to Dismiss." (*See* Def.'s Mot. to Correct, ECF No. 154.) The Court denies Defendant's request to correct his address on ECF and send e-mail messages of e-filings to his wife's address or, alternatively, mail all e-filings to his home address. (*See id.*) Although Defendant indicates that he wishes to receive electronic filings via the Court's electronic filing system, Defendant failed to recognize that such service requires him to waive his right to receive notice by first class mail. If Defendant consents to such waiver, the Court directs Defendant to submit correspondence to the Clerk's Office requesting to receive documents electronically.

[5] Defendant's Motions for a New Trial are also untimely under Rule 33(b)(2), which allows defendants to file a motion for a new trial for reasons other than newly discovered evidence "within [fourteen] days after the verdict or finding of guilty." Notwithstanding the timeliness of Defendant's submissions, Defendant's arguments are frivolous and lack merit.

IV. Conclusion

For the reasons set forth above, Defendant's Motion to Dismiss, Motions for a New Trial, and Motions to Expedite are denied. (ECF Nos. 142, 145, 146, 147, 148, 150.) The Court grants in part and denies in part Defendant's Motion to Correct PACER Entries. (ECF No. 154.) The Court will issue an Order consistent with this Memorandum Opinion.

MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA v. MARIJAN CVJETICANIN	Criminal Action No. 14-274 (MAS) **ORDER**

This matter comes before the Court upon *pro se* Defendant Marijan Cvjeticanin's ("Defendant") post-trial motions, including a Motion to Stay (ECF No. 142); Motion for Evidentiary Hearing, New Trial, and to Vacate Final Judgment (ECF No. 146); Motion to Dismiss or for New Trial (ECF No. 147); Motions to Expedite (ECF No. 145, 148, 150); and Motion to Correct PACER Entries (ECF No. 154). The United States of America (the "Government") opposed Defendant's Motion to Dismiss and Motions for a New Trial,[1] but did not oppose Defendant's Motions to Expedite and Motion to Correct PACER Entries. (ECF No. 159.) Defendant replied. (ECF No. 161.)

The Court, having carefully considered the parties' submissions, decides the matter without oral argument. For the reasons set forth in the Court's Memorandum Opinion, and for other good cause shown,

IT IS on this 5th day of March 2019, **ORDERED** that:

1. Defendant's Motion to Stay (ECF No. 142) is **DENIED.**

[1] Although ECF No. 142 is entitled, "Motion to Stay," the document is best characterized as a Motion to Dismiss. Further, ECF Nos. 146 and 147 pertain to Defendant's request for a new trial. The Court, accordingly, refers to ECF No. 142 as a Motion to Dismiss, and ECF Nos. 146 and 147 as Motions for a New Trial.

2. Defendant's Motion for Evidentiary Hearing, New Trial, and to Vacate Final Judgment (ECF No. 146) is **DENIED**.

3. Defendant's Motion to Dismiss or for New Trial (ECF No. 147) is **DENIED**.

4. Defendant's Motions to Expedite (ECF Nos. 145, 148, 150) are **DENIED**.

5. Defendant's Motion to Correct PACER Entries (ECF No. 154) is **DENIED** in part and **GRANTED** in part.

6. Defendant may submit proper formal consent to receive electronic filings with the Clerk's Office, requesting to correct his address on ECF and send e-mail messages or e-filings to his wife's address, or, alternatively, mail all e-filings to his home address. In that request, Defendant must consent to waiving his right to receive notice by first class mail.

7. The Court directs the Clerk to change the title of ECF No. 142 to Motion to Dismiss.

8. The Court administratively terminates ECF No. 160.

MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	Criminal No. 14-274(MAS)
v.	:	
	:	**ORDER FOR DISCOVERY AND INSPECTION**
MARIJAN CVJETICANIN	:	
	:	

In order to eliminate unnecessary motions for discovery in this case, to eliminate delays in the presentation of evidence and the examination of witnesses, and to expedite the trial pursuant to the provisions of the Speedy Trial Act of 1974,

IT IS ORDERED:

1. Conference. Within ten (10) days from the date hereof the attorneys representing the United States and the defendant shall meet or confer to seek to resolve any discovery issues prior to the filing of motions, and the United States shall permit the defendant to inspect, and shall permit defendant to photograph or copy, or shall furnish a photograph or copy of:

(a) All statements of the defendant required to be produced under Rule 16(a)(1)(A),(B) or (C), Fed. R. Crim. P.

(b) Defendant's prior criminal record as required by Rule 16(a)(1)(D), Fed. R. Crim. P.

(c) All documents and tangible objects required to be produced under Rule 16(a)(1)(E), Fed. R. Crim. P.

(d) All reports of examinations and tests required to be produced under Rule 16(a)(1)(F), Fed. R. Crim. P.

(e) All summaries of expert witnesses' testimony, required to be produced under Rule 16(a)(1)(G), Fed. R. Crim. P. The summaries provided shall describe the witnesses' opinions, the bases and reasons therefore, and the witnesses' qualifications.

(f) Any material evidence favorable to the defense related to issues of guilt, lack of guilt or punishment which is known or that by the exercise of due diligence may become known to the attorney for the United States, within the purview of Brady v. Maryland and its progeny.

(g) If there is more than one defendant named in the indictment, and if the United States intends to introduce into evidence in its case-in-chief a confession made to law enforcement authorities by one defendant which names or makes mention of a co-defendant, then the United States must make a copy of that statement or confession available to counsel for the non-declarant defendant, along with a proposal for its redaction to conform with the

requirements of Bruton v. United States. If the government makes no such disclosure and turnover within the time period allowed, the confession may not be received at a joint trial of the declarant and non- declarant defendants. If, within ten (10) days after receipt of the confession and its redacted version, counsel for the non-declarant defendant makes no objection to the redacted statement, the defendant will be deemed to have acceded to the receipt of the redacted statement into evidence.

(h) A defendant who receives discovery pursuant to this Order shall be deemed to have requested such disclosure for the purpose of triggering defendant's reciprocal discovery obligations under Rule 16(b), Fed. R. Crim. P. The defendant shall have ten (10) days from its receipt of discovery from the United States to produce its reciprocal discovery.

(i) Any defendant intending to offer a defense of alibi or insanity or mental condition shall comply with the requirements of Rules 12.1 and 12.2, Fed. R. Crim. P.

2. Disclosure Declined. If, in the judgment of the United States Attorney, in order to protect the identity of a confidential informant or undercover agent, to prevent interference with an ongoing investigation, to protect the integrity of the criminal proceeding, or to otherwise serve the interests of justice, any disclosure set forth in paragraph 1 hereof should not be made, disclosure may be declined, and

defense counsel advised in writing of the declination within five (5) days of the conference.

A defendant who seeks to challenge the declination may move the Court for relief in the following manner:

(a) No later than ten (10) days from the time that the government declines, the defendant shall file a motion for discovery or inspection.

(b) The motion shall conform to the schedule set forth in paragraph 12 of this Order, unless otherwise ordered by the Court.

(c) The motion shall set forth: (1) the statement that the prescribed conference was held; (2) the date of the conference; (3) the name of the attorney for the United States with whom the conference was held; (4) the matters which were agreed upon; and (5) the matters which are in dispute and which require the determination of the Court.

(d) In responding to any such motion, the United States must show good cause for the declination of discovery, and in doing so may invoke the provisions of Fed. R. Crim. P. 16(d)(1).

3. Rule 404(b) Evidence. The United States shall provide notice to the defense of all evidence it intends to offer of other crimes, wrongs or acts within the meaning of Rule 404(b)

of the Federal Rules of Evidence, not less than ten (10) calendar days prior to the date of trial, except that for good cause shown, the Court may excuse such pretrial notice.

4. Jencks and Giglio Material. The United States agrees to produce all statements within the meaning of the Jencks Act, 18 U.S.C. § 3500, and impeachment evidence within the meaning of Giglio v. United States, 405 U.S. 150 (1972), sufficiently in advance of the witness's testimony to avoid delay in the trial. Similarly, the defense shall produce "reverse Jencks" statements sufficiently in advance of the witness's testimony to avoid delay in the trial.

5. Continuing Duty. Any duty of disclosure and discovery set forth herein is a continuing one and the attorneys for all parties shall produce any additional discoverable information.

6. Exhibits. The United States shall pre-mark all exhibits that it intends to introduce as part of its case-in-chief and shall permit defense counsel to inspect and copy such exhibits thirty (30) days prior to trial. A set of such pre-marked exhibits with an exhibit list shall be given to the trial judge's deputy clerk no later than the first day of trial. The defendant's exhibits shall also be pre-marked and, unless otherwise ordered by the Court upon the defendant's application, shall be disclosed to the United States within

seven (7) days after the United States' disclosure. Defense counsel, in an appropriate case, may apply to the Court for an order requiring the United States to pre-mark exhibits more than thirty (30) days in advance of trial. The United States and the defense shall also pre-mark all Jencks Act materials and "reverse Jencks" pursuant to Rule 26.2, Fed. R. Crim. P., so that no trial delay is encountered.

7. Authenticity of Exhibits. The authenticity of all exhibits disclosed to and examined by counsel pursuant to the provisions of paragraph 6 of this Order shall be deemed to have been accepted by either the defendant or the United States unless counsel files with the Court, fourteen (14) days prior to the date of trial, a notice that the authenticity of one or more exhibits will be contested at trial, together with a statement delineating why the authenticity of the exhibit is being challenged together with a certification that the challenge to authenticity is being made in good faith.

8. Chain of Possession. When counsel has examined an exhibit disclosed prior to trial pursuant to the provisions of paragraph 6 of this Order, the chain of possession of the exhibit will be deemed to have been accepted by either the defendant or the United States unless counsel files with the Court fourteen (14) days prior to the date of trial, a notice that the chain of possession of the exhibit will be contested at trial together with a statement delineating that the chain of

possession of the exhibit is being challenged and a certification that the challenge to the chain of possession is being made in good faith.

9. Scientific Analysis. When any party has disclosed the scientific analysis of an exhibit proposed to be introduced at trial by that party, which analysis has been determined by an expert in the field of science involved, then the scientific analysis of the exhibit will be deemed admitted unless counsel for a party receiving the disclosure files with the Court, fourteen (14) days prior to trial, a notice that the scientific analysis of the exhibit will be contested.

10. Other Motions by Defendant. Motions regarding defenses or objections permitted pursuant to Rules 12 and 41(g), Fed. R. Crim. P., including, inter alia, motions for suppression of evidence, shall be made within thirty (30) days from the date hereof unless good cause for delay is shown.

11. Translations. In the event that the United States intends to utilize translations of any conversations, copies or transcripts of such translations shall be produced for defense counsel no later than thirty (30) days prior to the date of trial. The correctness of any such translation or transcript will be deemed admitted, unless defense counsel serves and files with the Court, fourteen (14) days prior to the date of trial, a notice that counsel objects to the translation or

transcript, specifying the portions thereof to which objection is made and counsel's contentions as to the correct translation.

12. All pretrial motions not otherwise specifically provided for in this or other Orders of the Court in this case will be deemed waived unless they are filed and served not later than:

Pretrial motions filed by:	June 17, 2014
Opposition due:	July 1, 2014
Motions hearing date:	July 15, 2014
Trial set for:	August 4, 2014

13. Counsel shall furnish to the Court, five (5) days prior to the date of trial, requests to charge and proposed voir dire questions.

s/Michael A. Shipp

MICHAEL A. SHIPP, U.S.D.J.

Dated: May 21, 2014

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

APPENDIX F

is we put in front of them. They're not checking the ads. So he says, the only way that anybody would know the ads weren't being placed is if we were using a separate advertising company, except he wasn't, he was using himself.

So now, what a great idea. Now I can bill for services that I don't even need to provide. So instead of basically having advertising be printed, I can essentially print money, because that's what these invoices were. Every invoice he sent to ADP and Broadridge was basically another $3,000 in his pocket for doing absolutely nothing. Okay. That's the plan.

Now, how does this plan work? The only way the plan works is if he conceals his ownership and his interest in Flowerson Advertising. So we got the plan in place, all right. Check that box, mail fraud; first element. Plan, check, got it. Second, intent. Did he act with the intention to further that plan? Did he act knowingly and purposefully to deceive ADP and Broadridge? All you got to do, when you want to ask yourself about intent, is to look at what he did and the lengths to which he went to conceal the fact that he was Flowerson Holdings. Because Flowerson is the vehicle for the fraud. It doesn't work if everyone knows that he's Flowerson. So what does he do?

You heard the testimony, again, of Ms. Sielewonczuk and Ms. Sacristan. They took the stand and they told you they

MR. CARLETTA: Thank you, your Honor. If it please the Court, members of the jury, last Monday when this trial started, the government stood up here and told you this is a case about a lawyer who exploited his position at his firm of Wildes and Weinberg. He took advantage of two of its largest corporate clients, ADP and Broadridge, companies worth collectively over a billion dollars. How he fleeced them for hundreds of thousand of dollars over a period of three years by a false billing scheme whereby he billed them for services which he never rendered and never intended to provide.

We told you that he did this through the use of an advertising company called Flowerson Holdings, Flowerson Advertising, which he concealed and secretly kept from Wildes and Weinberg, from ADP and from Broadridge. Now, the only thing different between today and last Monday is that now this is no longer just an allegation, it is no longer merely an accusation, it is fact. It is 100 percent true. And the reason why is because over the last week you had the opportunity to sit here and see the government's evidence. You saw how this case unfolded. You heard the testimony from the various witnesses. You watched the videotape, very long videotape, you heard the audio. You saw the documents and you read the e-mails. You know as sure you are sitting here today that that defendant, Marijan Cvjeticanin, is guilty beyond any doubt whatsoever of each and every count of mail fraud alleged

ladies and gentlemen of the jury, this case is about a lawyer who stole hundreds of thousands of dollars from his client through a false billing scheme. The man is sitting right there at the defense table and his name is Marijan Cvjeticanin.

We will prove to you through overwhelming evidence that for a period of almost three years the defendant routinely billed his client for services he never performed. We will show you how the defendant perpetrated the fraud through an intricate web of lies that included false names of companies he secretly controlled and fabricated documents.

You will see and hear how the fraud went down. You're going to hear it from multiple witnesses. You're going to hear the defendant when he was confronted about the fraud admitted much of it, and he tried to threaten the former boss and victims in this case to not go to law enforcement. Before I get to the evidence in more detail let me introduce the prosecution team. I'm Francisco Navarro. I'm an Assistant United States Attorney. Dennis Carletta is also an Assistant United States Attorney. Rick Patel from the Department of Homeland Security. And our paralegal cannot be here today. Her name Gayle Horton. Together we represent the United States of America.

Now, talking about the case, you're going to hear the defendant is a lawyer admitted to practice law in New York.

tell ADP and Broadridge to sweep it under the rug. He said, I won't say anything if you don't say anything.

Now, Mr. Weinberg obviously did not take him up on his offer. He reported it to law enforcement. And Mr. Weinberg is also going to take you, by the way, through the individual files, show you what was done, what should have been done, and then what the defendant did.

After you hear from Mr. Weinberg you're going to hear from Special Agent Rick Patel, Department of Homeland Security. Special Agent Patel is going to tell you about when he conducted a lawful search of the defendant's home. In his home, Agent Patel found the doctored ads. You're going to see them here in court. We're going to show you the ads.

We're going to show you that he had a warehouse of ads in his home. Special Agent Patel will testify that the ads and all newspaper clippings were strewn on a table larger, much large than the defense table -- either the government table or defense table. He's going to show you the folders where the ads were found and you will see that they are literally in the process of being doctored.

You're going to hear from ADP and Broadridge employees. They're going to testify that they had no idea that he controlled Flowerson. We're going to show you e-mails that shows the lengths he went to hide the ownership of Flowerson. Always referring to them in the third person.

They, the advertising company, never me or my.

You're going to hear that he had his wife assist him with this but she used her maiden name in all correspondence so nobody would know she was connected to him. You're going to hear that he signed faked names for fictitious people, the documents. For example, you are going to hear that he would sometimes signed his name as Marty Flowerson so that nobody would know that it was really Marijan Cvjeticanin. We'll show you that there really is no Marty Flowerson.

You're also going to hear about something called an agency profit agreement. One of the things the defendant said on the videotape was that he was permitted to do this by ADP and Broadridge. They told him, you could bill to Computer World, for example, and you don't have to place the ads, you could keep it as your profit. You're going to hear that on the tape.

You're going to hear from the ADP and Broadridge employees that they obviously never agreed to any such thing, never heard of anything like that. You're also going to hear from Special Agent David Rowinski from the Department of Homeland Security. He's going to tell you about the analysis he did of the defendant's bank records. He's going to tell you those bank records show that the payments from ADP and Broadridge went to an account in the name of Flowerson Holdings and the signature on that account was the

the defendant went to his boss at Wildes and Weinberg and said he wanted to switch the advertising agency. Didn't want to use the one they had used for a long time and he want to switch to one called Flowerson Advertising. Remember that name, Flowerson.

Sometimes you will see it as Flowerson Advertising, sometimes you will see it as Flowerson Holdings. You're going to hear from his boss that the boss said okay, fine, switch it.

What the defendant didn't tell anyone, what he didn't tell his boss, what he didn't tell anyone at Wildes and Weinberg, what he didn't tell ADP and what he didn't tell Broadridge was that he owned Flowerson. He owned it. Not only did he own it, he controlled it on a day-to-day basis, him and his wife. And he used Flowerson as the vehicle to commit the fraud. Here's how he did it.

Flowerson was supposed to place these advertisements in various newspapers and magazines for the clients. In many instances, which we will show you, we'll take you in detail through them, he didn't do that. He simply pocketed the money.

And you know what, I'm going to show you what an invoice from Flowerson looks like right now. Just take a moment. Look at that for a minute. Realize it's a little small and a little far for some, but generally speaking, let

defendant's.

And then he's going to tell you about how the money was taken from that Flowerson account and sent to the defendant's personal checking and savings accounts.

After you've heard all of the evidence, you're going to see that every excuse the defendant has come up with, the ever-changing excuses he comes up with are disproven by the evidence. You're going to see the defendant is guilty of mail fraud, all nine counts, and we're going to be asking you to return a verdict to that effect. Thank you.

THE COURT: Counsel. Ms. Gauli-Rufo.

MS. GAULI-RUFO: Thank you, your Honor. Good afternoon. Good afternoon, counsel. Ladies and gentlemen of the jury, I just want to start off by saying that Marijan Cvjeticanin, who is sitting here right now, is not guilty. Not guilty of any of the nine counts that in the superseding indictment.

My name is Lorraine Gauli-Rufo. I represent Marijan Cvjeticanin. I, together with Thomas Ambrosio and Wilma Sierra, are the attorneys and the investigator for Marijan Cvjeticanin.

The government stood here a moment ago and told you its version of the event of the charges. But this case, ladies and gentlemen, this case does not involve fraud. This is a case about an unwritten agreement, an unwritten agreement

applications approved, did they?
A. No, they did not.
Q. The defendant further states "well, they did because they have e-mails from me. Meaning they know, you know, my e-mails from, you know, your firm or our firm and they said oh, yes, perfect, do it that way." Do you have any understanding -- what did you understand the defendant to mean when he said that?
A. I have no idea what he was alluding to, I suspect he was alluding to the fact that they didn't know what was going on.
Q. Did you ever see these e-mails?
A. No.
Q. Did you have any access to e-mails?
A. I have access to all e-mails.
Q. Do you have any idea if these e-mails actually exist?
A. For my investigation, they do not.
Q. The defendant further states, they're not going to go, and if they do, they'll have to revoke all of these I-140s with whatever consequences there will be.
What kind of consequences would there be?
A. It would be very embarrassing to the corporation. These individual workers, you know, we're dealing with people, would be hurt by this. These people are workers. They are looking to immigrate with their families and themselves, and this would be a huge setback to that process if they revoked the

Englewood, New Jersey, and we have an office in Aventura Miami also.

Q. How long have you been working for Wildes and Weinberg?

A. I've been working there since 1971, 44 years.

Q. 44 years. Do you have a primary area of expertise?

A. My area of expertise is immigration law, sir.

Q. Have you been doing that for 40 years?

A. Yes, I have.

Q. Now, what types of clients do you have at Wildes and Weinberg?

A. I like to say at Wildes and Weinberg we represent a full spectrum of clients. Many of our clients are large corporations. I represent athletes, entertainers who enter United States and need visas to work here. We do some defense work representing people who are being deported from the United States also.

Q. Now, you reference the fact that you have some corporate clients; is that correct?

A. That is correct.

Q. Are you familiar with two corporations named ADP and Broadridge?

A. Very much so, yes.

Q. And have you represented those corporations in the past?

A. Yes, I have.

Q. And do you -- does your firm currently represent them in

Q. Okay. Now, was the defendant -- was part of the defendant's job to help take that verbiage that we were talking about from the abstracts from the company ADP and Broadridge, was it part of his job to help come up with the ad descriptions?

A. It was part of his job to oversee that that was done.

Q. Okay. And he got paid for that by you, correct?

A. Correct, yes, definitely.

Q. Now, was the defendant utilizing the advertising company known as Creative Effects in connection with these permanent labor applications in or about January 2010 to September 2012?

A. No.

Q. No, he wasn't. What entity was he using -- strike that. Why wasn't he using that entity?

A. Marijan at one time came to me and told me that he did not want to use Creative Effects any longer, that he felt that they were not doing an adequate job, that he was having difficulty in dealing with them and he wanted to use a different agency. I told him that if he could find another agency that would do it for us, it was okay to use another agency.

Q. Now, did he explain to you what the particular difficulties he was having were?

A. He wasn't getting tear sheets, meaning that he wasn't getting proof that the ads were placed properly, they were

making mistakes he said, that type of thing.
Q. Did you have an personal knowledge of any of these --
A. No, I did not.
Q. -- alleged issues?
A. No, I did not.
Q. Did any other lawyers in your firm make a switch from Creative Effects to this other agency?
A. No, they did not.
Q. Did any other lawyers in your firm indicate any alleged problems with this ad agency as alleged by the defendant?
A. No, they did not.
Q. Did the defendant tell you the name of the entity he wanted to switch to?
A. No.
Q. No.
A. No, he did not.
Q. Sitting here now, do you know the name of the entity that he used to place these advertisements?
A. In 2010, the agency --
Q. Sitting here now do you know who it was?
A. Yes, I do.
Q. Who was it?
A. Flowerson.
Q. Flowerson. All right. How did you -- what is it that you know about Flowerson, if anything?

Q. What is it?
A. It's a labor certification issued to Broadridge Financial Solutions in reference to Sandeep Vemasani.
Q. Sandeep Vemasani?
A. Vemasani.
Q. And who prepared that document?
A. Marijan.
Q. Again, at the risk of beating a dead horse, how do you know that?
A. That was Marijan's job in my office.
Q. Anyone else's job to prepare these filings?
A. No, it was Marijan's job.
Q. Now, if we move to pages 5 and 6 of this filing, can you please tell the jury on which dates newspaper advertisements were purported to have been run in the newspaper and specifically the *Star Ledger*?
A. It's alleged that advertisements were placed in the *Star Ledger* on March 4, 2012 and also in the *Star Ledger* on March 11, 2012.
Q. Did you have an opportunity to review the *Star Ledger* from those dates?
A. Yes, I did.
Q. And did you have the opportunity to confirm whether or not an ad had actually been run on those dates as purported by the defendant in that DOL filing?

A. And it would describe the job in detail, the position.
Q. Meaning what?
A. Well, as part of the application, the company has to describe what the position is that they are seeking to have certified.
Q. Okay. And then you also mentioned some recruitment efforts. Do you have to detail recruitment efforts in this 9089 form?
A. The regulations require that we go through five different steps of recruitment in order to prove that the company has tried to find the worker for a position.
Q. Of those types of recruitment, are newspaper advertisements one of the forms acceptable to the Department of Labor?
A. The regulations specifically requires that two Sunday newspaper ads be placed in a publication of general circulation in the area where the services are to be rendered.
Q. Now, this advertisement, I assume in the report you're indicating in a 9089 that an ad had been placed, correct?
A. Every application has that in it, yes.
Q. So the advertisement has to be placed in a newspaper before the DOL 9089 -- the 9089 form is submitted to the DOL, correct?
A. Without any question, yes.
Q. That's basically detailing the recruitment efforts you

of its regularly conducted business?
A. Yes.
MR. NAVARRO: Move to admit Government Exhibit 11, your Honor.
THE COURT: Ms. Gauli-Rufo.
MS. GAULI-RUFO: No objection, your Honor.
THE COURT: So moved.
(Government's Exhibit 11 E-mail 10/2/09 in evidence.)
Q. I'm handing you what's been marked Government Exhibit 12. Do you recognize it?
A. Yes, I do.
Q. Can you tell me briefly what it is?
A. It's an e-mail from the Wildes and Weinberg servers with a PDF file attached.
Q. Who is the -- which e-mail address sent from?
A. It's from Marijan's Wildes and Weinberg account.
Q. Who is it sent to?
A. Flowinvest@aol.com.
Q. What's the date on it?
A. March 22, 2010, 12:09 p.m.
Q. Is it the regular practice of Wildes and Weinberg to maintain copies of all e-mails sent to and from it's e-mail address?
A. Yes.
Q. Was this e-mail kept by Wildes and Weinberg in the course

A. Uh-huh.
Q. That went from Wildes and Weinberg to Flowerson Holdings saying I need the ad for applicant Patel?
A. No.
Q. Did you ever hear a voice message where somebody from Flowerson called and left a message on the voice message system that said the ad for application Patel was done on the following dates in the following newspaper?
A. I did not know Flowerson existed until September of 2012 when we read his e-mails period.
Q. That's not my question. My question is did you ever hear an e-mail -- a voice message where somebody from an advertising agency was calling in and left a message of the dates that are supposed to be --
A. Most definitely not.
Q. Okay. And did you ever see a letter that was drafted by Wildes and Weinberg in the form of a fax or a letter that was put in the mail that said we're doing our 9089 filing for application X, please tell us what dates and what paper the ad was placed?
A. No, I never saw that.
Q. And I understand that when you did your reviews --
A. Pardon me?
Q. When you did the review, the pre-filing review?
A. Oh, yes.

Q. And the only thing that he needed in connection with hiring a firm in Virginia would have been one to two pages per filing, which would say, "*Star Ledger,* Sunday" --

A. Yes.

Q. -- "May 21st" --

A. Two pages, it's on two pages, two of five of the application, that's right.

Q. So a total of 212, there would be, you know, 424 pages?

A. Yeah, right.

Q. Do you recall if you had a cover letter saying, Mike, look at these --

A. No, I didn't, it was conversations that we had. He wanted to see the documents. He wanted to see what we were talking about. And I remember carrying boxes with two other individuals up into his office, where they may still be, I don't know.

Q. Was that -- where is his office located? Same building as yours?

A. Oh, no, no, no. He's further downtown.

Q. Okay. And do you recall approximately what day, what month that was, what year?

A. What I know is that the review and investigation occurred in March of 2013, so it was sometime around March, February of 2013.

Q. Because the videotape, I believe, is March 27, 2013?

Q. At the house?
A. Yes, his wife and I believe his young child was there as well.
Q. And do you remember -- in the course of the investigation did you learn what his wife's name was?
A. I did. It's Katica -- I don't know if I'm pronouncing it correctly, but it's Katica Cvjeticanin.
Q. And did you happen to also learn her maiden name?
A. I did. Katica Papac.
Q. Papac. And have you seen that name Kathy or Katica Papac on any other documents in this case?
A. I have.
Q. What kind of documents?
A. In numerous e-mails from Flowerson Holdings, Global Media. The maiden which was Kathy Papac.
Q. In any of those documents did you see the use of the marital name?
A. No.
Q. By the way?
A. Not in those documents, no.
Q. Was it always the maiden name?
A. It was always the maiden name, correct.
Q. All right. Now, when you went to the defendant's house to arrest him, what happened when you got there?
A. So, we had an arrest warrant. Obviously I wasn't the

Mr. Weinberg, can you read the name of the business on this request for taxpayer ID -- identification number and certification?

A. This is -- the name is Flowerson Holdings Inc. and business name Flowerson Advertising under that.

Q. All right. And the address?

A. 6 LT John Olsen Lane, Saint James, New York.

Q. Can you tell what company this was sent to right there on the right hand side?

A. It was sent to Broadridge Financial Solutions.

Q. Can we scroll down a little bit. Can you see who it's signed by?

A. Signed by Marty Flowerson.

Q. What's the date there?

A. March 31st, 2010.

Q. And lastly, sir, I'm going to show you what's been marked as Government Exhibit 10 in evidence. Also in evidence. Do you recognize that document?

A. Yes.

Q. Again what is this?

A. This is a transmission by Paul Viola off of Marijan's -- it says from Marijan. So Paul went into Marijan's computer and sent that, got a copy of that, of the e-mail that was sent by Marijan to Flowerson on February 22, 2010.

Q. From the defendant to himself essentially?

of papers in Mr. Weinberg's office.
Q. Now, following that, and that the video recording we saw in court?
A. That's correct.
Q. For the past two days?
A. Yes.
Q. After you had the video recording and after you had the initial discussions with people from ADP and Broadridge and Wildes and Weinberg, what additional steps did you take, if any, to further investigate the case?
A. I obtained an arrest warrant. After I determined all the evidence that I saw, I decided that it might be a good time to go before a judge, swear out a complaint, and get an arrest warrant.
Q. And was that warrant and your decision to go get a warrant, was that based simply on statements to you, or was it based on your review of documents or any other kind of evidence?
A. Review of documents, statements, basically a whole -- a whole bunch of things.
Q. And approximately how long were you investigating the case before you made the decision to try to get an arrest warrant?
A. I think I started the case February 2013. I want to say February 11th. I'm not positive on the exact date. And I

labor certification to review, and that he was responsible for the statements contained in the labor certification or to verify that they were truthful.

Q. So if somebody else had -- somebody had to type that information in at Wildes and Weinberg, correct?

A. We had a staff, yes.

Q. They had to go in and they had to type in the descriptions and the dates on the publication, the name of the publication, all throughout the form, correct?

A. No.

Q. No one had to type that?

A. You said someone had to do it.

Q. Somebody had --

A. Some individual had to do it, yes.

Q. Yes?

A. But I'm not saying that it wasn't Marijan who did it.

Q. Are you saying that it was Marijan that would type everything onto --

A. I'm saying that it was Marijan that would type in the information on the ads that were --

Q. No. I'm talking about the 9089 form.

A. Yes.

Q. The entire form.

A. I'm saying that I know that the form was completed in part by others, but that the information contained in

A. The representation of a company like ADP doesn't only deal with labor certifications, it deals with the whole complex immigration problem. And there are many aspects of that problem aside from the labor certification process.

Q. And so a firm like yours, even though you're doing these labor certifications, during that process, you may be handling many other things, for -- in connection with the particular applicant, correct?

A. Yes, definitely. When you say "applicant," you mean the foreign worker --

Q. Yeah, the foreign worker applicant, yes.

A. Yes. We are involved with obtaining temporary documents and permanent documents, extensions of papers, travel permits, many different aspect of the process.

Q. And it would be fair to say that a firm that had a lot less experience than your firm might not be as successful at getting clients, because if mistakes are made, the applicants don't get approved?

A. Major corporations do not hire firms that do not have experience, firms that are not -- that do not have expertise in a particular field. They would not hire a small firm to do something, they look for the experts in the field.

Q. So if you met with a new client, let's say, I'll just throw out a name, Exxon. One of the things you're going to say, Look, we've been doing this for a long time. We have 44

A. Correct.
Q. Again, Agent Patel, did you have the opportunity to review the newspapers from the *Star Ledger* in connection with this filing?
A. I did.
Q. And did you review the -- obviously, you clearly reviewed the real newspapers on December 19th and January 16th, correct?
A. That's correct.
Q. And did you find a real ad there?
A. I did not.
Q. And did you review the newspapers from the Sunday edition of the *Ledger* in October of 2010?
A. Correct.
Q. And November of 2010?
A. Correct.
Q. And did you find any advertisements in connection with this specific job description?
A. With this specific job, no, I did not.
Q. How about *Computer World*?
A. I did not find any ads for *Computer World*.
Q. We'll do one more. Parul Soni?
A. Same kind of set up.
Q. Yup. Exhibit 9 is the DOL filing. The ads were purported to have been run in the *Star Ledger*, again,

APPENDIX G

No. 19-1599

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,

Appellant

Appeal from the Final Order in a Criminal Case of the United States District Court for the District of New Jersey (Crim. No. 14-274). Sat Below: Honorable Michael A. Shipp, U.S.D.J.

CORRECTED BRIEF FOR APPELLEE

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Sheila Strommen] . . . completely eviscerates the Government's scheme to defraud argument. Without it there is simply no proof of fraud in this matter . . ., regardless of how many advertisements the Appellant did, or didn't run . . .."). Cvjeticanin did not—and cannot—make that showing.

To determine whether the subject emails would likely cause an acquittal on retrial, the District Court had to weigh the emails "against all of the other evidence in the record, including the evidence already weighed and considered by the jury in the defendant's first trial." *U.S. v. Kelly*, 539 F.3d 172, 189 (3d Cir. 2008). It could not, as Cvjeticanin's opening brief suggests, view the emails "in a vacuum." *Id.*

Having presided over Cvjeticanin's four-day trial, the District Court was well equipped to make that assessment. The evidence established that Cvjeticanin billed ADP and Broadridge for hundreds of thousands of dollars' worth of advertisements that his company never placed. SA69, 75–80; SA1087, at DE105. The Government introduced inculpatory video and audio

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analysis of his *Brady* claims. The court did no such thing. In fact, it had no occasion to evaluate the merits of those claims because it dismissed them as untimely. *See infra* Section B. Thus, the District Court did not, as Cvjeticanin suggests, depart from existing Third Circuit precedent regarding newly discovered *Brady* evidence or create a circuit split in that regard.