

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Payyathi Sivanadiyan
ANNAMALAI ANNAMALAI — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Annamalai Annamalai

(Your Name)

P. O. Box-730, R. A. Dayton Detention Facility
(Address)

Lovejoy, Georgia - 30250
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

A. Whether the Eleventh Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and/or sanctioned such departure by the lower court concerning summary judgement motion of Petitioner(s) based on Fed.R.Civi.P 36(b) admissions, as to call for an exercise of this court's supervisory powers to correct it.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 01-21-2020 11-18-2019

[] No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 01-21-2020, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

STATEMENT OF THE CASE

STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF CASE

3. Annamalai and Sivanadiyan was initially indicted in the underlying criminal case. Ms.Sivanadiyan was later dismissed from the criminal action.Annamalai faced a trial, and found guilty of 34 so called criminal counts and sentenced for 28 years to prison for the 'bank fraud indictment of \$ 11, 854.00 (eleven thousand eight hundred and fifty four dollars).!!t;Annamalai became a pro se defendant at the 'restitution' part of his former sentencing and now too.After Annamalai's conviction, the district court has initiated 'criminal forfeiture proceedings'. Ms.Sivanadiyan, as a third party and as an aggrieved party initiated her claims for 'her' properties, which were maliciously dragged to the forfeiture. Ms.Sivanadiyan has filed her claims timely in which she has ownership and or possessory interests See: Doc# 259, 268.In the meanwhile Annamalai has filed several pro se motions to attack the indictment and other matters, as 'Free Standing motions'.The district court has denied almost every one of the motions of the appellants, which has caused the appeal case no(s) 18-13071CC and 18-14115DD.Annamalai's motion for new trial was also denied and appealed with the case no.18-14982DD.

On or about March 2019, the panel has denied the motion of the government to dismiss the three combined appeals, and the panel has specifically found as" In addition although the two appeals at issues attack the indictment, they are not duplicative of Mr.Annamalai's direct appeal, because they involve free-standing post trial motions....."¹

4. When the appeals are pending for final adjudication, Annamalai's direct appeal decison was issued in the direct appeal case no.15-11854CC, and the panel has thrown away 22 counts of 34 counts and remanded for resentencing, although the panel judge Wilson was very much concerned about very most damaging religious comments maded by the district court judge.²

The panel has made numerous errors and has failed to correctly notice the facts presented to panel, and thereby the appellants are prejudiced.First and foremost, the panel's decison is in serious conflict with this court's various binding precedents per se.

A. The panel has made a serious error by not noticing the 'facts conclusively established', under Fed.R.Civi.P.36(b) by Ms.Sivanadiyan at the time of her criminal forfeiture proceedings.

B. The panel has made an obvious error, by 'miscalculating' the '70 non-excludable days of the indictment,

C. The panel has made an error by 'not' noticing the 'judicially established fact', as such'eight (8) individuals who has testified at Annamalai's jury trial also inclusive of 55 (fifty five) individuals list, to which the Federal investigative agent (IRS Agent) Stephen Langamandel, under 'oath' gave a 'specific and reliable' evidence as such all those 55 individuals were NOT defrauded!! and its all were simple disagreements.Now to the insane, Annamalai is going to face resentencing for bank fraud, based on the same 55 individuals!!

D.The panel has patently disregarded the binding case precedents about 'jurisdictional' prerequisites, concerning the violation of statue 18 U.S.C. §1344 et seq.,

E. In fact, the government attorneys have elected NOT to respond and or contravert several claims expressly, by which they have already consented and agreed to such claims.However, the panel has made an error by not noticing such explosive fact, and prejudiced the appellants.All the above said needs a reversal of the panel's decison.

REASONS FOR GRANTING THE PETITION

Reasons for Granting the writ.

A. whether the Eleventh circuit court of Appeals has so far departed from the accepted and usual course of judicial proceedings and/or sanctioned such departure by the lower court, concerning the "Summary Judgement Motion of Petitioners based on federal Rule of Civil Procedure 36(b) admissions, as to call for an exercise of this court's supervisory powers to correct it?

I. The Panel has committed an obvious error concerning the facts conclusively established, pursuant to Fed.R.Civi.P.36(b) concerning Sivanadiyan's property and Annamalai's Liberty interests

The panel has and appears to be completely not aware of another appellant exists in this combined appeal (Case No.18-14115DD).Ms.Sivanadiyan as a third party and as an interested party appeared at the criminal forfeiture's ancillary proceedings as a pro se claimant.Ms.Sivanadiyan has ownership and possessory interests to all the properties subject to criminal forfeiture per se.

As a part of such ancillary proceedings, Ms.Sivanadiyan has caused to serve "request for admissions" on the government's attorneys and also on various privies. See: Evidence no.001 - 003, attached hereto, and by reference fully and expressly reincorporated herein.Those admissions were served by Ms.Sivanadiyan under Fed.R.Civ.P.36, and also under Fed.R.Civi.P.26(a)(B)(ii) & (iv).

The Judicial records and the enclosed Evidence no(1)-(3) will prove that, none of the government's attorneys and or their privies were cared for to respond and or controvert the requested admissions, which leads to all the admissions were/are 'fully (deemed) admitted, and all the matters as per the requested admissions are 'conclusively established'.

The following are the pertinent portion of admissions 'deemed admitted'.

(a). Admitted that, the Preliminary order of forfeiture initiated against Annamalai was, in fact, malicious and to unlawfully forfeit the properties of Annamalai's wife, Ms. Sivanadiyan (Admission no. 2).

(b). Admitted that, Ms. Sivanadiyan and her son Ashok Annamalai are the actual true owners of the real properties located at 3220, Hwy 27 North, Carrollton GA-30117; 7600 Bayway Drive Baytown Texas 77520; 7522 Bayway Dr Baytown Texas 77520; any and all properties owned by Ms. Sivanadiyan exclusively at Cleveland Ohio. (See: deemed admission # 3).

(c). Admitted that Mr. Ashok Annamalai is the sole owner of a real property located at Apple Valley, (10 acres land parcel), and Mr. Annamalai do not have any interest in that property at all. (See: Deemed Admission # 4)

(d). Admitted that Annamalai was maliciously prosecuted by the U.S.Attorney's Office of Northern district of Georgia. (See: Deemed admission # 6).

(e). Admitted that Annamalai is being held under illegal custody and in violation of 18 U.S.C.3621(c) (See: Deemed Admission # 8).

(f). Admitted that, Annamalai will be 'immediately released' from the prison, by the plaintiff taking immediate steps accordingly (See: Deemed Admission # 9).

(g). Admitted that the enclosed document with the request for admissions, which is being distinctly marked as EVIDENCE PSA-002, are true and the Plaintiff and its privies did not/do not dispute in any means of the same. (Admission No.14).

(h). Admitted that, the Plaintiff and its counsels have intentionally violated the Fed.R.Crim.P.32,2(d), 21 U.S.C.856(n), and have caused an injury in fact. (See: Admission No.15..

" Fed. R. Civ. P. 36(a) clearly provides that a party must answer each matter for which an admission is requested within 30 days or the matter is deemed admitted.

The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may (258 F.3d 419) agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter. . .FED. R. CIV. PROC. 36(a)(West 2001). Rule 36 allows litigants to request admissions as to a broad range of matters, including ultimate facts, as well as applications of law to fact. See, e.g., *Stubbs v. Comm'r Internal Rev.*, 797 F.2d 936, 938 (11th Cir. 1986); *Campbell v. Spectrum Automation Co.*, 601 F.2d 246, 253 (6th Cir. 1979). C.f. *Playboy Enterprises, Inc. v. Welles*, 60 F. Supp. 2d 1050, 1057 (S.D. Cal. 1999) ("Requests for admissions cannot be used to compel an admission of a conclusion of law."); *Kosta v. Connolly*, 709 F. Supp. 592, 594 (E.D. Pa. 1989) (suggesting that Rule 36 should not be employed to establish facts that are obviously in dispute). Such breadth allows litigants to winnow down issues prior to trial and thus focus their energy and resources on disputed matters. *WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE: Civil* 2d § 2254 (1994). For Rule 36 to be effective in this regard, litigants must be able to rely on the fact that matters admitted will not later be subject to challenge. *American Auto Ass'n v. AAA Legal Clinic*, 930 F.2d 1117, 1119 (5th Cir. 1991). Thus, Rule 36(b) provides that "any matter admitted . . . is conclusively established unless the court on motion permits withdrawal or amendment of the admission." *FED. R. CIV. PROC. 36(b)*.

" Third party proceedings ancillary to criminal forfeiture proceedings are governed by 21 U.S.C. 853 (n) and are CIVIL in nature ". United States V. Surrey 2016 U.S. Dist LEXIS 194026 (2016); United States V. Gilbert 244 F.3d 888 (11th cir 2001); A party to an ancillary proceeding may move for " summary judgment " under Rule 56 of the Federal rule of Civil Procedure. See also Fed.R.Crim.P.32.2(c)(1)(B); United States V. Henry 621 F. App'x 968, 972 (11th cir 2015).

" The legislative history of 853 (1) similarly indicates that congress considered this ancillary proceedings to be essentially CIVIL. See: H.R. Rep. No. 1030, 98th Congress, 2d Sess. 206-07 (1984). U.S.C.C. A.N., 3182, 3389-90. As per 853 (1) and its states that " the district courts of the United States SHALL have JURISDICTION to enter order as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section ". This reasoning is in alignment with the accepted tenet that criminal forfeiture are in personam. Judgments " See: United States V. Casey, 446 F.3d 107 (9th Cir. 2006).

" a district court has jurisdiction to enter orders concerning forfeited properties regardless of the properties location 21 U.S.C. 853 (1) ". Pegg V. United States 143 Fed.App'x 886 (11th cir 2005).

" ancillary forfeiture proceedings which arise out of Criminal case are " civil in nature " and are thus governed by the " federal Rule of Civil procedure " United States V. Weiss 791 F. supp 2d 1183 (11th cir 2011). See also:- Gilbert 244 F.3d at 907. Accordingly the parties may move for " summary judgment " under Fed.R.Civi.P. 56. See also Fed.R.Crim.P.. 32.2 (c) (1) (B).

" Once an issues is deemed admitted, the admissions are conclusive unless withdrawn upon motion to the court " Perry V. Miami-Dade County 297.F.3d 1255, 1299 (11th Cir 2002); United States V. 2204 Barbara lane, 960 F.2d 126, 129 (11 th Cir. 1992)' Stubbs V. Commissioner, 797 F.2d 936, 937, 38 (11th cir 1996) (Per curium).

" In form and substance a Fed.R.Civ.P.36 admissions are comparable to an admission in pleading or a stipulation drafted by counsels for use at trial " United States V. 2204 Barbara Lane 960 F.2d 126 (11th cir 1992).

Based on 'facts conclusively established' Ms.sivanadiyan has moved for 'summary judgement' with the district court and also for 'specific performance'. See: Dock # 691 & 693. This court knew that, as per this court's binding case precedents, the ancillary proceedings of criminal forfeiture is 'CIVIL IN NATURE' and the law and criminal rule allows to conduct civil discovery and also for filing summary judgements by the parties involved in such proceedings.

" Admissions made under Fed. R. Civ. P. 36, even default admissions, can serve as the factual predicate for summary judgment. Fed. R. Civ. P. 36(b) provides that a matter admitted is "conclusively established."

" Summary judgment is provided for in Fed. R. Civ. P. 56. Fed. R. Civ. P. 56(c) states that the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

" A party cannot attack issues of fact established in admissions by resisting a motion for summary judgment. Affidavits and depositions entered in opposition to summary judgment that attempt to establish issues of fact cannot refute default admissions."

3. Let the record be very clear that, Annamalai do not claim that, he is entitled to criminal forfeiture proceedings'. However, he is entitled to the claims of specific performance, based on the 'deemed admissions given by the governments attorneys' at the ancillary proceedings, since such admissions affects Annamalai's 'liberty interests' See Admission no(s)

Notably, in fact Sivanadiyan when she argued such explosive and judicially established facts with co-appellant Annamalai in her brief (case no.18-14115DD), the government attorneys even DID NOT RESPOND TO SUCH CLAIMS to its entirety, and the silence of the government's attorneys is a clear indication of 'tacit acquiescence' to the reliefs as sought by the appellants, inclusive of release of Annamalai from the prison for once for all.

The appellants, respectfully states that ' no man is above the law', and the prosecutors shall follow the 'rule of law'. If they have slept upon their rights, that should not cause a prejudice towards the Appellants. This is a legal battle, and nothing inappropriate one litigant is taking advantage on another litigant in a lawful manner, and this court should vacate its panel's order to respect various binding precedents about criminal forfeiture's ancillary proceedings, Fed.R.Civ.P 36(b) admissions, and summary judgement based on admissions etc., which will be not only in the best interest of justice, whereas it will maintain uniformity in this circuit about above stated material matters.

II. The Panel has made an obvious error in calculation of 70 ' non-excludable' days of the indictment concerning Annamalai

Annamalai expressly argued to the district court and also to this court as such, his sixth amendment rights to speedy trial was violated, since the trial was NOT started within 70 days. The fact of the matter is so straightforward, and its simple math of calculating what is allowable and excludable days to calculate that 70 days.

Here, just from the simple arguments of the government attorney's brief, they have expressly agree at least that 63 (sixty three days) are non-excludable. The panel has failed to notice that, the 63 days 'math' comes to MARCH 7, 2014 as per the government's own 'judicial admissions'. After that, the government's attorneys 'disguised & mislead', this panel of this court about some arrest matters with relates to co-defendant Kumar Chinnathambi. What the panel made an obvious error was the dates between MARCH 7, 2014 and Kumar chinnathambi who was arrested on or about APRIL 3, 2014. That means the non-excludable days of another 26 days which falls between March 07, 2014 and April 3, 2014, shall be added towards the 63 days, which totals to the net of 89 days of non-excludable days. Its a simple math and well established and the panel can see just from the public docket sheet. However the panel made an obvious error.

Secondly as per the binding case precedents of this court and the U.S. Supreme court's case precedents the speedy trial act can not be waived by the defendant by his silence at all. Also not to have any more prejudice, the district court never and ever even attempted to 'find that the 'ends of justice was served' by unlawfully extending the speedy trial given under the U.S. Constitution's sixth amendment towards the Appellant Annamalai, wherefore the ruling of the panel shall be vacated, and the criminal case shall be ordered to be dismissed, under speedy Trial Act Violation. Also see various binding precedents cases in this circuit: Generally-:- Zender V. United States, 547 U.S. 500, 126 S. Ct 1976, 164 L.Ed. 2d 749 (2006); United States V. Young, 674 Fed.App'x 855 (11th Cir 2010) (opinion by HULL, WILSON, WILLIAM PRYOR).

III. The panel made an error by misunderstanding the judicial facts surrounding
egregious misconduct of government's agent Mr.Stephan Langamandel
concerning a referral to treasury inspector General for Tax Administration

In denying the claim for referral the panel stated as " In fact, the portion of Agent Langamandel's testimony that Mr.Annamalai relies on is consistent with our explanation in Annamalai, 2019 WL 4621970, at * 15-*16, that not all of the followers of the Hindu Temple were defrauded"

The panel has 'failed' to note that, "THERE IS NO DOCUMENTARY AND TESTIMONIAL EVIDENCE" in the district court's entire criminal proceedings, that, any one of the 'FOLLOWERS' were defrauded in any and all manner. A shopper or a one time customer to Annamalai is NOT at all his and or the temple's followers per se. Secondly, the panel has misunderstood Annamalai's argument and or looked the facts in vaccum, and or in a tunnel view. Annamalai respectfully states that, THE 55 INDIVIDUALS AS PORTRAYED A " VICTIMS " OF " BANK FRAUD" OF ANNAMALAI ANNAMALAI, in fact is inclusive of 8 INDIVIDUAL WHO HAS TESTIFIED AS "VICTIMS" AT TRIAL!! That means, its a simple equation that, agent langmandel should know or known, even 'before' the indictment of Annamalai, as such 'there was no evidence of fraud', which he has admitted at the cross examination of 'sentencing' that too after Annamalai's indictment. Its not the duty of Annamalai, to reveal such unknown facts to the jury, which in fact, known facts to Agent Langamandel, to the prosecution, 'before' Annamalai's indictment. Here, Agent Langamandel, simply 'concealed' such an explosive and exculpatory material matters to the defense, 'before' trial, which has in fact prejudiced Annamalai and caused an injury in fact. Respectfully, now, Annamalai is going to be resentenced based on the same 55 individuals as already admitted as 'THERE WAS NO EVIDENCE OF FRAUD' of Annamalai concerning those 55 individuals, which of course inclusive of the 8 individuals testified at trial. The court's misunderstanding, as such Annamalai has argued as such he did not defraud all the 'natural individuals' should not prejudice Annamalai any more.

Here, this court as usual like the district court was defrauded by the prosecution, because Annamalai was NOT CHARGED FOR COMMON LAW FRAUD, OR CREDIT CARD FRAUD, OR IDENTITY THEFT, OR THEFT BY TAKING!! OR ACCESS DEVICES FRAUD". Annamalai in fact was charged and convicted for " BANK FRAUD" in violation of 18 U.S.C. §1344 (1) and (2). Here, it was the duty of the Federal agent Langamandel should and or should have prevented such a fraudulent and false wrongful conviction, since even for an argument overcharging 8 individuals is NOT bank fraud, and notably, none of the indictment entities as per indictment si NOT even financial institutions. Let the record state very clearly, Annamalai is NOT challenging and challenged about insufficiency of evidence. All dress down to a simple fact that, Mr.Langamandel, should have taken active steps to prevent such a wrongful conviction, when he was well aware of that, as " NO EVIDENCE OF FRAUD", concerning 55 natural individuals, which includes the 8 individuals came to give false testimony at trial. Where is the justice, and rule of law leads.....is it to the truth and honesty or fake and dishonest individuals to be favored?

Just for this court's ready reference Annamalai has again enclosed the explosive judicial admissions of "AUSA Grinberg, after trial of Annamalai and at pre-sentencing hearing , and this court easily compare the Agent Langamandel's testimony 'at sentencing', which will support the above stated and judicially established facts. All the above stated judicially established facts warrants a referral of Agent Langamandel to TIGTA, which will show as ' no man is above the law and also will be in the best interest of justice.

Prosecutor Grimberg 'truthfully' told the 'unbiased' district court as:

"It would be calling a case agent who has reviewed all of the credit card dispute files that we have and the the total approximately 90 dispute files.....that those files have with the exhibits and the evidence that are admitted at trial. If you recall.....eight victims. And each of them remarkably told similar stories about what had happened to them, either interactions with the defendant, with the Hindu temple, and then with the documentation that was submitted to their credit card company, which forms the basis for the bank fraud.....what I will proffer to your honor, is what the agent will testify to, is that each of those files on the paper alone have those same bearings of fraud"

Tr.P.13 Lines 1-24, dated December 16, 2014
Pre sentencing hearing. See: Evidence no 004

Now, correspondingly compare and look at an 'explosive' and 'specific & Reliable evidence given at sentencing by Mr. Langamandelas follows.

Q. But you assume that every single person for whom there was an Invoice, a mail receipt, or a letter was defrauded. Every one?

A. I WON'T SAY DEFRAUDED. Their Pattern Matched that of what was proven during Trial.

Q. So you agree there is not evidence of fraud with the 55;⁴ it is just these people had Disagreements with the credit card company and they had the typical paper work in that you would find from any dispute Correct?

A. CORRECT.

Q. Well, Let me ask you to kind emphasize that for me. You would AGREE with me that we can't identify those 55 people as being defrauded?⁵

A. CORRECT.

See: Evidence no 005 transcript.)

IV. The Panel has made an error by denying Annamalai's request to dismiss the Bank fraud indictment as if Annamalai is raising the 'insufficient of Evidence to support conviction of Bank fraud, and such erroneous decision shall be vacated to stop and prevent the fundamental miscarriage of justice and the 'continuing prejudice'

4. Not the panel and or en banc to make further error, the 55 natural individuals as given specific and reliable evidence by Agent Langamandel as " NO EVIDENCE OF FRAUD", is in clusive of 8 (eight) 'natural individuals' who was bought to give testimony against Annamalai, by at least the prosecution and the agent Langamandel knew in advance, as such no evidence of Fraud!!

A. ANNAMALAI's conviction on Bank fraud counts 1 - 8 are tainted by lack of 'Federally Insured victims' and -
also Lack of federal jurisdiction, hence based on the case precedents of this circuit, those counts shall be -
vacated and dismissed.

This claim is exclusively with relates to Appellant Annamaiai only. The panel when ruling on such a claim, has stated as " But he did not challenge those convictions on direct appeal, and therefore cannot attack them after trial absent showing of cause and prejudice or a fundamental miscarriage of justice" Respectfully, the panel has misunderstood the claims of Annamalai and also has even, failed to notice its own order entered on or about In fact the same panel has ruled out that, the combined appeals are NOT duplicative of Annamalai's direct appeal, and the appeals can move forward, since appeals are based on 'free standing motions' .See: Order, enclosed herewith as Evidence no-008, and by reference fully and expressly reincorporated herein.

Next, the panel has made an error, by not noticing, when the appeals was filed with this action, Annamalai's direct appeal was not yet final, and Annamalai is allowed to attack the indictment via his free standing motions, at that time the direct appeal was not ruled upon and also no mandate was issued.

§ 1344. Bank fraud

Whoever knowingly executes, or attempts to execute, a scheme or artifice--

- (1) to defraud a financial institution; or
- (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

(Added Oct. 12, 1984, P. L. 98-473, Title II, Ch XI, Part G, § 1108(a), 98 Stat. 2147; Aug. 9, 1989, P. L. 101-73, Title IX, Subtitle F, § 961(k), 103 Stat. 500; Nov. 29, 1990, P. L. 101-647, Title XXV, Subtitle A, § 2504(j), 104 Stat. 4861.)

Next, the 'fundamental miscarriage of justice' is that, now Annamalai is going to face resentencing based on the bank fraud conviction, which he has committed against some NO EXISTING financial institutions, since the FEDERAL DEPOSIT INSURANCE CORPORATION OF THE UNITED STATES, AT LEAST TWO TIMES CONFIRMED AS SUCH THREE ENTITIES AS SHOWN AS " FINANCIAL INSTITUTIONS" IN THE INDICTMENT ARE NOT FINANCIAL INSTITUTIONS. See: evidence no.006 & 007, and by reference fully and expressly reincorporated herein.

Now, Annamalai, to face resentencing for Bank fraud conviction, by the panel already knowing that, such entities as fraudulently shown as financial institutions in the indictment, goes to the hearts of 'FUNDAMENTAL MISCARRIAGE OF JUSTICE', since its 'factually impossible' for Annamalai to commit bank fraud against some non-existing financial institutions per se.

Further, in support of the 'fundamental miscarriage of justice', making Annamalai to face the resentencing on bank fraud convictions, will violate Annamalai's procedural due process of Fifth Amendment, and also substantive due process of Fourteenth Amendment of the United states constitutions per se.

"Proof of FDIC Insurance is an essential element of the crime of bank fraud, as well as an essential to establish Federal Jurisdiction". United States V. Scott, 159 F.3d 916 (5th cir 1998).

"to sustain a conviction for bank fraud, under 18 U.S.C.. 1344, the Victim bank must be FDIC Insured, when reviewing bank fraud convictions proof of FDIC insurance is not only an essential element of the crime, but is also essential for the establishment of federal jurisdiction. Where the government fails to sufficiently prove the FDIC-Insured status of a Victim bank, court overturn bank fraud convictions for lack of jurisdiction". United States V. Perez- Ceballos, 907 F.3d 863 (5th cir 2018).

"An Indictment that fails to invokes a court's jurisdiction or to state an offense necessarily undermines the validity of a conviction " United States V. McIntosh, 704 F. 3d 894 (11th cir 2013).

"But there is one when the indictment affirmatively alleges conduct that does not constitute a crime at all, because that conduct falls outside the sweeps of the charging statute " United States V. Brown, 952 F.3d 1344 (11th cir 2014).

" A Jurisdictional error can not be waived by the parties " United States V. Palma, 693 Fed.Appx 820 (11th cir 2017).

" To sustain a conviction for bank Fraud under 18 U.S.C. §1344, the victim bank must be FDIC insured" Davis 735 F.3d at 198 (5th Circuit). United States See: davis 735 F.3d at 196, 200-01 (refusing to find JURISDICTION where the defendant was convicted if defrauding AMERICAN EXPRESS, which lacked FDIC insured status). " Subject matter jurisdiction can not be conferred by agreement of the parties and its requirements are and can not be 'waived", 780 F.2d 1258, Davidson Oil Company Supply V. Klockner Inc., (11th Cir 1986).

" Jurisdiction can not be conferred on such a court by agreement, nor by the failure of the accused to raise the questions by a plea in bar or at trial. 255 U.S. 11 65 L.Ed 475 Givens V. Zerbst 164 U.S. 319, 41 L.Ed 451 (1921)

,Citizens Bank V. Cannon (1896), Joy V. St Louis, 50 L.Ed 776 201 US 332 (1906).

" Without an FDIC insured victim, there was no basis for upholding him (Annamalai), federal bank fraud conviction under 18 U.S.C. §1344. United Statse V. Perez-ceballos, 907 F.3d 863 (5th Cir 2018).

" Lack of sufficient proof of FDIC insurance compels reversal and dismissal of the indictment, NOT just remand for a new trial with better evidence " United States V. Maner, 611 F.2d 107 (5th Cir 1980) (A binding precedent case in this circuit per se- 11th circuit court of appeals).See also United States V. Rabuffo, 716 Fed App'x 888 (11th cir 2003)

" Federal Deposit insurance corporation insured status is an express requirement of conspiring to make and making false statements to a bank insured by the FDIC, in false statements to a bank insured by the FDIC in violtaion of 18 USC 1344 (1) & (2) & 371.The FDIC insured status is an essential part of a valid indictment, and an indispensable item of proof of the offesne.

United states V. Platenburg, 657 F.2d 797 (5th cir 1981)

A court may raise sua sponte jurisdictional issues up until, the issuance of the mandate on direct appeal. "United States V. Izurieta, 710 F.3d 1176 (11th cir. 2013). Annamalai was charged with Bank fraud pursuant to 18 U.S.C. § 1344(1) & (2). Proof that the Financial institution is federally insured has been characterized as both a jurisdictional prerequisite and a substantial element of a crime. " United States V. Menefee (11 th Cir 2015); United States V. Dennis, 237 F.3d 295, 1303 (11th Cir. 2001). To sustain a conviction under 18 U.S.C. § 1344, the government must prove the banks was insured by the federal deposit insurance corporation, which is both substantive element of the crime and a jurisdictional pre requisite. United States V. Jarred (11th Cir 2008).

A fundamental principal from (the fifth amendment) is that a defendant can only be convicted for a "crime" charged in the indictment. As it would be fundamentally unfair to convict a defendant on charges of which he had no notice. United States V. Kener 916 F.2d 628, 633 (11th cir 1991) United states V. Thomas (11th cir. 2015) Federal offense. Likewise, a prosecutor can not make this jurisdictional end run and the urge the court to sentence the defendant for an offense for which the defendant was neither charged nor convicted." McCoy V. United States, 266 F.3d 1245 (11th Cir 2001)

" To convict for the substantive offense of bank fraud, the government must prove " that a scheme existed to obtain moneys funds in the custody of a " Federally insured bank " by fraud as that the defendant participated in the scheme by means of material false pretenses, representations or promises " United States V. Presendle, 880 F.3d 1228 (11th cir 2018).

" Our Federal Prosecutors are taught and often reminded that the ' Interest ' of the united states " in a criminal prosecution is not that it shall win a case, but that Justice shall be done ". Stickler V. Greene, 527 U.S. 263, 281, 119 S.Ct 1936, 1948, 144 L.Ed 2d 286 (1999).

" when a court without Jurisdiction convicts and sentences a defendant, the conviction and sentence are void from their inception and remain void long after a defendant has fully suffered their direct force " United States V. Peter 310 F.3d 709 (11th cir 2002).

" proof of federally insured status of the affected institution is for Section 1344.....a jurisdictional prerequisite as well as an element of the substantive crime". United States V. Key, 76 F.3d 350, 353 (11th cir 1996) ; United States V. Dennis 237 F.3d 1295 (11th cir 2001); United States V. Williams, 592 F.2d 1277, 1281-82 (5th Cir 1979); United States V. Odiollo, 244 F.3d 398 (5th cir 2001); United States V. Fitzpatrick, 581 F.2d 1221 (5th Cir 1978) (Per curiam); United States V. Manier, 611 F.2d 107, 112 (5th Cir 1980).

" a constitutional violation is a " structural error " , if the violation undermines the basic guarantee of fairness resulting in a strong potential prejudice and immeasurable effects " United States V. Roy , 855 F.3d 1133 (11th cir 2017); United States V. Gonzalez-Lopez, 548 U.S. 140, 148 , 126 S.Ct 2557, 2564, 165 L.Ed 2d 409 (2006); Sullivan V. Louisiana, 508 U.S. 275, 281-82, 113 S. Ct 2078, 2083, 124 L.Ed 2d 182 (1983) (" noting that structural errors are " necessarily unquantifiable and indeterminate" .

As well demonstrated as above herein, a series of constitutional, statute, and 'structural errors' have occurred, and Annamalai do not need to show cause and prejudice for a structural error. Of course, there is no more debate here that, the 'fundamental miscarriage of justice' and Annamalai also prejudiced because of various material acts as stated above herein. Now this court shall step in to 'save' Annamalai from any more prejudice and from ongoing fundamental miscarriage of justice.

V. The Panel has made an obvious error in by not noticing that, the Appellee has "tacitly acquiescesed" to various claims of the appellants, and as a matter of law the appellants are entitled to relief on such tacitly agreed claims

In this respect the panel has made an error by not noticing as such several of Appellants' claims were in fact 'consented & agreed' by the appellee, by its tacit acquiescence. The following are the claims to which the appellee has either failed to respond or to controvert in any manner, which warrants all reliefs as sought by those claims for the respective appellants to this action. For the court's convenience the appellants has reenumerated those 'consent & agreed claims. The appellants would like to state that, 'when the parties are in consent, they bind the court"

FIRST APPEAL: (18-13071 DD)

Whether the Federal Bureau of Prison & U.S. Attorney (GA) acted in contrary to the constitutional rights of Annamalai and in excess or in omission of its authority and or without observance of procedures required by law, which all warrants an immediate release of Annamalai?

Whether the trial court Judge(s) have acted in contrary to the law, common law, U.S.Statues, U.S.Constitutions, and their failure to respect and follow the same has caused prejudice to Annamalai's liberty interest(s), all which warrants an immediate release of Annamalai?

SECOND APPEAL (No.18-14115-DD)

The district court has abused its discretion by denying the appellant's motion for summary judgement and or for specific performance, hence the erroneous order shall be vacated.

The False oath charges in a bankruptcy proceedings shall be dismissed, since the same is precluded by the doctrine of Res Judicata.

The charges relates to obstruction of justice, false statements to a federal agent shall be dismissed, since those charges have failed to state an offense or have or have failed to charge an offense

The charges with relates to filing of fraudulent (false) Federal Tax Return (count 9) and obstruction of justice claims have failed to charge and state an offense,

THIRD APPEAL (Case No. 18-14962 DD)

1. The newly found evidences and matters with relates to a " RICO ENTERPRISE" 's involvement in indicting and prosecuting Annamalai warrants a new trial in the interest of justice and respect to law.
2. The District court has abused its discretion by denying the appellant's motion for summary judgement and or for specific performance, hence those erroneous orders shall be vacated.
3. The Government attorneys' sought for false evidence, false testimony, and failed to correct the false testimony, when it have appeared and also deliberately and patently, kept entering false evidence to secure Annamalai's conviction in a wrongful manner, which warrants a new trial.
4. The prosecutors' several false statements placed at closing arguments before the petit jurors, and grounds exist for a new trial.
5. The Explosive facts, specific and reliable evidence of IRS special agent Stefan Langamandei's testimony 'after trial' has specifically shown the act(s) of suppression of exculpatory evidence by the government, which warrants a new trial for Annamalai in the best interest of justice.
6. The series of newly discovered evidence concerning the Brady and Giglio issues warrants a new trial for Annamalai.
7. Ineffective assistance of a 'fake' tamiz linguistic-interpretator at trial and at sentencing warrants a new trial for Annamalai.

Wherefore, the Appellants respectfully states that, they are entitled to a relief on the foregoing claims to which there are no objections by the government's attorneys.

VI. Annamalai at least deserves a ' new trial' based on cumulative effects of various misconducts and injury in fact caused by the government attorneys and also by considering the vacature of 22 counts of 34 counts on his direct appeal.

Annamalai would like to respectfully state that, the panel has made an error by disregarding the fact that, at least 22 counts of 34 counts of Annamalai was already vacated, which is over 70% of conviction were vacated. Notably, the Grand Jury and the petit Jury all have found Annamalai was guilty as charged, and Annamalai was convicted in the jury trial. Having said, its a very simple human logic and any one with normal minded humans will clearly agree that, there is no way to agree as that, the grand jury was convinced as such Annamalai has committed the bank fraud and tax violations as charged, when the same jury also convicted Annamalai for other vacated 22 counts of his conviction by the court's panel.

Annamalai respectfully state that a new trial is at least warranted on the balance 12 counts, since this court nowhere can decide that, the jury was able to convict Annamalai purely based on the evidences before them for the counts 1-8, 31, 32, and 33 per se, when the 22 counts of 34 counts were already thrown away by this court's supervisory authority. A new trial on the balance 12 counts, will at least prevent manifest of errors; and prevent a 'fundamental miscarriage of justice and also will protect Annamalai's procedural due process of the fifth and substantive due process of fourteenth Amendments of United States constitution.

Further, the cumulative effects and spillover effects of the vacated 22 counts of 34 counts is so vigorous and a new trial at least will cure such an injustice caused by the prosecution. Hope the panel will understand Annamalai's feelings, a human, an innocent soul, trying and fighting very hard to prove his innocence, who got stuck with some 'above the law persons'. Please help me judges, and please give me a chance to prove my innocence via the new trial which, I guarantee will end this seven years of litigation to once for all.... in the name of the God.

"FINAL MERCY PLEA"

I, Annamalai Annamalai whole heartedly thanks the panel and other judges of this court for giving me an opportunity to raise the foregoing claims. I also appreciate your honor spend your precious time to read this idiot's and this idiot's wife's brief as enumerated above. I respectfully state that, I am "NOT" an intelligent man, I have made lot of mistakes in my life, I have placed the God's wishes and God before any of my wishes and material benefits. I have donated in millions of dollars to charities, now, I have been convicted for \$11,854.00 so called bank fraud, which was/is 'FACTUALLY IMPOSSIBLE' to commit by me, since none of those Financial institutions even exists in the United states anywhere per se. I clearly understand that, when 'above the law persons' in the U.S. Justice department wants to hurt some one like me, they can, and will and shall do it. Now I can understand. I have spent 7 years in a

Terrorist cell already, which has housed 'only' 28 individuals, also known as 'north guntanamo bay cell'. Apart from me 90% of the inmates are Muslim terrorists caught from syria, pakistan, albania, nigeria, iraq, Iran etc. Balance are drug lords, murderers, and somalian pirates. I maintained my love, faith and devotion to the God 100% and still maintaining, and I will never and ever accuse the God for any of the tortures I 'enjoyed' so far. I am seeing YOU only as my savior from the 'bad people', and with my very bad health and various chronic medical conditions I will NOT serve for more than few months. I after all would like to die as a normal man, and NOT as a felon and or convict, hope the panel will understand my feelings. I am NOT a fraud, I am an idiot, and my sincerely held religious beliefs and extreme love and devotion and fondness to the God made me to protect and save the Temple from very bad people, including the gang connected with the appointed Trustee Lloyd T. Whitaker, his counsel James Hayden Kepner, all have caused to orchestrated these heinous prosecution towards me and my wife to loot millions of dollars worth properties and gold and diamonds, which all belongs to the God and partially to my wife and me. Please consider that, if I am forced to defend myself at the resentencing of bank fraud convictions, those convictions are based on violation of 18 USC 1344 et seq., in which patently, 'none' of the indictment Financial institutions exists anywhere in the United States. (Please see Exhibit/Evidence no. 6 & 7 attached hereto and by reference fully and expressly reincorporated herein), which goes to the hearts of "fundamental miscarriage of justice" and impringes on my 1, 5, 14th amendments of the U.S. Constitution protections. I still believe 'NO MAN IS ABOVE THE LAW'. I never and ever defrauded any one, in fact there is no need for me to defraud anyone.

Please see the judicially established facts as such when the Temple has raised over 15.5 Million dollar via credit card receipts, now I am going to face a sentence of \$ 70,000.00 to 120,000.00 fraud loss, which is NOT EVEN 1% of the revenue!! This case is NOT about fraud, all about some above the law individuals converted the victim as fraud and used some 'out of mind' individuals to gain more and more material benefits for them, with 'no respect to the judges of this court' per se.

I after all beg for your mercy. Also note that, I wrote a first check of \$1,850,000.00 to a public entity(temple), however at the same time I have committed a fraud of \$11,854.00 as bank fraud...what insane acquisition was that. The panel may not know another judicial fact. The individuals as shown as victims, first clogged the Gwinnett county police department to charge me with "credit card fraud", also theft by taking to the tune of \$ 1751.00 and \$1401.00. Latter, I without even stepping in to the court steps, able to cause the district attorney of the Gwinnett county-Georgia, by showing an 'orchestrated scheme', to throw away those charges. Latter, the same was converted as bank fraud, and I am sitting in prison for bank fraud, which is 100% factually impossible to commit, since none of those banks exists anywhere!!

Please save me, and please give me another chance, via at least through a new trial for the balance 12 counts, and I guarantee that, I can win with the help of God this time. Please excuse my english and also the typos, since English is not my first language. I give my apology for the same. I am NOT a bad person, I am an idiot, please save me. God bless your Honor and all your loved ones, and the dedicated law clerks of yours. God Bless!!

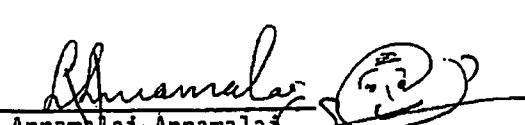
NOTE: the appeal case no. 18-14292DB, is with relates to the relief requesting for a NEW TRIAL for ANNAMALAI ANNAMALAI. Thanks.

CONCLUSION AND RELIEF SOUGHT


Annamalai Annamalai

As well demonstrated above, the appellants move the court to vacate its erroneous order and grant all the reliefs as sought in this petition, which will be in the best interest of justice and prevent grave injustice and Fundamental miscarriage of justice.

Respectfully Submitted this day of November, 22 2020

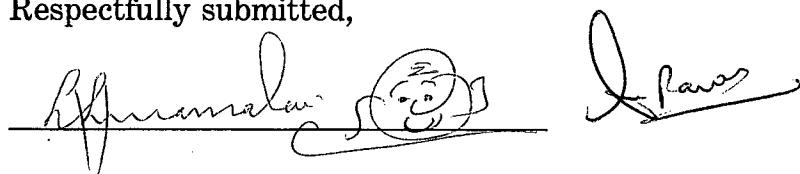

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 4/6/2020