

20-7728

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March 27, 2021

**Mr Michael Duggan**

**FA: Scott S. Harris, Clerk**

Supreme Court of the United States  
Washington, DC 20543-0001  
USA.

ORIGINAL

Dear Mr Duggan,

Re: Keith Smeaton V United States of America Case No. WWS-83-CR-0213 Certiorari Appeal of Sec 2255 Habeas Corpus No. 1551 from 9<sup>th</sup> Circuit Court of Appeal order from January 15, 2021 denial of En Bance Reconsideration of April 9th Circuit 1Court of Appeal order dated 7, 2020 denial of appeal from San Francisco District Court order dated October 26<sup>th</sup>, 2018.

Thank you for your letter of February 24, 2021 enclosed herewith.

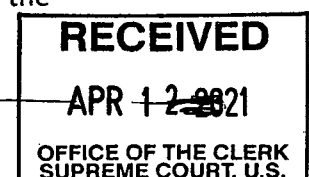
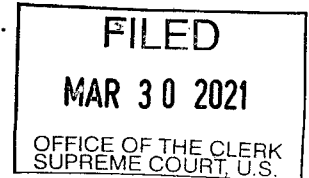
Please find attached my subject Pro Se Certiorari Appeal for the Supreme Court's consideration with my application to proceeded in forma pauperis supported by the UK's Government's DWP letter proving I am impecunious. Attached to the Court's required financial form.

Please note, various firms of Attorney's refuse to assist me because of my dyslexia problems of which you are aware. I, previously informed the court that dyslexia make it virtually impossible to comply with the court written rules because I do not understand them. I have done my best to comply with said rules. Therefore, I ask to court to implement the adequate adjustments for said hidden mental disability. I apologise for the possible repetitiveness of my Statement of Case. However, I have made it as succinct as I can.

I had previously filed exhibits Sec 2255 and proceeding transcripts and medical diagnosis supporting debilitating effects of dyslexia. However, I have attached them again in case the previously files exhibits have been deleted.

Because of my impecunious state I am unable to pay for the many copies as required.

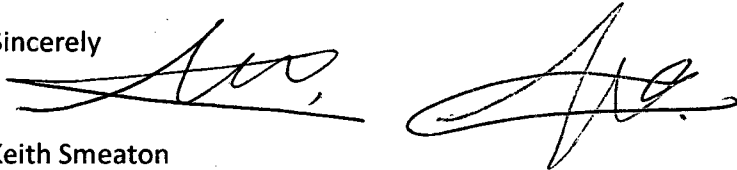
I understand that the court has the discretion to grant Certiorari if it finds the Government's or Judiciary's action are an insult to the U.S Constitution regardless of the correctness of said petition and will grant extension of time to correct said Petition. IN that regard, because this matter includes "Civil Rights" issues as discussed in my Statement of case the



Case of "Murphy" facilitates appointment of council to facilitate my filing correctly properly formulates said petition? If the Court refuses my Petition for being incorrectly formulated or out of time it arguably contravenes the ADA Act 1990 and denies me access to the court through said disability.

I look forward to your reply.

Sincerely

Two handwritten signatures in black ink. The first signature is on the left, and the second is on the right. Both appear to be stylized versions of the name 'Keith Smeaton'.

Keith Smeaton  
Appellant Defendnat.

PS: CONGRESS AND SUPREME COURT HAS STATED  
NO MAN IS ABOVE THE LAW WHAT EVER  
THEIR RANK.

### Questions Presented:

- 1 - Would a reasonable Jurist find the Appellant Constitutional Rights under e.g. The 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>s and 14<sup>th</sup> Amendments had been denied?
- 2 - Was the Appellant denied due process of law?
- 3 - Did the judiciary and the Assistant Prosecutor, Postal Inspector and Probation Officers contravene Appellant's rights under the ADA Act 1990 by failing to apply the required adequate adjustments for hidden Learning Dyslexia disability during the 1983 proceedings to date save for HHJ Peter L. Shaw, 9<sup>th</sup> Circuit Appeals Commissioner?
- 4 - Did the 1985 DJ err when failing to comply with the rule 11 of Federal criminal procedure when allowing and accepting the Assistant prosecutor to describe the crime of mail fraud which supposedly appellant had committed?
- 5 - Did the FPD's failure to object to the 1985 DJ err allowing Prosecutor's to describe said crime and when DJ accepted it?
- 6 - Were all three FPDs in error when refusing to investigate the:
  - (i) the elements of Appellant's defences as argued in Sec 2255 e.g. The fraud charges was merit-less on grounds the U.S Prosecutor and Postal Inspector concealed the defence evidence of Appellant's (a) hand writing samples negating charge of false statement to banks and (b) the appellant's clients relied upon the B of A bank 's representation to Appellant's that the trust account existed for clients money and;
  - (ii) There was no internet or scheme to commit fraud on grounds it was a misunderstanding caused by the debilitating effects of Appellant's undiagnosed learning disability Dyslexia causing Appellant to subconsciously avoid written matter e.g. contract and rely upon verbal agreements with the B of A and;
  - (iii) That appellant was in no mental state to enter a guilty plea on grounds he was at the time under doctor's orders psychotherapy at the Mount Diablo

Rehabilitation Centre which the of which was before DJ shortly after the plea proceeding filed in the subsequent bail jumping and;

- (iv) Learning of this FPD failed to apply to set aside plea conviction in a timely manner and;
- (v) Was FPD negligent when not applying to set-aside pleas conviction when in receipt of new post-conviction official medical evidence concerning appellant's debilitating HIDDEN effects of his at time of plea undiagnosed learning disability Dyslexia which removed the required element of intent to commit fraud confirming misunderstanding and;
- (vi) When they failed to apply to set aside the fraud conviction before the bail jumping charge was handed down and;
- (vii) When they failed to object to the Prosecutor's demand for plea proceeding before a pre-trial evidence hearing had occurred to determine if there was evidence supporting a trial or plea and;
- (viii) When failing to establish the defense of "Promissory" estoppel" on grounds of Appellant and his clients reliance upon the B of A's independent representation to said clients that the trust account existed on grounds Justice Blacks law dictionary states "Promissory Estoppel at its widest is a misrepresentation sans criminal intent" and;
- (ix) When not objecting to the DJ's over emotional demeanor rendering him irrational at sentenced and;
- (x) When 1985 FPD did not object to DJ required probation Officer to testify at sentencing without notice to the defense who then was untruthful under oath when stating Appellant had not supplied his financial situation when he had at prior arraignment and;
- (xi) Therefore did FPD err when not objecting to (i) DJ requiring Probation Officers testimony without notice and (ii) false and untruthful PSI report which, (iii) the Government concealed until the last minuet denying Appellant to object to its untruthful content and;
- (xii) When FPDs erred when failing to object to the Prosecutor's false and untrue argument in court that Appellant had cheated every person he had come in contacted with since he had in arrived in the U.S.A .

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- (xiii) FPD refused to investigate or consider the Civil Judgement appellant had secured against R/L Abbott, business partner, proving his embezzlement from appellant personally by stealing appellant's ID and stealing money from appellant's credit in appellant's name leaving debt with appellant with the intent taking over appellant's company RJS Packaging Corp, financed by the UK family Company of same name now ruined and (ii) relator Mr Mayer's breach of verbal contract to refinance appellants second business WIMG Corp upon Appellant purchasing his house. This resulted in appellant unable to pay mortgage and his repossessing said house evicting appellant's wife and infant daughters on to the street while appellant was in jail facilitating Mayer's collecting the mortgage money and the house and;
- (xiv) When the FPD failed to object to the Prosecutor's selective and malicious prosecution of appellant when should have known or knew evidence proved him innocent and that Abbott had misled the Government as to true fact e.g. Abbott informing Government appellant has stolen from him which is contrary to the civil judgment against Mr Abbott which FPD knew the Government was aware but suppressed and concealed it from the grand jury and the Federal court.

7 - Did the 1985 DJ err for allowing the plea proceeding to occur before said evidence hearing to determine if there was evidence to support a trial or plea proceeding?

Did the 1985 DJ err and demonstrate bias against appellant when angrily dismissing and emotionally dismiss appellant's dyslexia disability

8 - Was HHJ Peter L. Shaw?, Appeal Commissioner in 2017 right to transfer the Sec 2255 to the DJ for hearing?

9 - Is there a conflict of law between HHJ Peter L. Shaw's 2017 opinion that Sec 2255 No. 1551 should be listed in the lower District Court for hearing on grounds it has Constitutional merit and Constitutional Due process was previously denied in 1985 as opposed to HHJ's Owen and Bennett, Circuit Judges 2020 opinion that there was no Constitutional merit and therefore it

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should not be listed on grounds DJ had no jurisdiction to hear Sec 2255 based their application of Slack V McDaniel?

10 - Was appellant's rights under both the U.S. Constitution and The he 1948 Universal Declaration of Human Rights baring torture through false imprisonment obstructed and abused when:

- (i) the 1985 DJ dismissed Sec 2255 by his personal letter which was not an appealable court order
- (ii) (ii) when the 1985 DJ overruled Congress's Statute Title 28 USC Sec 2255 when not acting upon Sec 2255 within the required 28 days of DJ's receipt of it and
- (iii) (iii) said DJ waited for almost 90 days to act upon it?
- (iv) 9<sup>th</sup> Circuit Judge HHJ Choy correct to delay acting upon Sec 2255 appeal until Appellant was released from prison and
- (v) Did this these acts of the 1985 DJ and 9<sup>th</sup> Circuit judges deny appellant's constitutional rights and deny him due process?

11 - Were the Appellant's Constitutional rights contravened when the 1985 DJ dismissed Sec 2255 without a judicially render opinion as to why inhibited Appeal court function?

12 - Did the 2018 Assistant prosecutor err when opposing Sec 2255 by arguing DJ Illison did not have jurisdiction to hear Sec 2255 on grounds Slack V McDaniel was misapplied?

13 - Did DJ Illison in 2018 err when (i) choosing to ignore and not judicially consider the legal merits of all the above issues raised in Sec 2255 which HHJ Peter L. Shaw had noted as having Constitutional merit and (ii) dismissing Sec 2255 without Oral Argument on the grounds HHJ Peter Shaw had obviously found constitutional merit in Sec 2255 other wise he would not have wasted public money and court time in order DJ hearing?

14 - Was HHJ Owen and Bennet, 9<sup>th</sup> Circuit, in error when allowing the lower DJ Illson to not judicially consider all the above issues raised in Sec 2255 and to dismiss Sec 2255 without oral argument?

15 - Was HJJ Thomas and Bress in 2021 error when (i) refusing to reconsider the prier order



2020 of HHJ Owen and Bennett application of Slack and (ii) only dismiss Reconsideration on grounds Appellant had not met 9<sup>th</sup> Circuit rules because time constraints and (iii) said Judges failed to consider that they wrongly invoked said rules because the 9<sup>th</sup> Circuit Clerk sent the 2020 order to the wrong address in the UK and (iii) they refused to consider all of the above constitutional issues raised in Sec 2255?

16 – Did all the named judges from 1985 to date, save for HHJ Peter L Shaw, wrongly overrule both the U.S Constitutional Human Rights intent of Sec 2255 Habeas Corpus as mandated by Congress and Accepted internationally contravening the intent of the Declaration of Independence and the U.S Bill of Right which arguably have resulted in contravention of freedom and justice for all and life liberty and happens arguably achieved by correcting the injustice that has occurred to appellant and his destroyed international family?

**17 – Did The 1983 Assistant US Attorney Eb Lickle and Postal Inspector David West burg Obstruct and Pervert Justice when concealing defence evidence from the grand jury and the Federal Court?**

18- Did all lower Judges error when refusing the address the prosecutorial misconduct obstruction of justice which all lower Judges save for HHJ Peter L. Shaw, error when avoid the issues raised in Appellant's Sec 2255 No. 1551?

19 – Does this case include Civil Rights regarding false imprisonment? When 1985 DJ used his unappealable personal later to deny Sec 2255 Habeas Corpus? Leaving appellant in prison.

20 – Did the 1985 9<sup>th</sup> Circuit HHJ Choy and two others contravene Appellant's Civil Rights when refusing to consider appeal of Sec 2255 until appellant was released form prison leaving him in prison?

21 – Have the acts of the lower Judiciary save for HHJ Peter L. Shaw killed he U.S Constitution and does Freedom and Justice For life liberty and happiness still exist?

22- Should Prosicutor Eb LUCKLE AND DAVID WESTBURGE POSTLE INSPECTOR HAVE BEEN ARRESTED AND CHARGED WITH OBSTRUCTION OF JUSTICE TRIED AND IMPRISONED?

(12) (12)

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Note, The 9<sup>th</sup> Circuit Court of Appeal JHH Judge Choy denying Bail jumping is currently filed with Keith Smeaton V Alan Nelson et, al USCA9 No. 20-15364 which is not included in this subject appeal. HHJ Choy presiding over subject 1985/6 appeal of DJ's 1985 denial of Sec 2255 No. 1551 who refused to consider it until I was released from Prison in to USINS jurisdiction deportation proceedings. The Sec 2255 Argument and post-conviction evidence also supported HHJ Choy's denial of direct of Bail Jumping case WWS-83-CR-0693 is in error. The result of this is that the 9<sup>th</sup> Circuit or some other faction removed the entire court records of 0693.

**STATUTE AND RULES:**

The U.S Constitution's 1st, 5<sup>th</sup>, 6<sup>th</sup>s and 14<sup>th</sup> Amendments.

**U.S Constitution 1st, 5<sup>th</sup> 6<sup>th</sup>s and 14<sup>th</sup> Amendments,**

**The U.S Bill of Rights**

**Article 39/40 of Magna Carta Constitutionally guaranteeing a fare trail.**

The ADA At 1990

Void ab Initio

Nunc Pro Tunc

The U.S Civil Rights Act 1965 / 1866

The Habeas Corpus Act 1679

Title 28 USC Sec 2255 and i453 inclusive.

Title 18 USC Sec 1510 and 1Sec 503

**CONSTITUTIONAL AND STAUTUATORY PROVISIONS INVOLVED:**

Abuse of power and authority and malfeasance in office

Fales Imprisonment

Denial of Common Law Rights

Conspiracy to selectively and maliciously prosecute Appellant

Prosecutorial abuse Assistant US Prosecutor's and Postal Inspectors Negligence

FPDs infective assistance of Council - professional negligence

Judicial Abuse

Judicial abuse overriding Congress's statutes.

Contravention of the 1948 Universal Declaration of Human Rights Baring Torture through false imprisonment.

Abuse of Due process failing to protect citizens

Denial of access to the Federal Courts.

Court officer's Obstruction and perversion of Justice.

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**TABLE OF AUTHORTITES CITED Cases:**

**Washington V, Strickland 466 U.S. 668 (1984)**

*Black's Law dictionary, promissory estoppel*

**United States V. Frankhauser, 80 F.3d 641, 653 (ist Cir 1996)**

**United States V.Mullins, 22 F.3d 1365 (6ths Cir. 1994)**

**United States V. Jones, 663 F.2d 567, 569 (5<sup>th</sup> Cir.1981)**

**7the omnibus clause of 18 U.S.C Sec 1505.**

**United States V. Capsopia 260 F.2d 566 (2<sup>nd</sup> Cir. 1958).**

Title 28 USC Sec 2255

**Stephenson V. Herrera 464 F.3d, 897 (9<sup>th</sup> Cir. 2006)**

**Slack v McDaniel 529 U.S. 473 2000**

**Johnson v The United States 576 U.S. 591 (2015)**

**Max Plank Institute for Comparative Public Law and International Law under the direction of professor Anne Peters (2021-) and Professor Rudiger Wolfrum (2004-2020)**

**Murphy V. Smith, 138 S.CT 784 (2018) & The litigation Reform Act 42 USC Sec 1201**

**Habeus Corpus Sec. 2255 no. 1551 in the criminal case of WWS-83-CR-0213,**

**United States v. Dinome, 954 F.2d 616, 626 (5h Cir. 1996)**

**People ex rel. Union Bag & Paper Corp. v. Ex Rel. Union Bag & Papper Corp V. Gilbert 442, 444/ SUP CT 10032**

**Obergefell V. Hodges 2<sup>nd</sup> Cir. 2015**

**Gideon V. Wainright, 372 US 335 (1965)**

**U.S V Hikson 585 F.3d 1247 (9<sup>th</sup> Circuit)**

**Anderson V City of Bessemer, NC 470 US 564, 577**

**Commonwealth V. White 910 A.2d 626 (PA. 2006**

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Statement of Case

3:83-cr-00213-S1 Document 102 Sec 2255 No. 1551 Certiorari Appeal from 9th Circuit.

1. The appellant, Keith Smeaton, who until this matter has no criminal record, respectfully moves that the court grant an order to remove any mention of his criminal record from the internet and repeal the charge of wire fraud and bail jumping on grounds the District Court Judges Illison in 2018 and 9<sup>th</sup> Circuit Court Judges in January 2020 and 2021 erred denying appellant's Petition For Habeas Corpus Sec 2255 No. 1551 denying his Constitutional rights and due process.

2. The appellant in 1983 was induced / coerced to wrongly plead guilty to one count of wire fraud when not in sound state of mind. Subsequent expert testimony evidence by Doctor Sikorski, adduced during bail jumping trial case WWS-83-cr-0693, confirmand appellant was experiencing Adjustment Reaction (the legal definition is unable to do anything simple open to the suggestion) to plead guilty as the transcripts prove. This is based upon the new post-conviction medical evidence proving appellant specific details of his HIDDEN learning disability Dyslexia with which he voluntarily returned to the Court's jurisdiction with intent of setting aside the wire fraud conviction. The grounds are undiagnosed dyslexia eliminated element of intent resulting in misunderstanding not fraud which the 1983 DJ and Government accepted during bail jumping case 0693. The Adjustment Reaction result from the debilitating psychological side effect of Appellant's HIDDEN learning disability Dyslexia defined as "One who cannot understand the MEANING of that which written". The further effect results in appellant subconsciously avoids written matter relying upon verbal agreements. Ref Medical Diagnosis by Doc Beverly Hornsby, UK, Mr Guy Grey Educational Consultant and Member of the Royal Academy's working

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team on dyslexia and the 2018/ 19 letters from Hackney NHS Psychological department confirming the said effects are current.

3. The U.S Prosecutor not educated in learning disability mis-understood appellant's actions as criminal when the Sec 2255 proves otherwise. Therefore, through ineffective assistance of FPDs failure to investigate said effects in detail and the 1985 DJ judicial errors, said prosecutor and postal inspector were able to manufacture prosecutorial evidence and concealed defense evidence to selectively and maliciously prosecute appellant and manipulated the Court process to secure false conviction via guilty plea and pervert their investigation. In support prosecutor concealed the evidence of Mr R.L. Abbott, ex appellant's business partner and professional conman, who obstructed justice when lying to the Government's investigating officers on grounds said investigating officers concealed the Civil judgment against Mr Abbott redressing Abbott's theft of appellant's ID stealing vast amounts of credit leaving him with debt. The Government built their case against appellant based (i) appellant stole from Abbott Abbott's and (ii) Appellant made false statements to banks when Government possessed appellant's handwriting samples proving he did not which the Government concealed from grand jury which FPD failed to investigate or expose and who forced appellant to plead guilty refusing to investigate this prosecutorial misconduct and that appellant was under psychotherapy at the time suffering from an Adjustment reaction rendering him unable to do anything simple and open to suggestion to plead guilty by coercion and intimidation ignoring the evidence proving appellant's innocence he did not make false presentations to his clients that a trust account existed for clients money because the evidence confirms it was the B of A who did independently of appellant. DJ failed to comply with rules governing guilty pleas as argued hereafter..

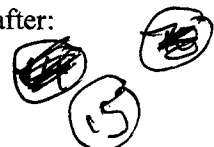
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4. Subsequently, after dyslexia therapy with prison Speech therapist facilitating appellant's understanding / access to the prison law books he, with other inmate assistance filed his pro se Sec 2255 No. 1551 Habeus Corpus which arguably invokes Civil Rights claims of false imprisonment. **See: Murphy V Smith** requiring pro se litigants be appointed council. **Ref Sec 2255 No. 1551 exhibited herewith.**

Appellant, upon release from prison was excluded to UK but found he was not released from Federal Conviction controls because he has been continually bared from:

- a - entering the USA;
- b - Boarding a plane which passes through U.S Air Space which;
- c - Requires him to change plans at an airport located on U.S soil and;
- d - Has no control of convictions being used against him in the UK and;
- e - Suffer continued social embarrassment and prejudice and discrimination and ;
- f - His character is questioned when arriving at other nations ports of entry.

5. The Appellant's argues that contrary to the 2018 DJ' denying Certificate of Appealability and Government's opposing opinion does not challenge appellant's Sec 2255 grounds but only challenges the DJ's jurisdiction to hear the Sec 2255 2028 and the 9<sup>th</sup> Circuit's failing to review the lower decisions but introduced erroneous other reasons that Appellant has not shown denial of constitutional rights which is not true, the Sec 2255 must be granted for good cause shown because appellant's has demonstrated in this narrative that the lower DJ (i) "DOES have jurisdiction " and (ii) should have issued certificate of appealability and the 9th Circuit should have (iii) either retuned Sec 2244 to DJ or (iv) set-aside lower DJ's irrational judicial reasoning denial order granting it and fraud and bail jumping convictions against appellant be set-aide and all records and publication including the internet be removed on grounds a reasonable jurist will clearly find appellant has been denied Constitutional Rights as further argued hereafter:

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1. On September 14<sup>th</sup>, 2017, HHJ Peter I. Shaw, 9<sup>th</sup> Circuit, Appellate Commissioner 9<sup>th</sup> Circuit Court of Appeal, correctly ordered (No. 17-71850) appellant's Sec 2255 No. 1551 Petition for Habeas Corpus transferred to District Court for listing hearing pursuant to **Stephens v. Herrera** 464 F.3d 895, 897 (9<sup>th</sup> Cir.2006). HHDJ Illison ordered Government to reply which they did within time. (This is significant as prior 1985 DJ refused to do same and only acted upon Sec 2255 almost 90 days after receipt of it overriding Title 28 USC Sec 2255 rule which said judge had no jurisdiction denying Sec 2255 as "Meritless" denying appellant's Constitutional Rights on grounds judges personal letter blocked appellant's appeal )

6. On September 29, 2018 HHJ DJ Ilison erred when denying appellant's certificate of Appealability dismissing Sec 2255 on grounds of **U.S V. Kramer** 195 F.3d 1129, 1139 (9<sup>th</sup> Cir. 1999) and **U.S V. Reves** , 774 F.3d 562,564-65 (9<sup>th</sup> Cir. 2014) on grounds Sec 2255 only applies to incarcerated Prisoners and appellant had been released many years ago in 1986/7.

7. DJ wrongly accepted the Government's only single objection arguing that therefore DJ had no jurisdiction to hear said Sec 2255. Note, the DJ avoided the evidence that the Government did not oppose any of the grounds raised in Sec 2255's arguments supported by the new post-conviction medical evidence and its supporting law which a reasonable jurist would agree has Constitutional grounds to release appellant from prison and vacation of fraud conviction for good cause shown.

8. On April 2020 HHJs Owen and Bennett's Order No. 20-15364 D.C. 3:17-cv-06828-SI erred when they denied appeal from DJ Illison on grounds of **Slack V McDaniel** 529 U.S. 473, 484 (2000) and **Gonzalez. Thaler**. 565. U.S 134, 140-41 (2012) on grounds "The request for certificate of appealability is denied because appellant has not shown that "jurists of reason" would find it debatable whether the (Sec 2255 motion) states a valid claim of

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denial a constitutional right and that jurists of reason would find it debatable whether the DJ was correct in its procedural ruling". **Appellant objects to this finding as unreasonable and unfair and a denial of Constitution rights.**

9. On January 15, 2021 chief Judge HHJs Thomas and Circuit Judge Bress erred when dismissing motion for reconsideration en-banc on behalf of the court See: 9<sup>th</sup> Cir. R.27-10; 9<sup>th</sup> Cir. Ord 6.111. No further filings will be entertained in this closed case. Appellant objects to this finding as unfair and unreasonable on grounds appellant did not receive the prior 2020 9<sup>th</sup> Circuit order until January 2021 because the Clerk sent it to the wrong UK address.

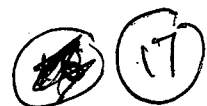
**10. Appellant also challenges the prior above opinions on grounds:**

(i) The DJ and all of the appeal judges failed to consider the factual arguments and supporting evidence and law - statute and common - raised in Sec 255 which are indisputable and therefore a reasonable jurist will find merit and therefore judge's orders denying Sec 2255 are in error and are denial of constitutional rights. **Re: Sec 2255 No. 1551** exhibited herewith.

(ii) Because The Government's had no evidence or grounds to oppose the issues, evidence and law raised in the Sec 2255 they therefore concurred with said Sec 2255 and appellant said arguments and his innocents and the fraud indictment should never have been brought and in support:

(iii) The case of **Johnson v The U.S 576 U.S. 591** overcomes the lower courts reliance on Kramer, Reves and Slack on grounds of Johnson finding: *".....The rule in Johnson also concerns the legality of a term of years sentence, and some prisoners have already served much of—if not more than—their lawful terms of imprisonment, which now cannot exceed ten years. A remedy for a Johnson claim must be made available now to ensure that prisoners do not serve more than their lawful terms of imprisonment..."* **UNDER JOHNSON 1651 claims a chance at liberty—liberty to which they are equitably and legally entitled.**

(iv) In support, lower judges erred on grounds they failed to consider:





- 132 (a) the Rules governing Sec 2255 which clearly state: "*(2) a person in custody*  
133 *under a state-court or 2 federal-court judgment who seeks a determination*  
134 *that future ... custody under a state-court judgment would violate the....*  
135 *Constitution laws or treaties of the United States* e.g. The Universal  
136 declaration of Human Right baring torture through false imprisonment  
137 to which the U.S is a signatory.  
138 (b) Therefore, failure to comply with both the intent of said Sec 2255 rules and  
139 pursuant to Title 28 USC Sec 2255 is a denial of Constitutional Rights which  
140 said judges refused to consider;  
141 (c) Failed to comply with rule 11 F.R.Cr.P governing guilty pleas when wrongly  
142 allowing the 1983 Prosecutor to describe the crime charged which evidence  
143 proves was untrue specifically;  
144 (d) appellant schemed to defraud his clients by misrepresenting there was a trust  
145 account for client's money which he knew at the time to be untrue because  
146 he possessed evidence proving it was the B of A and Lloyds banks who  
147 represented the trust account existed to appellant's clients independently of  
148 appellant which saved the bank from liability.  
149 (e) Concealed appellant's willingly provided hand writing samples from Grand  
150 jury proving appellant did not make false statements to bank and did not  
151 commit mortgage fraud and;  
152 (f) misdirected the subsequent Bail Jumping jury all of which is a denial of  
153 Constitutional Right of Due process.

154 11. The lower DJ's and 9<sup>TH</sup> Circuit Judges erred when failing to review the ineffectiveness of  
155 FPD counsel when not investigating or filing a defense concerning:

156 (a) the above facts and;

157 (b) the true intent of appellant voluntary return with new post-conviction official medical  
158 evidence to set-aside the fraud conviction before the grand jury handed down the bail jumping  
159 indictment and;

(18) (18)

(c) for not demanding appellant's right to appear before the Grand Jury which the Government wrongly caused which is a denial of Constitutional due process.

(d) for not objecting to the Government demand to cancel the due process pre-trial evidentiary hearing to establish evidence to supporting trial or guilty plea. This suggests Prosecutor was scheming to avoid examination of his and the postal Inspector's obstruction of justice argued above.

(e) Not objecting to 1985 DJ NOT acting upon Sec 2255 within 28/30 days of receipt and;

(g) not objecting to 1985 DJ's Judge denial of Sec 2255 by his unappealable personal letters dated April 11, 1985. Appellant's Petition for writ of Mandamus to 9<sup>th</sup> Circuit, under the all writs act, obtained the official 1985 DJ's court order simply stating sec 2255 "is meritless" with no judicially found opinion as to why which kept the appeal court in the dark in-habiting its function. Appellant appealed.

(h) Not objecting to 1985/6 9<sup>th</sup> Circuit HHJ Choy refusing to act upon said appeal until the appellant was released from prison months later. This act facilitated the 9<sup>th</sup> Circuit's to negate its legal obligation to the consider Sec 2255 issues in a timely manner, contravening Constitutional intent of Sec 2255 of timely relief which is a denial of Constitutional right arguably subjecting appellant to false imprisonment which is why appellant filed his;

(i) FPD knew said Sec 2255 was filled on February 12, 1985 to correct injustice for good cause shown but refused to assist.

(j) FPD stated Appellant was technically guilty, what does that mean?

(k) TFPD negligent not objecting to DJ error denying appellants' constitutional right to a fair hearing when failing to consider appellant's argument raised in his Sec 2255 that (l) FPD was ineffective e.g. when failing to file defense to fraud based upon promissory

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estoppel and appellant's innocents which the government did not and has not challenge to date. Therefore the lower judges further erred when ignoring Sec 2255 promissory estoppel argument that there was a verbal agreement between him and the banks resulting in promissory estoppel and appellant's innocents. As appellant argues in his sec 2255: According to Black's Law dictionary, promissory estoppel is the legal enforcement of a promise made by words or conduct to the promisee without the consideration of the detriment it may cause e.g: Shop keep agrees to hold an item for a customer at an agreed price and then sell the item to another customer at a higher price. While the first customer is away to obtain the money and return to pay shop keeper and collect item. The shop keeper's actions were not an intentional scheme to defraud the first customer. IN this case at bar the prosecutor and postal inspector not educated in the application of civil promissory estoppel law and not understanding debilitating effects of undiagnosed dyslexia manufactured the evidence to falsely create the impression of appellant's intentional scheme to defraud his clients this clients. To make this scheme stick, the Prosecutor and Postal had to also create the illusion that appellant has a history of criminality which is why the coached witnesses as to my supposed criminality, which is untrue as evidence supports e.g obtained character references from friends for the purpose of obtaining immigration statutes when my intent was for sentencing mitigation. The FPD further negligent because he was aware I was concurrently applying for green card residency and FPD instructed me to also give references to Probation officer. The FPD refused to inform the Court of this to my detriment. The Prosecutor who was aware of my immigration application also refused to inform the Court of it. The prosecutor, via probation office, misled sentencing DJ Appellant had intentionally lied to said friends and associates with the intent to support his scheme to prove I was career criminal misleading the court to impose maximum sentence consecutive bail jumping sentence which the Judge did in very irrational angry and over emotional state.

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212 12. Therefore, because of the above reasons a reasonable jurist would find appellant had  
213 demonstrated denial of Constitutional right and due process. All prior courts to date save  
214 HHJ Peter L. Shaw have wrongly denied appellant's Sec 2255. Hence prosecutor's  
215 intentional obstruction to mislead the Grand Jury DJs and Appeal judges concealing  
216 defense evidence on grounds he set himself au as judge and jury believing appellant was  
217 in fact a criminal who must go to prison and he must achieve this by manipulation of the  
218 court process. To date said judiciary have protected him and Postal Inspector save HHJ  
219 Peter L. Shaw. FPDs to date have refused to present for forging to the court and in 2018  
220 The Government in response to Sec 2255 refused to avoid the forging stated prosecutorial  
221 abuse facts.

222 (13) Because Appellant had no intent to defraud on grounds the appellant acted upon the  
223 bank's representation that the trust account existed prior to and after the surprising  
224 bankruptcy of BB&B Corp who verbally agreed to take over Appellant's WIMG Corp  
225 who agreed to deliver clients jewelry but did not do so, his actions give rise to promissory  
226 estoppel which negates the required element of intent.

227 (14) FPD infectiveness when he failed to object to 1983 prosecutors false statement I open court  
228 that appellant had cheated all he had been in contact since arriving in the USA which Prosecutor  
229 knew at the time was untrue which arguably invokes Assistant Prosecutor's' and Postal  
230 Inspectors contravention of Title 18 USC Sec 1510 / 1503 The grounds are Prosecutor and Postal  
231 Inspector again concealed the civil Judgement appellant obtained in the Walnut Creek County  
232 Court against R L Abbott, business partner, who stole appellant's ID and stole money from  
233 appellant's credit leaving him with the debt and also stole money from appellant's family  
234 business RJS packaging Corp killing appellant's family member and another's hart attack causing  
235 homelessness and sever financial and psychological damage internationally which occurred in  
236 1978. The prosecutor and Postal Inspector also concealed the evidence that one Mr Mayer

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237 Relator's scheme to use appellants dyslexia disability to obtain money form a mortgage bank  
238 when he -Mr Mayor, , unknown to appellant, misstated applicant's income on mortgage  
239 application which appellant signed blank due to dyslexia. This resulted in Mayor also retaining  
240 the property and the mortgage money again causing appellants infant families homelessness  
241 while appellant was wrongly in jail. The prosecutor and postal inspector used said mortgage  
242 application against appellant illegally knowing the hand writing was not that of appellant.  
243 Therefore he indictment is the result of the prosecutor's and Postal joint fruit of the poison tree  
244 the root of which is when the concealed defense evidence form the Grand Jury and which the  
245 2018 Assistant prosecutor did not oppose in his reply to Sec 2255. Therefore how can HHDJ  
246 Illison and 9th Circuit deny appellants Sec 2255 for not showing denial of Constitution rights  
247 when the U.S Supreme Court ruled in **Jonson V United States the U.S** : The U.S Constitution  
248 Guarantees due proses? ***For a person to be convicted of obstructing justice, that***  
249 ***person must not only have the specific intent to obstruct the proceeding, but***  
250 ***that person must know (1) that a proceeding was actually pending at the time;***  
251 ***and (2) there must be a connection between the endeavour to obstruct justice***  
252 ***and the proceeding, and the .***

253  
254 15. Therefore, **Strickland V Washington** is applicable here because they did not do what  
255 they should have done and for the forgoing reasons of ineffective assistance issues .

256 16. In 2018 DJ Illision and 2021 and 2021 9<sup>th</sup> Circuit erred when ignoring FPD's  
257 negligence for their not. Doing what they should have done as appellant argues in his Sec  
258 2255 which said the HHDJ Illision refused to consider but government did not oppose  
259 and 9<sup>th</sup> Circuit also refused to consider when knowing the 2020 and 2021 judgments were  
260 a denial of Constitutional right and international HUAN Rights.



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17. Subsequently, in 2015/16, when appellant's Adjustment Reaction had dissipated he was able to file his unchanged original Sec 2255 with 2017 9<sup>th</sup> Circuit in attempt to set aside convictions and stop the international publications of conviction via the internet. Which 1985 W W. Schwarzer DJ and HHJ Choy, 9th Circuit, illegally Blocked from is Constitutionally required due process through the court system by DJ denying Sec 2255 with his knowingly unappealable personal letter which is not a court order and the 9<sup>th</sup> Circuit refused to consider its appeal until appellant was released from prison negating its constitutional intent. All attorneys to date refuse to assist appellant.

**18. The judges rulings clearly erroneous:**

(i) being **ABUSE OF DISCRETION, DE NOVO** The requirement that findings be clearly erroneous to be set aside is a standard of review used especially by an appellate court when reviewing a trial judge's (as opposed to a jury's) findings of fact for error.

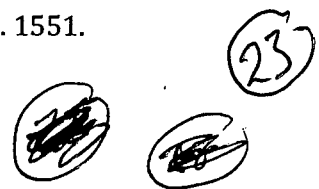
(ii) **Judges abuse of discretion**

***An error of judgment by a trial court in making a ruling that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the law applicable in the case. United States v. Hinkson, 585 F.3d 1247 (9th Cir. 2009) (en banc) – to clarify what the standard means. The court adopted a two-part test. See id. at 1261-63. The first step "is to determine de novo whether the trial court identified the correct legal rule to apply." Id. at 1262. The second step is "to determine whether the trial court's application of the correct legal standard was (1) 'illogical,' (2) 'implausible,' or (3) without 'support in inferences that may be drawn from the facts on the record.'***

19. The subject record is the Sec 2255 , its exhibits, arguments and the transcripts of the Plea proceeding filed with the appeal court which DJ Ilison and 9<sup>th</sup> Circuit judges refused to consider and which the Government accepted and therefore agreed with when not opposing them when only challenging DJ's jurisdiction to hear Sec 2255 No. 1551.

**20. Conclusion:**

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292 Certiorari should be granted **Cheek v. United States**, 498 U.S. 192 (1991), was a United  
293 States Supreme Court case in which the Court reversed the conviction on grounds  
294 negation of witfulness.

295 21 .Contrary to Government's false assertion Appellant's did not return to the court's  
296 jurisdiction under a false man. The printer mistook appellant's bad hand writing namely  
297 the letter "m" in Smeaton as "W" . The one leter error cannot be assumed as traveling  
298 under a false name. Ref Sec 2255 No. 1551. The Government congealed<sup>5</sup> appellants'  
299 passport Cleary in the name of SMEATON. Again Government erred when misleading  
300 the Courts when wrongly stating appellants Sec 2255 is a second "successive "habeas  
301 corpus when they knew it was the original 1985 Sec 2255 which HHJ Peter L. Shaw in  
302 2017 realized it had been denied due process of law previously / suppressed in  
303 contravention of Constitutional rights. Which Government does not deny and avoid to  
304 address and which DJ and 9<sup>th</sup> Circuit Judges avoid to consider. \*1

305 22. In support, HHDJ Ilison in her judgment denying Certificate of Appeal denying and  
306 Sec 2255 flippantly glosses over appellant's Sec 2255 grounds argued above, e.g. new  
307 post-conviction evidence and supporting USC and Appeal court law and refuses to  
308 seriously consider them judicially as required by U.S Constitutional Due process lof aw  
309 and Title 128 USC Sec 2255 as does the 2020 and 2021 9<sup>th</sup> Circuit Court of Appeal  
310 denying Constitutional Rights.

311 23. Note, there is a conflict between the 9<sup>th</sup> Circuit HHJ Peter L. Shaw finding merit in  
312 Sec 2255 and that it was originally in 1985 denied of due process requiring it must be  
313 heard in accordance of law of due process as opposed to the 2020 HHJs Owen and  
314 Bennett and HHJs Thomas and Bress who find there is no merit in it and should be  
315 denied its legal due process of law. HHJ Peter L. Shaw is a very experienced legal mind

\* / DJ IGNORES THE 03-05-18 GOVERNMENT'S REPLY IS NOT SEARCHED OR SIGNED  
AND THEREFORE NEGATED ARGUABLY NEGATING DJ'S DENIAL JUDGEMENT!!

(24)

(25)

(26)

316 and would not have wasted public money and court time if he concurred with HHJs  
317 Owen and Bress?

318 24. The 1939 / 1945 German Government ordered its judiciary protect it from it's  
319 citizens' complaints of prosecutorial and judicial misconduct .

320 25. Appellant understands his (i) novel arguments that civil promissory Estoppel is  
321 defense to charge of criminal fraud and (ii) appellant's argument supports grounds to  
322 set-aside a guilty plea alters current judicial thinking and if granted establishes a  
323 precedent which will effect many prior and current cases and (iii) The DJ's failure to  
324 comply with Rule 11 F,R,Cr,P when WW Showarzer at least had obviously not complied  
325 with in prior cases. However, common law is a changing developing philosophy  
326 otherwise sink or swim law would be current. And which is why the government lower  
327 courts oppose appellant's Sec 22552.

328 26. *If society had cared for his hidden mental disability of dyslexia he would not have*  
329 *become a serial killer. The Fifth Amendment provides that "[n]o person shall . . . be*  
330 *deprived of life, liberty, or property, without due process of law." Our cases establish that*  
331 *the Government violates this guarantee by taking away someone's life, liberty, or property*  
332 *under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it*  
333 *punishes, or so standard less that it invites arbitrary enforcement. Kolender v. Lawson, 461*  
334 *U.S. 352, 357-358 4 JOHNSON v. UNITED STATES Opinion of the Court (1983). The*  
335 *prohibition of vagueness in criminal statutes "is a well-recognized requirement, consonant*  
336 *alike with ordinary notions of fair play and the settled rules of law," and a statute that flouts*  
337 *it "violates the first essential of due process."*

338  
339 27. One final comment is that the prisons are full of dyslectic people because society  
340 does not make the adequate adjustments for hidden disability dyslexia and who are

25  
26



341 constantly abused by society because society does not make the said automatic  
342 adjustments they do for physical manifestation of disability under the ADA Act 1990; Joel  
343 Rifken for one.

344


345 28. Wherefore, the appellant pro se respectfully requests the Court to issue an order to  
346 remove any mention of his criminal record from the internet and to repeal the charge of  
347 wire fraud and bail jumping in the cause and interests of natural justice pursuant to  
348 freedom and justice for all in the cause of life, liberty and happiness under God for good  
349 cause shown if these doctrines are currently in force which form appellants experience with  
350 the lower U.S Judiciary they are not which is an insult to the U.S Constitution.

351 THE 2010 AND 2021 IGNORE THE 2018 GOVERNMENT REPLY IS NOT SEALED  
OR SIGNED!!

352 Respectfully

353 Keith Smeaton Pro Se.

354



355 Appellant Defendant.

356 PS: CONGRESS AND THE SUPREME COURT HAS SEALED  
357 NO MAN IS ABOVE THE LAW WHATSOEVER  
THOSE BASTARDS.

(16) (21)

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