20-5635

CIVIL ACTION

No._____

IN THE SUPREME COURT OF THE UNITED STATES

Daniel Thomason Smith Petitioner

VS.

WARDEN F.C.I. BEAUMONT (MEDIUM)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT UNITED STATES COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

Daniel Thomason Smith
Reg. # 29163-380
F.C.I. Beaumont (Medium)
C/O. P.O. Box 26040
Beaumont, Texas 77720

PARTIES

All parties appear in the 'caption' above as Warden is only one.

QUESTION(S) PRESENTED

1. Is it appropriate to convict me, Daniel Thomason Smith, when I was NEVER allowed to testify for what I had knowledge of and/or did not have knowledge of ??
2. Since the government has committed the Brady Violation, in Case # W 16-CR-039, why has the U.S. District Judge, Marcia A. Crone, and U.S. Magistrate Judge Zack Hawthorn completely ignored my Exculpatory Evidence ??
3. Is it not MY Right to have the Exculpatory Evidence ORDERED for MY Right to vindication ??
4. Since the government has lied about a 'Grand Jury', because there never was a Grand Jury, then how can the Indictment be 'true'??
5. Since the original Indictment was signed by U.S. Attorney Robert Pitman, is it not a conflict of interest that he has 'ruled' on my case # 6:16CV0280 after he became a U.S. District Judge ??
6. Is it not true that the case # 6:16CV0280 contains 37 Federal Questions and Answers that destruct the U.S. District Court's jurisdiction over Me ??
7. How can the court convict me withOUT MY demonstration of MY Mens Rea ??
8. Since it is a strict requirement of the law, to hear MY testimony, and state of mind/mens rea, how can I be convicted of a crime ??
9. Since I NEVER INTENDED to commit, or instruct anyone else to commit any act of fraud, how can I be convicted of any of the charges placed against me ??
10. Will the Supreme Court Justice who is reading this document, ORDER and take Judicial Cognizance of the TWO CRITICAL Pieces of Evidence which exonerate Daniel Thomason Smith, which are the government's Exhibit # 24 AND the 'Coercion Tape' ?? (See Letter entitled Daniel Thomason Smith's Evidence and Motion To Order Proprietary Exculpatory Evidence).
11. Is not Justice Warren E. Burger's decision to not withhold Evidence in President Nixon's case a perfect collaboration for MY right(s) to Due Process, and thus, compel the Supreme Court Justice to take Judicial Cognizance of the text of the 'Coercion Tape' and the Exhibit # 24 ??
12. Since the Savings Clause applies to Actual Innocence, then am I not convicted of a Non-Existent Offense, because there was NO INTENT to commit any act of wrong doing, and NO-ONE has ever proven the contrary to thereby invoke the Savings Clause as 'truly applicable'??
13. How can I aid and abet when I NEVER even conspired to commit an initial act of any fraudulent scheme in the first place ??
14. How can

14. How can there be any victims of identity theft, fraud, and the like, when I NEVER even met, saw, or had any knowledge of any of the 'victims', nor did I ever direct any one else to seek someone's identity to defraud Medicare/Medicaid ??

15. How can the U.S. District Judge Alia Moses libel and slander me, in a Court of Law, in a public record, both written and oral, on February 23, 2017, when she blurted out Two Prejudicial Remarks directed AT ME, and not be held accountable ??

16. How can False Witnesses bear False Witness against me without MY Testimony ??

17. Is not Circumstantial Evidence, Preponderance of Evidence, He said, She said, moot withOUT MY demonstration of MY True Mens Rea ??

18. How can the Assistance of Counsel for Daniel Thomason Smith not be an Officer of the Court 'first', and moreover, 'a Federal Agent, posing as an attorney for Daniel Thomason Smith ??

19. How can the Assistance of Counsel for Daniel Thomason Smith be totally ignorant and oblivious of my imperative necessity to testify for demonstration of my True Mens Rea ???

20. Is it not true that, AND, according to Black's Law Dictionary, 10th Edition, that U.S. District Judge Alia Moses, not only slandered AND libeled me 'by and through' public hatred and blasphemous **REMARKS DIRECTED AT ME, WHICH WERE PREJUDICIAL, EMPHASIS ADDED, on February 23, 2017, RIGHT SMACK INTO THE RECORD, when she said, " You have bought your way out of everything, always, and you're not buying your way out of this one", and she then said, "Oh, YOU and you're sovereignty", and she seriously VIOLATED MY RIGHT(S) FOR MY ALLOCUTION, BECAUSE; This address is required under Fed. R. Crim. P. 32(c)(3)(C) ?????**

21. Why are MY documents hidden, or trashed because they are not found the docket sheet regarding MY Allocution because when Alia **blasted My Allocution on February 23, 2017, she said I could leave My Allocution for entrance into the record, and so where are those documents ??**

22. Is it not true that Alia Moses is indeed held liable for slander and libel to/against me so that my Law Suit bearing the case # 1:18-CV-635 is sustainable and 'holds' merit, because NO ONE can state blasphemous remarks to me, in a Public Courtroom, in Oral AND Written Record(s), regarding my heritage, and generating HARM and

Post Traumatic Stress Disorder(s), and Mental Anguish through Nightmares by and through slanderous remarks that are hurtful and hateful, just because I grew up around the law and know MY Right(s) ?????

23. Should Alia Moses be Impeached and Removed from the bench, wherever she has 'shifted' to, to include, but not limited to, The Texas Supreme Court Justice, and/or other U.S. District Judgeship(s), etc.???

Why have U.S. Magistrate Judge Zack Hawthorn & then U.S. District Judge Marcia A. Crone in the Eastern Dist. Texas, Beaumont Div., having juris. (where my flesh-and-blood body is Warehoused for Commercial Fraud by the govt.) for the Title 28 U.S.C. Sect. 2241 properly submitted, completely ignored, evaded, and disregarded in my Sect. 2241, the fact that Newly Discovered Evidence is and will always be Available for presentation in infinite subsequent Sect. 2241's, or the like, for the simple, obvious basic Right(s) for 'Due Process' and conceivable Exculpation of the Undersigned, and ignoring my Invocation of the Incontrovertible Physical Facts Doctrine (Hotel Manifests, Airline Manifests, Country Club Receipts, and Two friends who were expecting to Testify that I, Smith was NEVER at the business for which I owned) because MY Exculpatory Evidence, being the govt's Exhibit #24 & The 'Coercion Tape', and the fact that Exculpatory Evidence and Testimony (Testimony is actually also Exculpatory, MY Testimony, which is a strict requirement of the Law) are Newly Discovered Evidence because they have NEVER even been presented in the first place, and the Incontrovertible Physical Facts Doctrine by its Exclusion and Pre-meditatedly, with Intentionality Precluding such vindicating Evidence because they are allergic to the truth, because Exoneration of Smith cuts into their paychecks, because I, Smith NEVER committed actions of ridiculous Fraud and Identity Theft, and NO ONE can or has or ever will prove the contrary, and so can we say The Brady Violation, which is also Fraud on the Court???????????

25. Did U.S.D.C. Beaumont not Err because The Savings Clause in Sect. 2255, and my usage of 28 U.S.C. Sect. 2241 is proper, despite The Hon. Marcia Crone's denial, because of my actual innocence of violation of Fraud and Identity Theft, generating the illegal Sentence & Incarceration? See: Reyes-Requena VS. United States, 243 F. 3d 893, 904-06 (5th Cir. 2001); In Re. Jones, 226 F. 3d 328, 333-34 (4th Cir. 2000); Triestman VS. United States, 124 F. 3d 361 (2nd Cir. 1997). and because:

On May 28, 2013, the Supreme Court decided, McQuiggins VS. Perkins,

506 U.S. ___2013, In Light of McQuiggins, Smith's actual innocence of violating 18 U.S.C. Sect. 1347, 1028, and 1035 has been properly raised in the instant motion pursuant to Sect. 2241 and 2255(e) motion, and there is no time barr, because this case falls under the "Fundamental Miscarriage of Justice Exception" (just like Newly Discoverd Evidence) reaffirmed by the Supreme Court in McQuiggins. This course of action for Actual Innocence is the Savings Clause under Sect. 2255(e), due to Sect. 2255 or Sect. 2255(h) being Inadequate or Ineffective.???

26. Do you see the identical similarity between Brett Kavanaugh having some loony tune lady from San Fran., inter alia, splash a bunch of non sensical slanderous, defamatory, libel(ing), blasphemous junk about you like when the Indictment about me says that I told one of my employees that "the Feds. can come after me and pin my aus to the wall", and that they told me "we had to stop 'doing' fraudulent claims". What the heck are these people talkin' about????

27. Will you see how the Asst. U.S. Attorneys are excellent at playing on the Emotions of the jury, because even the trial and sentencing judge Alia Moses is an Emotionally submissive individual??

28. Is it possible that F.B.I. agent Lee McLoy (See Procedural History, Appendix F, and Substantiation Pages 19-21, Appendix B; Heed the Socio-pathic behavior and traits of the F.B.I. Agents) surreptitiously violated the prohibition of electronic communications wiretapping laws when he coerced My Office Manager to call me & he recorded the call, (Hence: "The Coercion Tape") in March of 2012, by NOT yet having proper authority to pull such a stunt, and that's why the gov't. AND my attorney refused to even fathom playing MY EXCULPATORY EVIDENCE, (BRADY!) and with, of course, the fact that it was Exonerating, combined with MY evaded, required by law, Testimony, producing Pre-Meditated with Intentionality pure FRAUD on the Court??? See: Behavior of Lee McLoy's Boss(es) Jim Comey & Andrew McCabe, and counterparts, Peter Strzok & Lisa Page, AND ALL of the Double Standards.... Despicable Disparity. Emphasis Added.

Struck App. D, E, F, G, H-Redundant

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NOTE: My MOTION TO ORDER PROPRIETARY EXCULPATORY EVIDENCE (REVIEWABLE IN APPENDIX H) FILED WITH DOC'S IN APPENDIX G WAS SIMPLY IGNORED. CONTRADICTS IMPERATIVE APPLICATION AND AUTHORITY TO PREVENT FRAUD, BRADY VIOLATION, DEPRIVATION OF DUE PROCESS, PURSUIT OF CONSTITUTIONAL CLAIMS/RIGHTS. SEE: PAGE 4 of Appendix B.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AFTER CONCLUSION

JURISDICTION

The date on which the United States Court of Appeals decided my case was June 19, 2020

No petition for rehearing was timely filed in my case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment of the Constitution for Entitlement to Proper Representation and Due Process 'Right(s)', and Witnesses.
6th Amendment
14th Amendment

Universal Declaration of Human Rights
Article 8, 5, 3, 11. 12.

STATEMENT OF THE CASE

INTRODUCTION BASIC FACTS

Daniel Thomason Smith is confined to F.C.I. Beaumont (Medium) at P.O. Box 26040 Beaumont, Texas 77720. Fed. I.D. # 29163-380. The sentencing occurred in San Antonio Division under Case # W 16-CR-039 on the 23rd day of February, 2017, with finality on March 23, 2017.

A trial occurred from June 20, 2016 through June 27, 2016. On June 27, 2016, a jury 'found' guilt of all counts 1 through 21 for Conspiracy to Commit Health Care Fraud, Count One. 18 U.S.C. Section 1347 Aiding & Abetting Health Care Fraud, Count Two, 18 U.S.C. Section 1028 C Aiding & Abetting Aggravated Identify Theft, Counts 3-13. 18 U.S.C. Section 1035 Aiding & Abetting False Statements Relating to a Health Care Matter, Counts 14-21.

SPECIFIC CASE(S) FOR SUBJECT MATTER

W 16-CR-039
6 16-CR-039
Title 28 USC SECT. 2241 1:18CV581 Eastern Dist. Tex. Beaumont
Which led to the Appeal 19-40558 Fifth Circuit New Orleans

SUBSTANTIATION OF PETITION FOR CERTIORARI

When Daniel Smith's Procedural History is read from the original Title 28 U.S.C. 2241, filed in the Eastern District of Texas, Beaumont Division on November 8, 2018, and the government's Exhibit # 24, AND the 'Coercion Tape' is/are revealed, (provided preservation of the tape has prevailed and it has been safe, NOT tampered with, altered, edited, filtered, modified, etc..) any reasonable Judge will clearly see that Daniel Smith was not only NEVER at the business, but Daniel Smith was also completely unaware of operations and intentions of an employee's efforts to produce fraudulent claims billed to Medicare and or Medicaid.

It is IMPOSSIBLE to convict me withOUT MY Testimony, which is a strict requirement of the law and entrance of MY Mens Rea into the record. See: Title 18 U.S.C. Section 2, and its substantive definition of what constitutes an INTENT. Emphasis Added.

You or I canNOT (lawfully) be convicted of a crime which we did NOT KNOWINGLY commit. Period. Anything to the contrary is a FRAUD, in and of itself.

The simple similarity here is, you were the owner of the Mall, a young lady in the perfume department at Nordstroms was conducting a 3 ring circus of a drug ring, buying, selling, the whole enchilada, and boom, you get Indicted for a Drug Conspiracy, and all the while, you have no idea what that gal is doing.

Similarly, Brett Kavanaugh NEVER even associated with the gal that flew from San Fran. to come testify AGAINST Brett, and we all remember how she couldn't even look out of her glasses and that hideous hair!! Oh come on, you think she flew all over and to Honolulu, etc.. looking like that?? Point being, she was coached to play the part of an overwhelmed battered lady recalling some horrific act(s) by Brett. What a joke!! Right?? So, as you read this 90 page 'report', PLEASE place all bias aside, as U.S. Dist. Judge Alia Moses never did. (Brett, I prayed for you and your precious wife and girls daily.)

To the Hon. Justice(es), imagine being taken from your beautiful wife and children and home...

I entrust that you all will order the original 30 page Title 28 U.S.C. Sect. 2241 from East Dist. Texas, Beaumont Division, and 'live'

within my 11 page Procedural History, realizing the Indictment is/was an incredible concoction of theoretical presumptions, designed to point culpability upon my name, such as about 8 emails that I sent out to an employee ONE time when I was going on a trip, and the idea was to emphasize certain methodical tasks that needed attention, and the bank accounts that, Yeah, I told employees to set up at my bank so that I could transfer funds to their accounts easily. Wow. what a crime!! The Asst. U.S. Attorneys had to inflame an otherwise normal set of circumstances into a, "Oh, he's a bad boy." Oh Come On! And what's this 97 Percent conviction rate?? Oh, now I see. Let's create a pack of lies about you and go get a conviction. Quite simple, Apparently.

The Infinite Budgets of the governmental actors/agents are an incredulous sorrowful reason for this debacle, travesty, and UNnecessary conviction, and incarceration, which has caused Law Suits, stemming from everything like Physical Assault(s), Sexual Assault(s), severe Health Issues evaded, exposure to vast amounts of Black Mold, causing additional Health Issues, still evaded, U.S. Mail Fraud, to name a few.

EFFICACY FOR PLAUSIBLE CERTIORARI BY THE SUPREME COURT

Procedurally, and In Witness Whereof: because this entire 'report' is My Affidavit, and you will see all numerous Affidavit(s), and are/were to establish the veracity for those who may not be allergic to the truth, (To date, No One has decided to step up for what is 'right') and so Daniel Thomason Smith of/for DANIEL THOMASON SMITH(C) TRUST Ens Legis, and in Case # 6:16CR039 (And now, Case # 1:18CV581, which U.S. Dist. Judge Marcia A. Crone has failed to admit) AND in Indictment that is a Negotiable True Bill, SA13CR09780G, there was NEVER ANY UNDERSTANDING (See: Appendix I and Specifically PROOF OF CLAIM #'s 12, 14, 20, & 21) that I was or am responsible for the Bonds, and there is NOTHING in the record to prove such cause of/for further action beyond the date of December 4, 2013. That right there NULLIFIED Jurisdiction, OR The Officers of the United States are to be charged and convicted with treason, IF they had not provided a REMEDY, which they did, attributed to Mandell House, a close confidant to the President,(See: House Joint Resolution 192 recorded in the Congressional Record in May 23, June 3, June 10 of 1933.) and claiming MY Right(s) on/from MY Birth Certificate ("A very valuable instrument") and HJR

192 on June 5, 1933, addressed and approved by the Supreme Court in 1939, now identified in Public Law 73-10, and we all know what U.S. Rep. Louis T. McFadden said when he brought formal charges May 23, 1933 on the floor of the House against the Board of Governors of the Federal Reserve Bank System, The Comptroller of the Currency, and the Secretary of the United States Treasury (Congressional Record May 23, 1933: "Mr. Chairman, we have in this country one of the most CORRUPT Institutions the world has ever known, I refer to the Federal Reserve Board and the Federal Reserve Banks..."

The U.S. Supreme Court decisions in Guaranty Trust Co. of New York VS. Henwood Et.Al. with Chemical Bank & Trust Co. VS. Same, Nos. 384, 485 [307 U.S. 251] quotes HJR 192 word for word, "Analysis of the terms of the Resolution (FN3) discloses first, the Congress declared certain types of contractual provisions against public policy in terms so broad as to include then existing contracts, as well as those hereafter to be made [307 U.S. 252]. In addition, future use of such proscribed provisions was expressly prohibited, whether actually contained in an obligation payable in money of the United States or separately 'made with respect thereto'. This proscription embraced 'every provision' purporting to give an obligee a right to require payment in (1) gold, (2) a particular kind of coin or currency of the United States money measured by gold or a particular kind of United States coin or currency." "Having thus unmistakably stamped illegality upon both outstanding and future contractual provisions designed to require payment by debtors in a frozen money value rather than in a dollar of legal tender current at date of payment, Congress--apparently to obviate any possible misunderstanding as to the breadth of its objective --added, with studied precision, a chatchall second sentence sweeping 'every obligation', existing or future, payable in money of the United States, irrespective [307 U.S. 253] of 'whether or not such provision is contained'". "Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained in or made with respect thereto, shall be discharged upon payment... in any coin or currency which at the time of payment is legal tender for public and private debts." (HJR 192) (SEE: Appendix I, as that Entire Motion 'covers' in succinct detail THE Inside AND Outside the U.S.D.C's. Jurisdiction. Entitled: MOTION TO COMPEL NEWLY DISCOVERED EVIDENCE AND YEAR 2020...)

Therefore, this critical 'report' which is indeed meritorious for Certiorari because Motion to Amend or Alter Judgment Rule 59(e) allows for correction of law or fact or to produce newly discovered evidence. Waltman VS. International Paper Co. 875 F. 2d. 468, 473 (5th Cir. 1989)

In Texas, recognition of Incarceration 'of' my Actual Innocence violates my Due Process Clause of the Fourteenth Amendment. Elizondo 947 S.W. 2d. at 205; Thus, serves as freestanding, substantive basis for habeas relief. (See: Previous clear explanation(s) of my Ineffective and Inadequate 'abilities' by and through literal hidden and/or trashed Title 28 U.S.C. Sect. 2255's. Emphasis Added.

See: Plausible Inclusion of Appendix H, and the obvious Violation(s) of my Sixth and Fourteenth Amendment(s) for counsel and the very problematic Right, or the lack thereof, to Defense, NOT just this misconstrued Representation, and notice how the lawyer is caught red-handed lying, (Pages 8-11) (1) See from the confirmation and my family that there was NEVER any appeal to New Orleans AND "That assertion is untrue" (Page 10).. If it were untrue, then why did he not play my (2) Exculpatory Evidence (The Coercion Tape) and hit the ball outta tha park & The Exhibit #24??!? I swear, 'they've tampered, edited, erased, modified, and the like MY Exculpation Product(s), and this is all Pre-Meditated with INTENTIONALITY FRAUD VIOLATION BRADY VS. MARYLAND. (See: Sidney Powell- 'Defense' for Michael Flynn)

PRESUMPTION OF SMITH'S PROCEDURAL DEFICIENCY VS. THE CONSTITUTION

Let's assume that I, Smith still don't have the correct procedural 'stuff' quite in line for all of this "Smith doesn't meet the criteria for the Savings Clause". Ah Bull, because The Constitution TRUMPS ALL Statutes, Oh Yes It Does. Watch this, to wit:

Actual Innocence Id., 404, 113 S. Ct 853 122 L. Ed. 2d. 203 (citing Sawyer VS. Whitley, 505 U.S. 333, 112 S. Ct. 2514, 120 L. Ed. 2d. 269 (1992)) Murray VS. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986) "Without showing cause for procedural default" & Pursue his Constitutional Claims, like Ineffective Assistance of Counsel, & Stop Incarcerating Innocent People." Herrera, 506 U.S. at 404, 113 S. Ct. 853, 122 L. Ed. 2d 203.

United States VS. Ekanem, 555 F. 3d. 172 (5th Cir. 2009) See his charge of 18 U.S.C. Sect. 1347 (Medicare Fraud) and it's always about knowingly. Every one I read, is all about what he or she knew. Where's My Knowledge that has NEVER been sought?? That's because they are scared and 'know' (Ha!) that I NEVER KNOWINGLY committed an act that they claim I did, so since they can't 'tap' My Dignity, they have hidden from the truth. All of this reliance upon Preponderance of Evidence, Circumstantial Evidence, He Said, She Said, They Said, We Said, and even I Said, is a flat out joke. I can say that you said.... Absolutely makes NO sense, does it?????

I know My Right(s), and I, nor you can (Lawfully) be convicted of an act which I, or you did NOT KNOWINGLY commit. Period. Period.

Finally, what began with a person in Boston, and another in New York, who are and have been dying to post The Article, which is Appendix L, because they wrote to me with empathy for just cause, and that (The Article) is what the one in N.Y. wrote. So, my point is, after all of the Sexual & Physical Assaults & Severely Busted Wrist and Mental Anguish and Life Long Severe Post Traumatic Stress Disorder, and Health Issues Unattended to, and my elder status (59), and NO Violence, and NO Criminal History, (And Lord only knows where someone claims I have a Crim. Hist. of '2', when I can't even spell traffic citation) that this utterly ridiculous 'sentence' pronounce upon my name should be DRAMATICALLY REDUCED, AT A BARE MINIMUM, or of course, what I have propounded to this Court, respectfully, and No One can prove the contrary. See: Appendix L.

NOTE: Pages 6 through 16 of this section entitled SUBSTANTIATION, which is Appendix B is indeed submitted as of June 22, 2020, F.Y.I.

NOTE: Pages 17 through 24 of this section entitled SUBSTANTIATION, which is Appendix B is included to proceed 'with an abundance of caution' so as to rely on your receipt of these first 7 Pages of the original 2241, and enclosed Appendix F, the 'real' Procedural History for any sort of SURREBUTTAL TESTIMONY since even Eastern Dist. Tx., Beaumont, to date, has refused and evaded such cause, looking solely for procedural deficiencies. Hence; The reason for Pages 6 through 16.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Daniel Thomason Smith)
VS.) CIVIL ACTION NO._____
UNITED STATES OF AMERICA Et. Al.)
Respondent(s))
PLAUSIBLE FOR SECT. 2241

MOTION FOR RELIEF PURSUANT TO
TITLE 28 U.S.C. SECTION 2255

COMES NOW: Daniel Thomason Smith, pro se, Plaintiff, Petitioner, for request for entrance into this Honorable Court, respectfully, in above styled cause to 'possibly' receive clarification for procedural defect(s)/deficiency wherein Constitutional provision(s) underline an otherwise simple conclusion to Responsibility under Law.

1. The Constitution trumps all statute(s).

2. In recent 'litigation', there are some conflicting decisions that lend a serious contradiction to the above statement. Therefore, I, Daniel Thomason Smith, Affiant, as I request that this document be construed as an Affidavit, for the veracity is of, to my knowledge, understanding, sworn on my Unlimited Commercial Liability, true, complete, and correct, so help Me, God, and under penalty of perjury, pose enclosed Motion(s) pursuant to the Case #, 6:16CR039, ultimately adjudicated to pronounce culpability upon my name.

3. I sent 3 (Three) Sect. 2255's to collaterally attack the conviction and sentence against me, and one was denied by Judge Alia Moses on or about July 8, 2016; the 2nd one was sent in October of 2016, and 'ruled' by Robert Pitman, who obviously became a U.S. Dist. Judge AFTER placing his signature on the original Negotiable True Bill against me, which was a conflict of interest, in of itself. A.K.A., a violation. The 3rd 2255 was sent in January of 2018 via U.S. Certified Mail, which was 'TRASHED' by the prison, since it was never even recorded in the U.S.P.S. System, AND the prison staff trashed my folder containing 'that' copy of said Motion and U.S. Mail Receipt when the prison staff 'shook down' my unit.

While I know a time constraint looms large for detrimental effect in my behalf, I nonetheless present the stark differences of Motion(s).

motion pursuant to Sect. 2241 and 2255(e) motion, and there is no time barr, because this case falls under the "Fundamental Miscarriage of Justice Exception" reaffirmed by the Supreme Court in McQuiggins. This course of action for Actual Innocence is the Savings Clause under Sect. 2255(e), due to Sect. 2255 or Sect. 2255(h) being Inadequate or Ineffective.

There always has to be a Remedy. Cox VS. Warden, Fed Det. Center, McGhee VS. Hanberry

When I raise Supreme Court decision in Rosemond VS. United States, 572 U.S. 65 (2014), the simple correlation to collaterally attack the legality of conviction and/or sentence is Rosemond did not have "ADVANCED KNOWLEDGE" OF THE FIREARM; In the Daniel Thomason Smith's case, NO ONE has ever proven that I had ADVANCED KNOWLEDGE OR ANY KNOWLEDGE OF PRODUCTION OF FRAUDULENT CLAIMS TO MEDICARE AND/OR AIDING AND ABETTING AND GIVING DIRECTIVES TO RUN AROUND AND STEAL PEOPLE'S IDENTITY TO BILL MEDICARE!!

RETROACTIVELY OR NOT, THE PRECEDENT WAS SET THAT ESTABLISHES MY ACTUAL INNOCENCE OF ABOVE PARAGRAPH BECAUSE THE DECISION DECRIMINALIZED THE CONDUCT FOR WHICH I WAS CONVICTED AND I could NOT raise issues stated at the trial and even the sentencing hearing because Alia Moses would NOT allow me to Allocute, which is a violation of Fed. R. Crim. P. 32(c)(3)(C), which is also Pre-Meditated FRAUD on the Court.

Keep in mind, I already told you the previous 2255's have been removed from the Docket Sheet, and the 3rd one was destroyed AND MY copies by the prison staff in January of 2018, AND even MY U.S. Mail Certified Registration Receipts. Emphasis Added.

FACTUAL BASIS FOR ISSUES RAISED

In my case, MY Mens Rea is missing, to illustrate My state of mind (INTENT) (See: Any definition of INTENT) and the DISallowance To Testify is a violation in and of itself, because the Title 18 U.S.C. Section 2, substantively defines what constitutes a violation of INTENT, and quite frankly the definition of such, accordingly, and MY lack of Testimony (which a strict requirement of the law) was to erroneously WITH INTENTIONALITY, DEFRAUD THE COURT BY instructing the jury to claim that "KNEW" my intent, and MY TESTIMONY which

which is a STRICT REQUIREMENT OF THE LAW, so withOUT it, I have been convicted of a NON-Existent Offense(s), thereby generating ACTUAL INNOCENCE to be pervasive.

The Pre-Meditated FRAUD on the Court exists AND also for EVADING MY TWO CRITICAL PIECES of EXCULPATORY EVIDENCE, WHICH WERE THE EXHIBIT # 24 & the 'Coercion Tape', generating the BRADY VIOLATION. The Assistant U.S. Atty's would NOT play the tape NOR would the so-called Fraudulent Attorney for my representation, NOT my defense, because they knew it was vindicating and the Exhibit #24, which was the 'whole story' was also what the attorney could have taken and chopped like hamburger meat, which I invoke the INCONTROVERTIBLE PHYSICAL FACTS DOCTRINE, and those TWO pieces of MY EXCULPATORY EVIDENCE, which demonstrate that I was NEVER at the business for which I owned, and did NOT even have a key to the front door, but that I did NOT even know how to turn on the computer!!

CRITICAL NOTE: The 'Coercion Tape' may have been tampered with, altered, modified, filtered, edited, and the like since neither my atty., nor the 'gov't.' would play it, and the last time I heard it and the only time I heard it was the ORIGINAL Attorney's office, who bailed out in late 2015 due to a medical mishap, and it's Exonerating, or, it was.

NEWLY DISCOVERED EVIDENCE

Jeannette J. Clack has my 'Discharge' of the Debt, which is all that this is, before my complete exhaustion of my private administrative remedy process, before my Tort Claim and subsequent Law Suit for all of the FRAUD against me, and now I bring forth an 'updated' version in the attached Motion to accompany this Brief of Introduction and Title 28 U.S.C. Section 2255. The reason for the vast difference(s) is simple: 1. To 'reason' with the Interior of the Jurisdiction of the Court in case 6:16CR039, for 'knowledge' that you canNOT (Lawfully) convict me (OR YOU) of something that I (OR YOU) did NOT KNOWINGLY do, but now to also explain the Exterior of Jurisdiction, where I was FRAUDULENTLY LED ASTRAY FOR THE COMMERCIAL FRAUDULENT BENEFIT OF ALL INVOLVED. See: MOTION TO COMPEL NEWLY DISCOVERED EVIDENCE enclosed. (2). I am NOT responsible for the Bonds (Liens against me), and NO ONE ever explained to me that was a 'set up' of such to create a Debt.

I, Daniel Thomason Smith will show the Judgment is VOID from its inception in said Motion.

Judgment rendered without Jurisdiction, and/or therefore not authorized by law, and/or there has been such a denial or infringement of my constitutional right(s) as to render the judgment vulnerable. 28 U.S.C. Section 2255. Jeffers VS. Chandler, 253 F. 3d 827, 830 (5th Cir. 2000); Tolliver VS. Dobre, 211 F. 3d 876, 877 (5th Cir. 2000) per curiam))

IF I operate within the jurisdiction of 'that' Court of Case for subject matter at hand, I have clearly explained My Constitutional Right(s) violated in the trial court, AND for Sect. 2255, applicable right here in this enclosed Sect. 2241, construed as 2255 applicability, or for the Judgment rendered for enclosed Motion to wit:

2241 "Savings Clause" of Sect. 2255 provides my limited exception for Sect. 2241. See: Pack VS. Yusuff, 218 F. 3d. 448, 452 (5th Cir. 2000)

Inadequate or Ineffective under Sect. 2255, retroactively applicable Supreme Court decision establishing actual innocence because the decision decriminalized the conduct for which I was convicted and would have been foreclosed by existing circuit precedent had I raised it at trial, direct appeal, or original 2255. Reyes-Requena VS. United States, 243 F. 3d 893, 904 (5th Cir. 2001)

Remember, I could NOT raise issues in trial for stated reasons AND subsequent relief became obsolete, so reviewability is invoked for meritorious grounds as Motion to Amend or Alter Judgment Rule 59(e) allows for correction of law or fact or to produce newly discovered evidence. Waltman VS. International Paper Co. 875 F. 2d. 468, 473 (5th Cir. 1989).

In Texas, recognition of Incarceration 'of' my Actual Innocence violates my Due Process Clause of the Fourteenth Amendment. Elizondo 947 S.W. 2d. at 205; Thus, serves as freestanding, substantive basis for habeas relief.

I will show the Attorney lying to me in enclosed Exhibit Appx. H. because as you will clearly see from the confirmation from the Clerk in New Orleans, that was NO case number and NO Appeal AND "That assertion is UNtrue", where he would NOT play MY 'Coercion Tape', (Exculpatory Evidence) and NEITHER would the Gov't. (BRADY VIOLATION)

If it were UNtrue ("That assertion") then why did he NOT play MY Exculpating Evidence and hit the ball outta tha park??? & The Exhibit # 24 should, and could have been hammered home!! The tape has been hidden, tampered with, altered, filtered, modified, edited.

Actual Innocence Id., 404, 113 S. Ct. 853 122 L. Ed. 2d. 203 (citing Sawyer VS. Whitley, 505 U.S. 333, 112 S. Ct. 2514, 120 L. Ed. 2d. 269 (1992)) Murray VS. Carrier, 477 /U.S. 478, 496, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986) "Without showing cause for procedural default" & Pursue his Constitutional Claims, like Ineffective Assistance of Counsel, & Stop Incarcerating Innocent People." Herrera, 506 U.S. at 404, 113 S. Ct. 853, 122 L. Ed. 2d 203.

PRESUMPTION VS. INTERPRETATION VS. REALITY

Presumption(s) equals Theory(ies), albeit, circumstantial, and Preponderance, and all of these thrown in he said, she said, we said, they said, in the case of Smith, was/were/are designed to offer a and/or an idea of the person(s) making such ludicrous statements about me to generate pure falsehoods, but to 'rely' on less time of an incapacitation known as sentencing to incarceration of some other co-defendant, whereby prosecutors wrapped me into an act of conspiring to cooperate or giving directives to commit Fraud. Gimme a break. Jeez. Hence, the correlation for Advanced Knowledge in Rosemond VS. United States 572 U.S. 65 (2014). The trial court severely erred, precluding My Constitutional Right(s), 5th, 6th, 8th, 14th Amendments, to Testify and there is NO evidence in any record, Emphasis Added, to prove that I had any KNOWLEDGE of contorted Theoretical Presumptions in a bold Fraudulent Indictment.(See: Appendix F & H). In addition to the Brady Violation, clearly with Intentionality, The Asst. U. S. Attorneys set up a deal to bear False Witness(es) about/ against me, to slander & libel me, withOUT MY Testimony (Pre-Meditated With Intentionality Fraud on the Court, like, for example, putting a lady on the stand in the trial to literally state, as a Notary, that signatures were mine, which were NOT, and I told the Asst. Atty. to the Attorney sitting next to me that those are not my signatures, he told me to be quiet, and they would handle it, so at recess, I told the atty., and he said he would "handle it", and he, of course, did NOTHING.

Interpretation equals OPINION(s). How can you ever fathom an

opinion or an interpretation about something or someone withOUT that person's KNOWLEDGE OF/FOR his INTENT receiving proper demonstration?? Emphasis Added. See: Title 18 U.S.C. Section 2, for God's sake.

Reality: See: Every word on Every page within this 'report' for overwhelming cause to GRANT said petition.

As raised in 'discarded' Motion Sect. 2255 in January of 2018, **Excessive Sanction** and for Judicial Cognizance for the "Manner in which this sentence pronounced upon my name is being executed", the sentence is being executed in a profane, unreasonable, unnecessary way so as to violate my Eighth Amendment Right(s) for Abusive Sanction. See: Clear Explanation in Appendix E, Appellant Brief, pages 7, 7A, 8. Compare U.S. VS. Holguin-Hernandez, Certiorari 5th Cir, 2020 Lexis 1365 No. 18-7739, Appellate 746 Fed. Appx. 403 2018 U.S. App. Lexis 36558 (5th Cir. Tex., Dec. 27, 2018).
Compare: U.S. Vs. Curry 461 F. 3d. 452, 459 (CA 4 2006);
U.S. VS. Vonner, 516 F. 3d. 382, 389 (CA 6 2008) (en banc);
U.S. VS. Castro-Juarez, 425 F. 3d. 430,433-34 (CA 7 2005);
U.S. VS. Sullivan, 327 Fed. Appx. 643, 645 (CA 7 2009);
U.S. VS. Autery, 555 F. 3d. 864, 868-71, (CA 9 2009);
U.S. VS. Torres-Duenas, 461 F. 3d 1178, 1183 (CA 10 2006);
U.S. VS. Gonzalez-Mendez, 545 Fed. Appx. 848, 49, and n. 1 (CA 11 2013);
U.S. VS. Bras, 483 F. 3d. 103, 113, 376 U.S. App. D.C. 1 (CA DC 2007).

Additional application in Sect. 2241 to Beaumont, previously, and herein applied, accordingly.

In same Sect. 2255, and for recognition of Ineffectiveness and Inadequacy, producing relevance to this matter at hand, where the Undersigned, Daniel Thomason Smith, has claimed Ineffective Counsel, much less Assistance of same, and presumption of prejudice recognized in Roe VS. Flores-Ortega, 528 U.S. 470 (2000) even when defendant signed and appeal waiver. I, Smith signed nothing, & you see where the atty. told my family that a Mr. Phil Lynch (See: Appendix H, Pages 8-11) filed an appeal, but after numerous calls to the alleged attorney, and never an answer and never returning any calls with 'left' messages, that the second lie to me from the attorney, 'counsel' M. Gross. The first, of course, was the denial of ever even considering, after pleading to him & his asst. during the trial to play the 'Coercion'

discussion in part for dramatic reduction of the sentence. Title 18 U.S.C. Section 3553(a), and 3553(a)(2)(A), respectively, AND 18 U.S.C. Sect. 1341 collaborate for reasons to wit:

1. Sect. 3582(c)(1)(B) "Modification of an imposed term of imprisonment" and 3582(c)(2), If sentence range later lowered by the Sent. Commission. I request that this U.S. Magistrate Judge take a hard look at.

2. Both 'pending appeal' and 'imposition of sentence' sojourn for review as Daniel Thomason Smith has NO severe conduct, and I have NEVER even been to jail before, and have NO criminal history, despite some distorted statement and inclusion for an upward departure in my sentence based upon a crim. hist. of "2". What the heck is this?? Right there substantiates a reduction. Additionally, I have NO violence, am of elder status, and the offense(s) for which I was convicted have been overly Discredited (See Case 1:18CV581) for lack of proof of any sort of ridiculous Identity Theft, and even accused of making false statements of health care matter is insane and I closed the business for which this conviction pertains to and I have NO desire or necessity to re-enter the medical field, and If I am released, it can be Home Confinement, at the least, AND I am AT HIGH RISK TO/FOR SUSCEPTIBILITY TO CONTRACTION OF COVID 19. Emphasis Added. CRITICAL TO NOTE: When I was Blind Sided with this Indictment on Dec. 4, 2013, I spent 3 years on bond, and even told Alia Moses on June 23, 2016, which was Thursday before the obvious weekend, during the trial,(which the bonds belong to me,)(See: Appendix I) that I had to go to a wedding 350 miles from the trial site, and so she allowed for us to 'relax' on that Thurs. evening, until Monday, which by the way was the day I was buried, so the point is that even then I left to journey accordingly, as I did the same while on bond forever, literally flying from Miami to San Francisco, to New York to Houston, for 3 years, and the Airline & Hotel Manifests prove such statements; Thus, Daniel Smith is NO threat to anyone, or fleeing. Jeez.

The P.S.I. for the fact of the matter, is an item I skimmed through One Time before the sentencing hearing, and I immediately had two options, tear it up to throw it away, or vomit, so I chose option 1. Because just like the the F.B.I.'s contorted, fabricated, packs of

Incredible False Witness Bearing Nonsense, like manufactured F.B.I. 302's and ridiculous P.S.I.'s by some foreign completely unknown 'Probation Officer' who could NOT even get it right that I said I was raised around the law, NOT "by the law", A Huge Difference, and after I saw that, I knew to not skim through it any more and throw it away or vomit. Oh, and by the way, Where's My Mens Rea??

RAMBLING VS. WHAT IS 'RIGHT'

When Michael W. Lockhart and his para-legal(s) get a hold of this one, (Motion) I already know what he will say, which I am rambling, but that's necessary to get the point across, which I did not say it, You all, or your predecessors said in the Supreme Court, regarding the Actual Innocence subject, and to overlook Procedural Default, and "Pursue Constitutional Claims", and knock off the folly. (Incarceration). Even De Novo--Actual Innocence Id., 404, 113 S. Ct. 853 122 L. Ed. 2d 203 (citing Sawyer VS. Whitley, 505 U.S. 333, 112 S. Ct. 2514, 120 L. Ed. 2d. 269 (1992)) Murray VS. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 91 L. Ed. 2d. 397 (1986) and Herrera, 506 U.S. at 404, 113 S. Ct. 853, 122 L. Ed. 2d. 203.

CONCLUSION

The theme has spoken for itself, and NO ONE can prove any such Fraudulent Activity by me, an owner of the D.M.E. Company, which is exactly why certain "Rules" for F.R.C.P. have been clearly violated in this case, and then throw in my MOTION TO COMPEL NEWLY DISCOVERED EVIDENCE and Year 2020 Synopsis in its ENTIRETY, (Critical) See: Appendix I) and produce or compel release of my physical body from the Incapacitation, with OUT 'remand' of my physical body back to any Western District of Texas venue, for my protection since I am NOT very good at this jail stuff, (Stupid Nonsense) and so Keep me right here in the Eastern District of Texas, Beaumont venue, UNTIL I am released from Incarceration. Please.

PRAYER

That you see IF, Lee McLoy, F.B.I. agent, surreptitiously violated the prohibition of electronic communications wiretapping laws when he coerced My Office Manager to call me & he recorded the call, (Hence: "The Coercion Tape") in March 2012, by NOT yet having proper authority to pull such a stunt, and that's why the govt. AND

my attorney refused to even fathom playing MY EXCULPATORY EVIDENCE, (BRADY!) and with, of course, the fact that it was Exonerating, combined with MY evaded, required by law, Testimony, producing Pre-Meditated with Intentionality pure FRAUD on the Court, and now you see why that's why I pled with the attorney to play the tape and hone in on Exhibit #24 for simple vindication and LACK OF INTENT. Period. Title 18 U.S.C. Section 2. Where is My Intent???

PREPONDERANCE FOR APPENDIX I

Further preponderance to/for Appendix I is in enclosed Exhibit "Fraud 911, Letter for Rogatory Relief".

Further prayer in redundance, as Issues NEVER opposed in original Sect. 2241, or in objections, is again, "Manner in which sentence is executed". (See: Page 7 of this brief AND Appendix, pg's 7, 7A, 8 in this brief) "Plainly Unreasonable" for revocation of this sentence. United VS. Miller, 634 F. 3d 841, 843 (5th Cir. 2011) "Assessment of significant procedural error(s)" "In My district court". I've given ample errors. United States VS. Fuentes, 906 F. 3d. 322, 325 (5th. Circuit 2018); Smith's sentence is absurd. United States VS. Warren, 720 F. 3d 321, 326 (5th. Cir. 2013).

ATTESTATION & Cert. of Serv. Page 55 For Beaumont Div.

Commit Health Care Fraud, Count One. 18 U.S.C. Section 1347 Aiding & Abetting Health Care Fraud, Count Two. 18 U.S.C. Section 1028 C Aiding & Abetting Aggravated Identify Theft, Counts 3-13. 18 U.S.C. Section 1035 Aiding & Abetting False Statements Relating to a Health Care Matter, Counts 14-21.

STANDARD OF REVIEW

THE EFFECT OF ROSEMOND V. UNITED STATES

Petitioner, Daniel Thomason Smith, avers that the decision in Rosemond V. United States, No. 12-895 (2014), that interpreted the federal statute of 18 USC 2, Aiding & Abetting, has substantively defined what constitutes a violation of "INTENT" as required in 18 USC 2 directly affects the petitioner in two ways to wit:

Since Daniel Thomason Smith, in case # W 16-CR-039, or 6-16-CR-039, was, and has never knowingly committed a crime, because you cannot commit an act of a crime without an INTENT, which NEVER entered the mind, or state of mind/mens rea of Daniel Thomason Smith, then Smith is actually innocent of the Conspiracy Charge, and ALL charges of Aiding & Abetting 2 through 21, because an INTENT was NON-EXISTENT. **(1) The District Court instructions were, to the jury, erroneous, because the jury NEVER heard the testimony, which is crucial and a strict requirement of the law (I WAS NEVER EVEN ALLOWED TO TESTIFY), thereby avoiding an irreducible element or building block of knowing the INTENT of Daniel Thomason Smith, in light of the Supreme Court decision in Rosemond, AND (2) Petitioner, stands convicted of a NONexistent offense causing effect that the Judgment & Committment must be ruled, without uncertainty, null & void, vacated, and invalidated.**

The federal aiding & abetting statute, which derives from common law standards for accomplice liability, has two components. A person is liable under "2" only if he (1) Takes an affirmative act in furtherance of the underline offense, (2) With the intent to facilitate that offense commission. Smith never committed either of the two, or conspired to an act of giving "directives" to commit fraudulent schemes...**See Procedural History. In** answering the second question, the Court stated (Rosemond) In addition to conduct extending to some part of the crime, aiding & abetting requires **"INTENT"** extending to the whole crime. The defendant must not just associate himself with the venture but also participate in it as something that he wishes to bring about and seek by his actions to make it succeed. Nye &

Nissen V. United States 336 U.S. 613,619. That requirement is satisfied when a person "actively" participates in a criminal venture with FULL KNOWLEDGE of the circumstances constituting the charged offense.

The government states that I have admitted (Smith) to knowledge of conduct of fraudulent activity and giving 'directives' to the co-conspirators to 'create' and 'manufacture' fraudulent claims and schemes... That is an absolute **FALSEHOOD AND LUDICROUS.** Smith distinctly recalls the F.B.I. Agent Lee McLoy relishing in his intimidating tactics on March 15, 2012, in the home of Daniel Smith, so whatever some F.B.I. 302 states is erroneous hogwash, because when Lee McLoy persisted with his redundant questions until Smith said, "what do you want"?, and he said, "I want you to say you did do this or that", and Smith said, "OK" as Lee McLoy leaned up to adjust his gun and recorder, and forcibly use his voice inflection and body language to get Smith to admit to something, which was already stated that Smith had NO knowledge of fraud... So the threats, duress, and coercion he placed Smith under, in the home of Smith, after Smith gladly allowed 2 and a half hours earlier, became an obnoxious over kill, until Smith said, "I have to go", and he threatened Smith with, "I have enough to hall you in right now", and Smith said, "then why don't you?" for him to understand he had absolutely nothing and had NO jurisdiction for "hauling anyone in". Emphasis Added. **All of the preponderance of evidence, and circumstancial evidence, and he said, she said heresay is IRRELEVANT WITH OUT the establishment of Smith's true mens rea. Smith NEVER KNOWINGLY committed any crime, and never allowed to testify, which is a strict requirement of the law, so the conviction is impossibility. See the Procedural History.**

JURISDICTION

The only district that may consider a habeas corpus challenge pursuant to Section 2241 is the district in which the prisoner is confined at the time he files his Section 2241 petition. Rumsfeld V. Padilla, 542 U.S. 426, 442-43, 124 S. Ct. 2711, 159 L. Ed. 2d 513 (2014); Lee V. Wetzel, 244 F. 3d 370, 375 n.5 (5th Cir. 2001). Petitioner is confined in the Eastern District of Texas, in Beaumont, Texas. Thus, Beaumont Division has jurisdiction over the petition as well as the prisoner in this matter.

Daniel Smith, respectfully requests this Honorable Court to review his contention under the well established precedent of Haines V. Kerner 404 U.S. 519,520 (1972) wherein the court construes a pro se brief liberally. Windland V. Quarterman, 578 F. 3d 314 (5th Cir. 2009).

DISCUSSION

F.B.I. Agents are typically sociopaths. This is a profile that lends itself to corruption and the stresses and rigor, and quotas, of F.B.I. work. F.B.I. Agents lie, cheat, steal, and plant evidence. They are experts at taking any information they are provided and turning it into reasonable suspicion or probable cause. They are practiced at intimidation, (Smith saw firsthand March 15, 2012) and consider any gesture other than complete cooperation, a threat or challenge to their authority. Their job is 'supposed' to be 'to just investigate', (ask questions); However, F.B.I. Agent Lee McLoy's manipulations and planting of words in the co-conspirators **(See Procedural History) mouths**, and others, via threat, duress, and coercion, and the like, despite his (Lee McLoy's) testimony on the witness stand on Thurs. eve. June 23, 2016, when he vehemently denied the "set up" questions from Greg Surovic (prosecutor) to quash the intimidation factors, which Lee McLoy employed upon the co-conspirators and others. (See the sneaky behavior of Peter Strzok, Lisa Page, Jim Comey, Andrew McCabe, Rod Rosenstein, Hillary, to name a few).

The emotions of the jurors were aroused and effectively played upon by the 'professional' prosecutors to stir a belief that Daniel Smith was in control of D.T.S. Medical Supply Corp.**(SEE EXHIBIT 24; CRITICAL FACTS)** by displaying Smith's bank accounts, AND creating dialogue, for the record that Smith told employees to open accounts at Smith's bank, to concoct a distorted belief that Smith was hiding something, when the fact of the matter is Smith simply and absolutely told others to open an account at the same bank to simplify transfers of funds, (which Kate handled, See Procedural History) when others needed money. Smith NEVER committed any crime, or knowingly committed any crime. Emphasis Added.

Money was a subject for the prosecutors to play upon the emotions of the jurors, by attempting to concoct an accusation that Smith paid "Kick-backs" to someone. Smith NEVER paid such a thing or knew of anyone else providing such an idea. Smith did NOT NEED to do any such thing.

The government contends that Smith directed the Real Estate Agent, Juan Camacho, to destroy all paperwork at the time of the sale of the building, owned by Smith, (See Procedural History) which **IS SO FALSE, BECAUSE THE GOVERNMENT KNEW IF Smith was trying to conceal paperwork**

and apparent remittance of payments (pay schedules)from Medicare or Medicaid, which Smith never read or looked at, were items of NO bearing or corroberation to Smith's committal or even an intent to commit any crime, whatsoever, as Smith NEVER knew of 'false billing, different billing, alternate billing, and the like.'

Kate knew down to the minute, in August of 2010 when Smith sold the building, (because Smith told Kate whenever Smith sold the building, he would gladly give her half of the profits) but that was also by selling the business, because upon 'closing' at the Title Company, as soon as Smith put the key in the ignition of his car upon exiting the Title Company, Kate called Smith and said, "where's my money?" Smith did not give her any money because there was no money 'out of the deal' to give. She **WAS VERY DISGRUNTLED.** Emphasis Added. Kate called Smith again one month later, pressing for money. Point being, Smith was known as "deep pockets, or the money man and others were not receiving dinero, frustration was prevalent. See John 2:13-25, key verse 17. Also 1 Timothy 6:9-11.

The government contends 3.5 Million Dollars of fraud occurred, which is DISCREDITED. For example, Smith DISTINCTLY REMEMBERS Norma Perez asking for assistance with Physicians to prescribe powered wheelchairs to patients that Norma derived via networking with nurses, home health personnel, etc., and she had Smith call Physicians to ask for their approval for equipment, which was often successful because Norma told Smith in gratitude. Smith DISTINCTLY REMEMBERS Jorge Garcia (George) providing AT LEAST 200 POWERED WHEELCHAIRS to patients in San Antonio, Austin, Tilden, Laredo, etc... George had a 'base' for patients in and throughout West Texas and New Mexico. Smith went with George on several trips to deliver the equipment to the patients. While on the trips, George asked for assistance with certain Physicians for their prescriptions for patients who needed George's help for their mobility needs. Smith made calls to those physicians, (successfully) and physically visited with many of those physicians while on delivery trips with George. The strabismic attacks by the government hold NO leverage whatsoever.

Daniel Smith, respectfully requests this Honorable Court to review his contention under the well established precedent of Haines V. Kerner 404 U.S. 519,520 (1972) wherein the court construes a pro se brief liberally. Windland V. Quarterman, 578 F. 3d 314 (5th Cir. 2009).