

APPENDIX - A

THE "OPINION AND DENIAL" OF "HYDE AMENDMENT ATTORNEY FEES AWARD  
BY THE ELEVENTH CIRCUIT COURT OF APPEALS DATED NOVEMBER 16 2022

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANNAMALAI ANNAMALAI, a.k.a. Dr. Commander Selvam, a.k.a. Swamiji Sri Selvam Siddhar, Defendant-Appellant.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

2022 U.S. App. LEXIS 31651

No. 20-10543

November 16, 2022, Filed

**Notice:**

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.**

**Editorial Information: Prior History**

{2022 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Georgia. D.C. Docket No. 1:13-cr-00437-TCB-CMS-1. United States v. Annamalai, 2014 U.S. Dist. LEXIS 108509 (N.D. Ga., July 16, 2014)

**Disposition:**

AFFIRMED.

**Counsel**

For UNITED STATES OF AMERICA, Plaintiff - Appellee: Samir Kaushal, J. Elizabeth McBath, Michael Sinan Qin, U.S. Attorney Service - Northern District of Georgia, U.S. Attorney's Office, ATLANTA, GA.

For ANNAMALAI ANNAMALAI, a.k.a.: Dr. Commander Selvam, a.k.a.: Swamiji Sri Selvam Siddhar, Defendant - Appellant, Leigh Ann Webster, Strickland Webster, LLC, ATLANTA, GA.

**Judges:** Before BRANCH, GRANT, and JULIE CARNES, Circuit Judges.

**CASE SUMMARY** Because the government legitimately believed, albeit erroneously, post-petition receivables of a new temple were part of a bankruptcy estate and that it and a Hindu temple were alter egos, its prosecution was not vexatious, in bad faith, or legally frivolous. Thus, a district court had no discretion to award fees or costs under the Hyde Amendment.

**OVERVIEW: HOLDINGS:** [1]- Because the government legitimately believed, albeit erroneously, that post-petition receivables of a new temple were part of the bankruptcy estate and that a Hindu temple and the new temple were alter egos, its prosecution was not vexatious, in bad faith, or legally frivolous. Accordingly, the district court had no discretion to award defendant fees or costs under the Hyde Amendment, Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997); [2]-The district court did not apply an improper legal standard because it properly identified that the Hyde Amendment allowed attorney's fees if a prosecution was brought vexatiously, in bad faith, or so utterly without legal or factual foundation as to be frivolous, which was the correct legal standard.

**OUTCOME:** Judgment affirmed.

**LexisNexis Headnotes**

CIRHOT

1

The court of appeals has appellate jurisdiction over only final decisions of the district courts. 28 U.S.C.S. § 1291.

***Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction***

In a criminal case, a premature notice of appeal is effective to perfect an appeal as of the date the sentence is entered as the judgment. When an appeal is from a final judgment, the fact that the appeal substantively concerns an interlocutory ruling is no bar to jurisdiction.

***Civil Rights Law > Practice & Procedure > Costs & Attorney Fees > Appellate Review***  
***Criminal Law & Procedure > Sentencing > Costs***

The court of appeals reviews the district court's award or denial of attorney's fees and costs under the Hyde Amendment for abuse of discretion. An abuse of discretion occurs if the judge fails to apply the proper legal standard or to follow proper procedures in making the determination, or bases an award or a denial upon findings of fact that are clearly erroneous.

***Criminal Law & Procedure > Sentencing > Costs***

The Hyde Amendment provides in part: The court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997).

***Criminal Law & Procedure > Appeals > Prosecutorial Misconduct > Burdens of Proof***  
***Evidence > Procedural Considerations > Burdens of Proof > Preponderance of Evidence***  
***Evidence > Procedural Considerations > Burdens of Proof > Allocation***

The criminal defendant bears the burden of proving by a preponderance of the evidence that he or she is entitled to the fee award. In order to be entitled to a Hyde Amendment award, the defendant must do more than show that he prevailed at the pre-trial, trial, or appellate stages of the prosecution. Rather, a defendant faces the daunting obstacle of showing that the government's position underlying the prosecution amounts to prosecutorial misconduct-a prosecution brought vexatiously, in bad faith, or so utterly without foundation in law or fact as to be frivolous.

***Criminal Law & Procedure > Grand Juries > Indictments > Prosecutorial Powers***  
***Criminal Law & Procedure > Grand Juries > Investigative Authority > Prosecutors***

For Hyde Amendment purposes, [ vexatious means without reasonable or probable cause or excuse. A frivolous action is one that is groundless with little prospect of success; often brought to embarrass or annoy the defendant. Bad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it contemplates a state of mind affirmatively operating with furtive design or ill will. In all but an exceptional case, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.

***Evidence > Judicial Admissions > Legal Conclusions***

A party cannot use Fed. R. Civ. P. 36 to request admissions to legal conclusions. Fed. R. Civ. P. 36(a)(1) authorizes a party to request admissions to facts, the application of law to fact, or opinions about either. Requests for admissions as to central facts in dispute are beyond the proper scope of Rule 36.

### ***Governments > Courts > Authority to Adjudicate***

Courts are never bound by concessions on questions of law. Rather, the determination of whether a government's prosecution was vexatious, frivolous, malicious or in bad faith is reserved for the court.

### **Opinion**

PER CURIAM:

In 2014, following a lengthy trial, a jury convicted Annamalai Annamalai of 34 criminal offenses, including conspiracy to commit bank fraud, bank fraud, filing a false federal income tax return, conspiracy to commit bankruptcy fraud, bankruptcy fraud, money laundering, making a false statement in writing, obstruction of justice, making false statements under oath during a bankruptcy proceeding, and conspiracy to harbor a fugitive. See *United States v. Annamalai*, 939 F.3d 1216, 1221-22 (11th Cir. 2019) (Annamalai I). On appeal, we reversed his convictions for conspiracy to commit bankruptcy fraud, bankruptcy fraud, money laundering, and conspiracy to harbor a fugitive. *Id.* at 1225-35. We affirmed his remaining{2022 U.S. App. LEXIS 2} convictions and remanded for resentencing. *Id.* at 1221, 1238-39.

Following our decision and prior to resentencing, Annamalai filed a motion for attorney's fees under the Hyde Amendment for the counts that we reversed on direct appeal, along with a related motion for summary judgment and a motion to compel production of documents. The district court denied these motions, and Annamalai appealed. After review and with the benefit of oral argument, we affirm.

#### **I. Background**

##### **A. Annamalai's Trial and Direct Appeal**

Annamalai, "a self-proclaimed Hindu priest," ran the Hindu Temple and Community Center of Georgia, Inc. in Norcross, Georgia from 2005 to 2009. *United States v. Annamalai*, 939 F.3d 1216, 1221 (11th Cir. 2019). "The Hindu Temple generated income in part by charging fees for religious and spiritual products and services, including religious ceremonies and horoscopes." *Id.* "The evidence at trial showed that Mr. Annamalai used the Hindu Temple as part of a criminal scheme to defraud his followers and commit bank fraud." *Id.* Specifically, he made unauthorized transactions on his followers' credit cards, and then, if they complained, he would cite to the temple's "no refund" policy. *Id.* He also submitted false documents and information to banks and law enforcement to justify{2022 U.S. App. LEXIS 3} the charges. *Id.* He "used the fraud proceeds to fund a lavish lifestyle, including multiple homes and expensive cars." *Id.* The Hindu Temple filed for Chapter 11 bankruptcy in 2009 and the bankruptcy trustee closed the temple. *Id.* at 1221-22. Meanwhile, Annamalai incorporated a new temple, which also provided religious and spiritual products and services for a fee. *Id.* at 1222.

In 2013, a grand jury in the Northern District of Georgia returned an indictment against Mr. Annamalai and others. The government subsequently obtained two superseding indictments.

The second superseding indictment charged Mr. Annamalai with 34 criminal offenses: conspiracy to commit bank fraud in violation of 18 U.S.C. §§ 1349 and 1344 (Count 1); bank fraud in violation of 18 U.S.C. §§ 1344 and 2 (Counts 2-8); filing a false federal income tax return in violation of 26 U.S.C. § 7206(1) (Count 9); conspiracy to commit bankruptcy fraud in violation of 18 U.S.C. §§ 371 and 152(1) (Count 10); bankruptcy fraud in violation of 18 U.S.C. §§ 152(1) and 2 (Counts 11-20); money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (Counts 21-30); making a false statement in writing in violation of 18 U.S.C. §§ 1001(a)(3) and 2 (Count 31); obstruction of justice in violation of 18 U.S.C. §§ 1503 and 2 (Count 32); making false statements under oath in a bankruptcy proceeding in violation of 18 U.S.C. §§ 152(2) and 2 (Count 33);{2022 U.S. App. LEXIS 4} and conspiracy to harbor a fugitive in violation of 18 U.S.C. §§ 1071 and 371 (Count 34).*Id.* The monies received by the new temple served as the basis for the bankruptcy fraud charges. *Id.* A jury convicted Annamalai of all 34 counts. *Id.*

On appeal, we reversed Annamalai's convictions for substantive bankruptcy fraud (Counts 11-20), conspiracy to commit bankruptcy fraud (Count 10), money laundering (Counts 21-30), and conspiracy to harbor a fugitive (Count 34). *Id.* at 1228-35. As to sentencing, we determined that the district court erred in its loss-amount determination related to the bank fraud counts, which affected the guidelines' calculation and required resentencing. *Id.* at 1235-38. We affirmed the other sentencing enhancements and remanded the case for further proceedings. *Id.* at 1238-39 & n.5.

#### *B. The Hyde Amendment Proceedings*

Following our decision in Annamalai I and prior to resentencing, Annamalai filed a *pro se* motion for attorney's fees and expenses under the Hyde Amendment, seeking to recover fees and expenses incurred in defending against the counts of conviction that we reversed on direct appeal. He maintained that the government's prosecution on those counts was "frivolous, [v]exatious, or in bad faith" and "utterly without foundation{2022 U.S. App. LEXIS 5} in law or fact." That same day, he filed a *pro se* notice stating that he had served the government with a request for admissions under Federal Rule of Civil Procedure 36.

Approximately a month later, he filed a *pro se* motion for summary judgment on the Hyde Amendment claim. He asserted that the government had not answered his request for admissions, and, therefore, all were deemed admitted, and he was entitled to summary judgment on his Hyde Amendment motion.<sup>1</sup> Annamalai also filed a motion to compel production of certain documents, including any e-mails, excluding privileged materials, that related to him, his wife, his former business partner, and any Hindu temples or business entities with which any of those individuals were involved—which he claimed was related to his Hyde Amendment motion.

The district court denied all three motions in an omnibus order, explaining that the Hyde Amendment allows attorney's fees if a prosecution is brought vexatiously, in bad faith, or so utterly without legal or factual foundation as to be frivolous. This is not the case here. A jury convicted Annamalai of [the reversed] counts and, although the Eleventh Circuit reversed the conviction[s], it is a far stretch from the type of prosecution for which the Hyde Amendment{2022 U.S. App. LEXIS 6} provides relief.(internal citations omitted). Annamalai, proceeding *pro se*, appealed. Meanwhile, he awaited resentencing. We appointed counsel to represent Annamalai and held oral argument.

During the pendency of this appeal, the district court held the resentencing hearing and resentenced Annamalai to 216 months' imprisonment, followed by five years' supervised release.

With this procedural background in mind, we turn to the arguments on appeal.<sup>2</sup>

## II. Standard of Review

We review the district court's award or denial of attorney's fees and costs under the **Hyde** Amendment for abuse of discretion. *United States v. Adkinson*, 247 F.3d 1289, 1290 (11th Cir. 2001); *United States v. Gilbert*, 198 F.3d 1293, 1296-98 (11th Cir. 1999). "An abuse of discretion occurs if the judge fails to apply the proper legal standard or to follow proper procedures in making the determination, or bases an award or a denial upon findings of fact that are clearly erroneous." *Gilbert*, 198 F.3d at 1298 (alterations adopted) (quotations omitted).

## III. Discussion

Annamalai argues that the district court abused its discretion in denying his **Hyde** Amendment motion because it applied the wrong legal standard and because the government's unanswered request for admissions established that Annamalai was entitled to relief.

The **Hyde** Amendment provides in pertinent part:

[T]he court, {2022 U.S. App. LEXIS 7} in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) . . . may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code. Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997) (reprinted in 18 U.S.C. § 3006A, historical and statutory notes). The criminal defendant bears the burden of proving by a preponderance of the evidence that he is entitled to the fee award. *Adkinson*, 247 F.3d at 1291. In order to be entitled to a **Hyde** Amendment award, the defendant must do more than show that he "prevailed at the pre-trial, trial, or appellate stages of the prosecution." *Gilbert*, 198 F.3d at 1299. Rather, a defendant faces the "daunting obstacle" of "show[ing] that the government's position underlying the prosecution amounts to prosecutorial misconduct—a prosecution brought vexatiously, in bad faith, or so utterly without foundation in law or fact as to be frivolous." *Id.* at 1299, 1302.

For **Hyde** Amendment purposes, {2022 U.S. App. LEXIS 8}

[v]exatious means without reasonable or probable cause or excuse. A frivolous action is one that is [g]roundless . . . with little prospect of success; often brought to embarrass or annoy the defendant. [B]ad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; . . . it contemplates a state of mind affirmatively operating with furtive design or ill will. *United States v. Shaygan*, 652 F.3d 1297, 1312 (11th Cir. 2011) (second and third alterations in original) (internal citations and quotations omitted). "[T]he Supreme Court has explained that, in all but an exceptional case, 'so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.'" *Id.* at 1315 (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S. Ct. 663, 54 L. Ed. 2d 604 (1978)).

The district court denied Annamalai's **Hyde** Amendment related motions, concluding that his prosecution was not brought vexatiously, in bad faith, or legally frivolous. The district court's decision was correct because Annamalai failed to demonstrate his entitlement to a fee award.

Although Annamalai argues that our opinion{2022 U.S. App. LEXIS 9} on direct appeal reversing the bankruptcy fraud convictions demonstrated that the government's position was legally frivolous as a matter of law, his argument is meritless. We reversed Annamalai's bankruptcy fraud convictions after determining that inclusion of the post-bankruptcy petition monies received by the new temple-the only basis for the bankruptcy fraud charges-would contravene the plain language of relevant bankruptcy statutes that defined the bankruptcy estate. Annamalai I, 939 F.3d at 1228-29. Accordingly, the bankruptcy fraud charges could not stand. *Id.* But our conclusion in Annamalai I does not demonstrate that the government's position was legally frivolous.

As we noted in Annamalai I, the bankruptcy trustee incorrectly opined that the receivables of the new temple were property of the bankruptcy estate. *Id.* at 1229. Additionally, the government believed that the Hindu temple and the new temple were essentially alter egos-i.e., that they were the same business. *Id.* at 1230-31. Although we determined on direct appeal that those conclusions were incorrect and based on a misunderstanding of bankruptcy law, *id.*, an incorrect interpretation of the law or a misunderstanding of the law does not make a prosecution legally frivolous.{2022 U.S. App. LEXIS 10} Thus, because the government legitimately believed, albeit erroneously, that the post-petition receivables of the new temple were part of the bankruptcy estate and that the Hindu temple and the new temple were alter egos, its prosecution was not vexatious, in bad faith, or legally frivolous. *Shaygan*, 652 F.3d at 1315, 1317. Accordingly, the district court had no discretion to award Annamalai fees or costs under the Hyde Amendment.

Annamalai argues that the district court applied an improper legal standard in denying his Hyde Amendment motion because the district court based its denial on the fact that he was convicted by a jury. He maintains that there is no limitation on Hyde Amendment relief for defendants that were convicted by a jury but later prevailed on appeal, and that it is entirely plausible that the government can convince a jury to convict in a legally frivolous case-as it did in his case. His argument is unpersuasive.

Although the district court mentioned in the order denying the Hyde Amendment motion that Annamalai had been convicted by a jury, the court did not improperly apply that fact in its determination of his entitlement to the fee award. Rather, the district court properly identified that the{2022 U.S. App. LEXIS 11} Hyde Amendment "allows attorney's fees if a prosecution is brought vexatiously, in bad faith, or so utterly without legal or factual foundation as to be frivolous"-which is the correct legal standard. And it applied that legal standard when it determined that Annamalai's case was "a far stretch from the type of prosecution for which the Hyde Amendment provides relief." Accordingly, the district court did not apply an improper legal standard.

Alternatively, Annamalai argues that the district court erred in denying his Hyde Amendment motion and his related motion for summary judgment and motion to compel because it ignored the fact that the government failed to respond to his Rule 36 request for admissions and therefore those admissions-which included three statements that the government's prosecution was malicious, in bad faith, vexatious, and frivolous-were admitted. Accordingly, he claims that he made the required showing for a fee award. Annamalai's argument is meritless. Even assuming that Rule 36 applies to his case-a question on which we express no opinion because we do not reach whether a Hyde Amendment motion is a separate civil proceeding or part of the underlying criminal action-a party{2022 U.S. App. LEXIS 12} cannot use Rule 36 to request admissions to legal conclusions. See Fed. R. Civ. P. 36(a)(1) (authorizing a party to request admissions to "facts, the application of law to fact, or opinions about either"); see also *Pickens v. Equitable Life Assurance Soc'y of the U.S.*, 413 F.2d 1390, 1393 (5th Cir. 1969) (holding that "requests for admissions as to central facts in dispute .. are beyond the proper scope of [Rule 36]"). And, regardless, even if the government were deemed to

have made the alleged admissions, we are not bound to accept the government's concessions. *United States v. Watkins*, 13 F.4th 1202, 1210 (11th Cir. 2021); see also *United States v. Colston*, 4 F.4th 1179, 1187 (11th Cir. 2021) (explaining that courts are never bound by concessions on questions of law). Rather, the determination of whether a government's prosecution was vexatious, frivolous, malicious or in bad faith is reserved for the court.

Accordingly, we affirm the district court's order.

**AFFIRMED.**

#### Footnotes

1

One of the requests for admissions was that all of the charges against Annamalai were "bogus, and brought with a vexatious and bad faith intent," and that the government had "orchestrated a massive malicious prosecution" against him.

2

We issued a jurisdictional question, asking the parties to address whether the district court's omnibus order was a final order or otherwise immediately appealable. We have appellate jurisdiction over only "final decisions of the district courts." 28 U.S.C. § 1291.

Annamalai argued that the district court's order was final and appealable under § 1291 because a Hyde Amendment motion constituted a separate, ancillary civil proceeding, and the order ended the litigation on the Hyde Amendment motion. The government, on the other hand, argued that we lacked jurisdiction to review the order because the Hyde Amendment motion is part of the underlying criminal action and, therefore, the order would be final only upon Annamalai's resentencing.

However, Annamalai's resentencing is now complete. Accordingly, we have jurisdiction under § 1291 to review the district court's denial of the Hyde Amendment motion. See *United States v. Curry*, 760 F.2d 1079, 1079-80 (11th Cir. 1985) (explaining that, in a criminal case, a "premature notice of appeal is effective to perfect an appeal as of the date the sentence is entered as the judgment"); see also *OFS Fitel, LLC v. Epstein, Becker & Green, P.C.*, 549 F.3d 1344, 1356, 1359 (11th Cir. 2008) (explaining that "when [an] appeal is from a final judgment, the fact that the appeal substantively concerns an interlocutory ruling is no bar to jurisdiction"). Therefore, we need not decide whether the filing of a Hyde Amendment motion constitutes a separate civil proceeding or is part of the underlying criminal action.

CIRHOT

7

The unconstitutional and 'chilling effect' to attack and  
assault the "standing final order of Specific performance"  
ordered by the indiana state court affecting the Hyde amendment  
Attorney fee award matters order

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-10543-DD

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANNAMALAI ANNAMALAI,  
a.k.a. Dr. Commander Selvam,  
a.k.a. Swamiji Sri Selvam Siddhar,

Defendant - Appellant.

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On Appeal from the United States  
District Court for the Northern District of Georgia

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BEFORE: BRANCH, GRANT, and JULIE CARNES, Circuit Judges.

BY THE COURT:

Appellant attaches to his petition for rehearing, as "Evidence no.3" and "Evidence no.4," two orders that purport to be issued by the Vigo Superior Court of Vigo County, Indiana. The purported orders clearly appear not to be legitimate court documents as they are handwritten on notebook paper and contain various errors. Yet, these documents have been stamped with a "seal" that purports to be an Indiana court seal and contain a signature that purports to be the signature of a person who is in fact an Indiana judge, but who is not a judge of Vigo County. In sum, it appears that these purported orders are forgeries. Accordingly, the Court directs Appellant to show cause within 21 days of the date of this Order why these documents should not be struck and

why Appellant should not be sanctioned for filing forged documents.

The Court further refers this matter to the United States Attorney for the Northern District of Georgia for it to investigate any potential violation of federal criminal law.

The Clerk's Office is DIRECTED to provide to the Vigo County Superior Court a copy of this order and copies of the purported orders attached to Appellant's petition for rehearing.

AN ORDER FROM THE PANEL "BACKING OFF" FROM ITS UNCONSTITUTIONAL STAND  
"WITHOUT" ITS SUA SPONTE REFERRAL TO THE UNITED STATES ATTORNEY'S OFFICE  
( the same office in fact ' maliciously, vexatiously and also in  
bad faith prosecuted and convicted Mr. Annamalai on the 22 counts of  
conviction, latter vacated by the 'first panel judges' in the year of  
September 2019 )

**CORRECTED**

— IN THE UNITED STATES COURT OF APPEALS —  
FOR THE ELEVENTH CIRCUIT

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No. 20-10543-DD

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANNAMALAI ANNAMALAI,  
a.k.a. Dr. Commander Selvam,  
a.k.a. Swamiji Sri Selvam Siddhar,

Defendant - Appellant.

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Appeal from the United States District Court  
for the Northern District of Georgia

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Before: BRANCH, GRANT, and JULIE CARNES, Circuit Judges.

BY THE COURT:

Upon review of appellant Annamalai Annamalai's response to our show cause order, we decline to strike and, in ruling on the petition for rehearing, will consider all of the exhibits attached to that petition.

The Clerk's Office is hereby DIRECTED to provide to the United States Attorney for the Northern District of Georgia and the Vigo County Superior Court a copy of Annamalai's response to the show cause order and a copy of this order for any further action they deem appropriate.

THE FINAL ORDER WITH DENYING THE EN BANC HEARING AND  
PANEL REHEARING

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 20-10543-DD

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANNAMALAI ANNAMALAI,  
a.k.a. Dr. Commander Selvam,  
a.k.a. Swamiji Sri Selvam Siddhar,

Defendant - Appellant.

Appeal from the United States District Court  
for the Northern District of Georgia

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

BEFORE: BRANCH, GRANT, and JULIE CARNES, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

Appellant Annamalai Annamalai's "notice" about the "discharge" of his court appointed counsel "with" a "motion for status hearing" is DENIED.

"Appellant Annamalai's Emergency Motion to ask the court for additional time to file for En Banc brief," and "Notice of Discharge of his court appointed counsel," and "Notice of appealing the denial to en banc" is DENIED.

APPENDIX - 2

The true copy of the response filed towards the unconstitutional show cause order of the panel and the copy of the motion to rescind such order

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee,

Vs.

No.20-10543-D

ANNAMALAI ANNAMALAI

USDC # 1:13-cr-00437-TCB-CMS

Defendant-Appellant.

"Verified response" of Appellant/Victim/ Judgement Creditor/Account Creditor

Mr.Annamalai Annamalai towards the "show cause order" of this court  
entered on 1/20/2023 with particularized requests, to give equal treatment, and  
"complete due process" under law

COMES NOW, Mr.Annamalai Annamalai respectfully filing his response to this court's order dated 01/20/2023, regarding serious "confusion" of the court, with particularized requests under the "complete due process", "in equity", and also to do complete justice.

I. P R E F A C E

Mr.Annamalai resperctfully say that, "he is not a criminal", simply because he was "railroaded", by some persons, who has acted with impunity and also as above the law. As a matter of fact he is, at least "innocent" of 22 counts of fabricated criminal charges, for \$32,000-, thereby, Mr.Annamalai has lost in "Billions" of dollars in the hands of the "privies" of the prosecution, most especially, the "fake victim" which was Mr.Lloyd T.Whitaker, the appointed trustee for the Hindu Temple of Georgia's estate and his lawyer Mr.James Hayden Kepner, who is a so called officer of this court!!Mr.Annamalai is going to be "brutally honest" "candid" "truthful" to this court now ( as always ). Also respectfully, not every one in the prison are criminals, inclusive of Mr.Annamalai too.

II. Response to the court's show cause order

Mr.Annamalai respectfully say that, as a man of Hindu faith and most especially a Hindu High priest ( which was also granted as such status by the State department of the United States ) and not a " Self-proclaimed Priest, literally shocked to see the show cause order. First as amatter of fact, although the order asked Mr.Annamalai to "show cause", by violating his basic due process, and by the "own beliefs" of the court, "without any corroborating evidence of forgery"

alreday concluded in its order as " In sum, it appears that these purported orders are forgeries. Respectfully its a "mind boggling a criminal acquisition" per se. The court even went more lengths "before" "giving, an opportunity to "hear" from Mr.Annamalai in a meaningful and with complete due process, even has made criminal referral" and also "alerted" the Vigo county superior court's clerk of court about the "pre conceived forgery theory" by this court.

It clearly appears that, the well pronounced "hate" Religious bias" portrayed and repeatedly announced by District court Judge Batten, has "highly inflicted and also condamnated" this proceeding, by its extensive spill over. In India, there is a traditional saying that, "if you are going on shout and tell on some one as a "bad person", and latter the same will "withstand", irreseptive of such man is really an innocent man".Here, it clearly appears that, the "hate towards the "color ( Mr.Annamalai being a colored man ) a man of different faith, different race, different ethinicity, all individually or in combination has caused this court to "pre-judge" and also "pre conceive" a "( false ) fact, which has never and ever existed.Not to say, there is a strong history in this country, the colored man ( black and brown ) are disproportionately thrown in to prisons with "long sentence". Most notably, mr.Annamalai is the "FIRST" and the "ONLY HUMAN in the Court system ( both federal and state ) thrown in to prison formerly for 28 years ( now 18 years ) for an alleged bank fraud, involving \$11,854- ( eleven thousand eight hundred and fifty four dollars, in which "NONE" of such "Financial institutions" as described by 18 U.S.C. § 20, never and ever have existed!! Mr.Annamalai humbly say that, he born as a brown man, and his sincerely held (Hindu) religious beliefs, and "fighting for "real justice", all, not only landed to get this 22 counts of wrongful conviction, subject to en banc determination, whereas, now, causing again and again to "challange his honesty" and this show cause order appears, best"example", about how this court by its "pre conceived" notions, "pre judgement" affirmed the lawless denial of hyde amendment attorney fees, and 'now" highly strengthens the arguments and facts as presented to vacate the denial of the hyde amendment fees award.

III. The pre conceived and pre judged notions, beliefs, are NOT supported by the "real facts" "Judicial records" of the Indiana court

Mr.Annamalai has attached two orders/judgements from the Vigo county superior court Division 2, Terre Haute Indiana, in the case no.84 D02-1704-MI-2768, with his "motion for en banc determination. ( appears to be evidence no 3 and 4 ). This court "in advance" pre judged" and "pre determined" about such judgements as follows:-

Appellant attaches to his petition for rehearing, as "Evidence no.3" and "Evidence no.4," two orders that purport to be issued by the Vigo Superior Court of Vigo County, Indiana. The purported orders clearly appear not to be legitimate court documents as they are handwritten on notebook paper and contain various errors. Yet, these documents have been stamped with a "seal" that purports to be an Indiana court seal and contain a signature that purports to be the signature of a person who is in fact an Indiana judge, but who is not a judge of Vigo County. In sum, it appears that these purported orders are forgeries. Accordingly, the Court directs Appellant to show cause within 21 days of the date of this Order why these documents should not be struck and why Appellant should not be sanctioned for filing forged documents.

The Court further refers this matter to the United States Attorney for the Northern District of Georgia for it to investigate any potential violation of federal criminal law.

The Clerk's Office is DIRECTED to provide to the Vigo County Superior Court a copy of this order and copies of the purported orders attached to Appellant's petition for rehearing.

To address one by one "pre judgement" and pre conceived" facts are patently wrong, Mr, Annamalai states as follows:-

- 1). Yes the judgements ( both ) were/are "hand written" ones. Nothing in the federal or state law, states that, the litigants shall not present "hand written orders" and the judges/courts shall not sign such orders.
- 2). As the continued blessings of GOD, Mr.Annamalai in fact has requested the Indiana special Judge Hon.Charles D.Bridges, for the "new sets of certified judgements ( since Mr.Annamalai is engaging in " registering such judgements in various state court jurisdictions, to " execute" the non-appealable equitable order of specific performance against various "Account Debtors" ).
- 3). On 01.12.2023, the State court Judge Bridges, Granted such request, and Mr.Annamalai has received new sets of "certified judgement copies, and also the "certified copies of "Account debtors" who owes various debts, inclusive of several "federal actors" involved in the "malicious, wrongful, frivolous, and also vexatious prosecution of the 22 counts of convictions, subject to the

underlying criminal case. See, Evidence no.1, the cover sheet from the state court of Indiana, Evidence no.2 is the "Equitable order of specific performance" Evidence no.3, is the "order of execution", Evidence no.4 is the "extract list of various "ACCOUNT DEBTORS" ( which is inclusive of the various federal actors who were brought as "party-in-privity" to the Indiana action ( the page 1-14 are miniature ones, however the Indiana court records has the "full version" of the same, to avoid any confusion, please ).

4). The signature of the "person" who has signed was Honorable Charles D.Bridges. Of course, he is "not" the Judge of the "Vigo county superior court". He in fact was the judge of "putnam county Superior court" in Indiana, who was "brought as a "SPECIAL JUDGE" to the Indiana action. As of backdrop, initially the civil action was dismissed at the Indiana court, ( under belief under information "after" some persons subject to the "veaxatious, frivolus" bad faith" "ex-parte" court communications in the year of 2017, "within few months" after the case was docketed. Mr.Annamalai, with the "support and assistance" of GOD, took such a dismissal to the Indiana court of appeals. Mr.Annamalai has mad a "historical winning" on such appeal, as a "pro se appellant". The chief judge of the Vigo county superior court, who was then the presiding judge, "sua sponte" "recused" herself. Then on or about August 22nd 2019, a "SPECIAL JUDGE" known as HONORABLE CHARLES D.BRIDGES from the Putnam county Superior court was appointed to such action. See, Evidence no.5, The : copy of such ORDER apointing special Judge.  
5). Special judge Bridges is a "man of honor", integrity, and 100% wanted to uphold the law, and a very best human being. Mr.Annamalai has moved for the "specific order of performance" from Judge Bridges , after the various "Account debtors", patently failed to settle their " debts" towards Mr.Annamalai. Then on or about 11/09/2020, special judge bridges has signed the "hand written judgements" submitted to the court "as is ". ( to make it clear the situation, when Mr.Annamalai has filed his hand written judgements to Judge Bridges, he was "not" having meaningful access to typewriter ( no typewriter at all ) in the GEO Lovejoy Federal detention center, hence he has no other options, except to hand write such orders. Be clear on the record that, Mr.Annamalai needed to submit his "proposed order" as per the court's order dated 10.26.2020.  
See, Evidence no.6, the pertinent portion of such court's order, which has expressly ordered as:- ( the docket sheets ).

Plaintiff must provide the court with proposed order(s) to appear for a proceedings supplemental hearing along with proof of service upon the defendant in order to move forward with this matter. id.

(4). After such "extortion & black mailing attempts" have failed, the fake victim Lloyd T.Whitaker, went to common pleas court in Dayton Ohio, and has sued the Corporate entities" of Mr.Annamalai's wife Ms.Parvathi Sivanadiyan, with 100% in "violation of permanent injunction" orderd by the Bankruptcy Judge Massey, as such—"the Trustee/Plaintiff "shall" not go after any of the "transferred properties", and by that, time Trustee Whitaker has "used" the "above the law" person AUSA Samir Kaushal, to charge Mr.Annamalai with "bankruptct fraud" "monry laundering ( 21 counts in total ), and also used such arrest to inform the state court judge and has secured a "default judgement" against all the defendants in the state court action, with 100% disrespect and in violation of standing final judgement ordered by Judge Massey in Georgia. ( not to say that, Ms Sivanadiyan was "openly extorted and blackmailed for the same "Paru tower" property, "inside" the Judge Batten's court room, in "exchange" for the "dismissal" of the 22 counts, as vacated by the 11th circuit latter. See, the "notorized affidavit Evidence no.3", fully reincorporated herein by reference.

4). The atrocious misconduct does not stop there. Latter the same natural individuals were "created" as "bank fraud victims" of Mr.Annamalai, although, not even a single person gave any money to Mr.Annamalai, and of course they were the one time customer, and also paid fees for services to the Hindu temple of georgia and other Temple entities, and however "none" of the Temple entities ever charged on any criminal charges so far!!

5). Then at trial the above the law prosecutors, has presented "false evidences" in support of Mr.Annamalai's fabricated "bank fraud" charges of \$11,854.00. Using such \$11,854 Bank fraud conviction, the prosecutors, even has sought a "LIFE IMPRISONMENT" for Mr.Annamalai by , bringing more false evidences, on a continuing basis. These are "NOT"" conclusory allegations at all, since the allied State court proceedings at the Vigo County Superior court, Mr.Annamalai has 'already established' such audacious criminal and also misconducts of the prosecutors, and "shockingly", the "recent "criminal referral" was cited to the same office of such persons, for "PERJURY" felony criminal investigation, and also appears that, a "Criminal contempt sanction" ; for "being honest, truthful, candid, and most importantly brought the various errors of this panel concerning the Hyde amendment attorney fees award. Although this action is NOT appeal to the pending "bank fraud" conviction, this motion is with relates to the "erroneous criminal contempt sanction" against Mr.Annamalai, "with" "ZERO due process", given "before" such a criminal contempt, turned out to be a criminal referral.

6). As a matter of another "historical event in this circuit or in any circuit, Mr.Annamalai is not aware of any human, "sua sponte" referred for "Criminal contempt sanction with criminal referral" without giving any "advance notice and opportunity to respond or cure any errors of the court(s). Its said in Indian proverb " giving the cash chest key bunch(s) to a robber"That analogy appears to perfectly fit to this "instant criminal contempt with criminal referral to the U.S.Attorney's office, which, is the same office, some of the persons, in fact has brought bad faith, vexatious and fabricated at least 22 counts of convictions" on Mr.Annamalai, and most notably, several of such persons were judicially established in the parallel Indiana State court action, as such; "they have acted "without the scope of employmment, when they have violated Mr.Annamalai's constitutional rights and as well as Indiana's constitutional, civil human rights of Mr.Annamalai, and lead to an "irreparable harm" and an "injury in fact".Also further "fact" has been judicially established in the Indiana court's proceedings, some persons in the same office where the "criminal referral" "sua sponte" has been made for an alleged "forgery", in fact that, various of their malicious actions towards Mr.Annamalai, either comission or omissions were "criminal" and "clearly outside of the "scope of employment" of such persons. These are judicially established, and respectfully, "not" for relitigation now, and also precluded to discredit such judicially established facts, pursuant well established Rooker-Feldman and Res Judicata doctrines".Be cautious, the office where now, the "sua sponte" felony forgey criminal sanction and criminal referral has been ordered by this court, in fact such office, and various government attorneys "very well knew about" the Indiana court action, at least since, the year of 2018 , which is over ~~five~~( 5 ) years now.

7). Another "shocking conscious" misconduct of certain government attorneys, which Mr.Annamalai believes, that, they do anything in their power to harm, will "retaliate" to "harm, injure Mr.Annamalai more and more, since it appears that, they can not "over rule" or "attack" the standing "Equitable order of Specific performance", which are "not" appealable either, with relates to the Indiana state court proceedings, which has "exposed" series of criminal and misconducts of such persons, working in the same office, "where the "sua sponte" "criminal contempt sanction", with an order for " Criminal referral for criminal investigation, of course. As a matter of indisputable fact, although that's not the "core" of this proceedings, however as an ancillary matter, Mr.Annamalai brings the following facts, in support, genuine"fear of retaliation", "more false and fabricated criminal charges" against him now, as follows.

See, Evidence no.4, the "pertinent portions of the so called "Bank fraud indictment". The same has/had "three Non-Existing ""Financial institutions, "insured by "FDIC". See, Evidence no.5, the "Explosive testimony under oath, by Federal Agent Mr. Stephan Langamandel, who gave "shocking conscious" "truth" as such "NO EVIDENCE OF FRAUD ( of Mr.Annamalai ) "after" Mr.Annamalai was convicted for \$11,854- Bank fraud. Also the FDIC in the year of 2019, "after" such "wrongful conviction" expressly noticed Mr.Annamalai as "NONE" of the entities as shown in the Indictment as well as in that correspondence were FDIC insured Financial institutions, See, Evidence no.6.

8). Of course, the court appointed attorney Ms.Leigh Ann Webster, "before" Mr. Annamalai's 'mockery resentencing" has served "subpoenas" on all such alleged Financial institutions, as "claimed by the government attorneys", happened to be "none" of them are FDIC insured Financial institutions, and majority of them were simply, just, "merchant services entities"!!Take judicial notice, of Doc no.905 as well as the "resentencing memorandum" filed on or or about August 2021, by attorney Webster, in the underlying Criminal action no.1:13-cr-00437-TCB-CMS. Further see, true certified copies of Indiana action, Evidence no. 7 to 9, by reference fully and expressly reincorporated herein.

### III. Conclusion & Relief Sought

The order to show cause appears to be clearly "punitive" and can be best characterized as a "criminal contempt order". Most notably, the court did not cite any Federal rule, law or statue violation in support of such "sua sponte" punitive sanction, and Mr.Annamalai was "NOT" given with anything to address the court's errors, confusion or otherwise, "before" such "punitive sanctions per se". May be this court has sanctioned such "criminal punitive measures, based on "inherent power". However the inherent power, to sanction shall be for either civil or criminal contempt, "supported by facts and law", not by "beliefs". Here, the court's express "conclusion" as such two Indiana court order were in "forgery", is not only wrong, whereas that were "obviously wrong" per se. The court's inherent power otherwise, is "NOT" a broad reservoir or power ready at an imperial hand, but a limited source, an implied power squeezed from the need to make the court function. NASCU INC 894, F.2d 696, 762 ( 5th Cir 1990 ). The court's inherernt power shall be exercised with utmost caution and restraint, and not against, someone, lawfully filed a petition for en banc determination, by "couching" the "beyond indisputable, public-court records" as "forgery, by simultaneously "punitively punishing" Mr.Annamalai, for a "crime" never and ever occured ( Forgery ).

Annamalai   PEACE & LOVE  
Annamalai Annamalai  
Victim-Appellant-Judgement Creditor  
P.O.Box-1000, Marion, IL-62959

Verification pursuant to 28 U.S.C. § 1746

I, Annamalai Annamalai verifies under penalty of perjury that, the foregoing is True and correct to the best of my knowledge and beliefs.

01.29.2023.

Annamalai   PEACE & LOVE  
Annamalai Annamalai

Certificate of Service

Annamalai certifies that, this document is caused to be mailed to this court as well as to the appellee, via first class mail, postage being prepaid, by invoking Prison mail box rule.

Executed on: 01.29.2023.

Annamalai   PEACE & LOVE  
Annamalai Annamalai  
Appellant-Victim-Judgement Creditor.

Note: Kindly excuse my English writing and typing. I lacks typing skills, and English is NOT my first language.

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA  
Plaintiff-Appellee,

Vs.

Appeal case No. 20-10543-D  
USDC # 1:13-cr-00437-TCB-CMS

ANNAMALAI ANNAMALAI, et al.

Defendants/ Victim.

Appellant-Victim-Judgement Creditor Mr.Annamalai's "verified Motion" to "Rescind" the "Show cause order", to avoid more harms & prejudices from Appellee's counsels by "retaliation" and request for an "oral argument & "evidentiary hearing", with an "appointment of a counsel"

COMES NOW, Mr.Annamalai annamalai the appellant, victim, a judgement creditor, an account Creditor, respectfully filing this "verified" motion, to humbly ask this court to eithr "rescind" or alter, amend a show cause order, to avoid any more grave injustice, fundamental miscarriage of justice, and to "again" plcae the "law & facts" in defiance, and also to avoid "another opportunity" to the appellee's counsels to "retaliate", "harm and injure" Mr.Annamalai with any more "fentastic" "novel" criminal charges.He further humbly demonstrate as follows:-

I. Short procedural posture

- 1). Although the court records has already epicted the procedural matters of this appeal, in abundance of caution, Mr.Annamalai is giving the "short narrative" of this case and also underlying criminal criminal action no. 1:13-cr-00437-TCB-CMS at N.Dist.Ga, Atlanta division,and other parallel civil actions which affects this appeal matters and etc.
- 2). Mr.Annamalai is a Hindu High Priest, granted with such status by the United States "State department".He is also the "only" Hindu monk, a Hindu High priest, a legal immigrirant, an Indian American in the federal prison, and also the "first" and the "only" "human" in federal prison, for the past 10 years, for an alleged bank fraud involving \$11,854-, with "no prior criminal convictions" in his entire life.Most notably, the "financial institutions" allegedly "defrauded" or "presented with False pretenses", was nowhere exists and have existed anywhere on the planet earth. ( however he is "not" sure about the planet "mars" or planet moon!! ).
- 3). Mr.Annamalai was the first human being in the history of the United States, charged with "novel" "bankruptcy fraud money laundering charges" by the "above the law" government's attorneys, in the year of 2013, and latter such wrongful convictions were thrown away and such judgement is "final-non-appealable".

4). On or about September 2019, after the vacture of the 22 counts of wrongful convictions, Mr.Annamalai has moved for the "hyde amendment fees award" with the district court Judge ( Judge Batten ) who has explicitly attacked and questinoned "repeatedly" the 'sincerely held religious beliefs" of Mr.Annamalai for years, and also repeatedly pronounced Mr.Annamalai as an "evil", " a so called man of cloth" "He ( Annamalai ) is "not" a "Holy man" ( although Mr.Annamalai is/was having over 17 million plus "faithful followers " ( not social media followers ), who has successfully established five "non -profit" religious organizations, in the United Status, under complete scrutiny ), "its a joke to call " Mr.Annamalai ) as a "holy man". He is "a uniuque man" and this "criminal case " "was an extraordinary and unusual case". ( These "egregious, racial, religiouis bias and attack on Mr.Annamalai's sincerely Hindu Religious beliefs, his race, ethinicity,color are all already the part of Judicial-court-public records" of this and as well as the district court action any way)

5).Recently this court has "affirmed" the "lawless" denial of Hyde amendment attorney fees by the district court judge, by even" assaulting this court's binding precedents about "final order Rule, Res Judicata", and most notably, the government attorneys never and ever argued anything against such Hyde amendment award" at the district court at all!!

6). Mr.Annamalai has filed his petition for "en banc rehearing", appropriately. Then on or about 01.20.2023, this court has entered a "shocking conscious show cause order, by "criminally accusing Mr.Annamalai of "committing "FORGERY" with certain Indiana State court's judgements ( which are final, non-appellable, and also non reviewable" by this court under ROOKER-FELDMAN doctrines and Res Judicata ).

7). This court "ordered" Mr.Annamalai to show cause within "21 days", and Mr.Annamalai "rapidly" and "swiftly" complied with that order, with "indisputable facts that, "there is not even any kinds of forgery occured in such Indiana court's judgement orders, even "remotely", and already mailed to this court with response.

II. This court shall "rescind" its show cause order, since it was infected with pre notion, pre conceived "judgement" criminally sanctioned "terribly" Mr.Annamalai "sua sponte", even "before" Mr.Annamalai responded to the show cause order

8). Mr.Annamalai by reference expressly move this court to take "judicial notice" of its 01.20.2023 show cause order and other Judicial facts, for the matters as demonstrated in the item " I. Short Background", under Fed.R.Evid. 201 (c) et Seq. He is also willing, ready, and able to support with public/judicial records for

the above stated facts, if in case this court is need of, at an "evidentiary hearing".

To make it simple and clear, this court's "show cause order" is divided in three parts as follows:-

(1). To show cause why the Exhibits/evidence no 3 & 4 the true copies of Indiana state court's judgements, shall not be striken from the record, and also why mr.Annamalai shall not be "sanctioned";

(2). To forward such orders ( Exhibits 3 & 4 ) to the Vigo County Superior court, Terre Haute Indiana;

(3). "A CRIMINAL REFERRAL TO THE UNITED STATES ATTORNEY'S OFFICE FOR THE NORTHERN DISTRICT OF GEORGIA, FOR ANY "potential" violation of Federal criminal law.

9). First as a matter of "basic and complete due process, equal protection granted by the United States Constitution, the sua sponte criminal referral and referral to the Vigo county superior court" stripped off any and all constitutional protections given for Mr.Annamalai, because of such "sua sponte" sanction, then latter asks mr.Annamalai to show cause, which respectfully makes, the due process utter failure or mockery, and appears that, this panel already "pre judge" Mr.Annamalai is a "criminal" and he deserves a "criminal referral". Its a simple history in 'all' the United States courts, NO Judge who took oath of office to "uphold the law" 'simply makes "criminal referral of a litigant/party appeared before the court(s). The history shows clearly, and unambiguously "only" in the "most drastic and or egregious nature" the party(s) have been referred to the criminal referral.

10). In the present show cause order, even "before" Mr.Annamalai has "complete due process rights" to respond within the 21 days time allowed, this court has either directly or indidrectly or at least implied manner "criminally sanctioned" Mr.Annamalai with "criminal referral" for this court's confusion, misunderstanding of the "Indiana court" instant litigation on hands as we speak Mr.Annamalai respectfully submit that, "he has been already found "guilty" and he is forced to provec that he is innocent.

11). Now, it appears that "a very dangerous and highly potential risk to Mr.Annamalai's "liberty and property interests" have beed "freely sanctioned" to the "lawless, and 'above the law" prosecutors and to his privies, who as a matter of Judicial record, "never and ever had any respect for the "final judgements/order of the State and federal court. By knowing the "past conduct" of such persons, involved in the vacated 22 counts of convictions, Mr.Annamalai respectfully submit that, he is "again" going to be "harmed and injured" beyond irreparable level.

12). These are "NOT CONCLUSORY ALLEGATIONS" or simply a "FEAR OR BELIEFS". Whereas the following "audacious, atrocious, lawless, and brutal conducts " of the government attorneys and its privies will speak in volume. Some of them as follows. In demonstrating that, Mr.Annamalai humbly say that, this court is "NOT" an

adversary to Mr.Annamalai in any means, and he also "expressly" and "affirmatively" say that, such "erroneous criminal referral" will "ultimately" "silence him to death".

(1). The 22 counts of vacted prosecution, even was brought in defiance of law final order rule, and res judicata, with "novel" facts, since "no human" was ever prosecuted in the United States court's history with such "false facts". As a matter of the "United States bankruptcy court for the Northern district of Georgia, in the case of IN RE. HINDU TEMPLE AND COMMUNITY CENTER OF GEORGIA INC, Case no. 09-9080, a "final judgement/order" was entered, well 'before' the "novel" and "phony" bankruptcy fraud and monry laundering charges were fabricated against Mr.Annamalai. See, Dock no.400, attached hereto, and by reference, fully and expressly reincorporated herein.

The 21 counts ( bankruptcy fraud, bankruptcy fraud conspiracy, and money laundering ) charges, were "without any debate" brought in "violation of permanent injunction ( see page 10 of the judgement ) and also expressly found out by the senior bankruptcy judge Massey, about what are the properties were "transferred" "before and or after" the bankruptcy petition.

(2). The Judgement of the bankruptcy court has expressly found out "only" the "siddhi Times web site and couple of "phone numbers" were "transferred from the "Debtor" as "PRE-PETITION" transfer ( not a post-petition transfer ).After such failure by the "Fake Victim Llloyd T.Whitaker, has appears to cut a deal with a handful number of "natural individuals, who are all were "NOT" the followers of the temple or Mr.Annamalai, by "dismissing the lawsuits against them, by they dismiss / withdraw their "phony" "bankruptcy "proof of claims". See, Evidence no.2, by reference, fully ande expressly reincorporated herein,

3). Then after few months, after the "unsuccessful attemts' at the "Bankruptcy court to take any of Mr.Annamalai's personal or his wife Parvathi Sivanadiyan's 15 storied office tower ( Paru Tower ) at 32-38 North main street, Dayton Ohio-45402, with 15 story(s) and over 266,000 sq feet furnished space, with approximate "reproduction value" of over \$21,000,000.00, the Trustee Whitaker and his counsel and officer of this court Mr.James Hayden Kepner "extorted and blackmailed" Mr.Annamalai and his wife Ms.Sivanadiyan, to "give away" for "free" the \$210 Million worth vintage 1920s paru tower, so that Mr.Annamalai will not be prosecuted. Several of such "extortion" negotiations occurred via Mr.Jerome Ferolich, an attorney in Atlanta, Georgia as as well as by the Attorney of Mr.Annamalai, in Texas known as Mr.

(4). After such "extortion & black mailing attempts" have failed, the fake victim Lloyd T.Whitaker, went to common pleas court in Dayton Ohio, and has sued the Corporate entities" of Mr.Annamalai's wife Ms.Parvathi Sivanadiyan, with 100% in "violation of permanent injunction" orderd by the Bankruptcy Judge Massey, as such "the Trustee/Plaintiff "shall" not go after any of the transferred properties", and by that, time Trustee Whitaker has "used" the "above the law" person AUSA Samir Kaushal, to charge Mr.Annamalai with "bankruptct fraud" "monry laundering ( 21 counts in total ), and also used such arrest to inform the state court judge and has secured a "default judgement" against all the defendants in the state court action, with 100% disrespect and in violation of standing final judgement ordered by Judge Massey in Georgia. ( not to say that, Ms Sivanadiyan was "openly extorted and blackmailed for the same "Paru tower" property, "inside" the Judge Batten's court room, in "exchange" for the "dismissal" of the 22 counts, as vacated by the 11th circuit latter. See, the "notorized affidavit Evidence no.3, fully reincorporated herein by reference.

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8). Of course, the court appointed attorney Ms.Leigh Ann Webster, "before" Mr. Annamalai's 'mockery resentencing" has served "subpoenas" on all such alleged Financial institutions, as "claimed by the government attorneys", happened to be "none" of them are FDIC insured Financial institutions, and majority of them were simply, just, "merchant services entities"!!Take judicial notice, of Doc no.905 as well as the "resentencing memorandum" filed on or or about August 2021, by attorney Webster, in the underlying Criminal action no.1:13-cr-00437-TCB-CMS. Further see, true certified copies of Indiana action, Evidence no. 7 to 9, by reference fully and expressly reincorporated herein.

### III. Conclusion & Relief Sought

The order to show cause appears to be clearly "punitive" and can be best characterized as a "criminal contempt order". Most notably, the court did not cite any Federal rule, law or statue violation in support of such "sua sponte" punitive sanction, and Mr.Annamalai was "NOT" given with anything to address the court's errors, confusion or otherwise, "before" such "punitive sanctions per se". May be this court has sanctioned such "criminal punitive measures, based on "inherent power". However the inherent power, to sanction shall be for either civil or criminal contempt, "supported by facts and law", not by "beliefs". Here, the court's express "conclusion" as such two Indiana court order were in "forgery", is not only wrong, whereas that's were "obviously wrong" per se. The court's inherent power otherwise, is "NOT" a broad reservoir or power ready at an imperial hand, but a limited source, an implied power squeezed from the need to make the court function. NASCU INC 894, F.2d 696, 762 ( 5th Cir 1990 ). The court's inherernt power shall be exercised with utmost caution and restraint, and not against, someone, lawfully filed a petition for en banc determination, by "couching" the "beyond indisputable, public-court records" as "forgery, by simultaneously "punitively punishing" Mr.Annamalai, for a "crime" never and ever occured ( Forgery ).

Honestly, Mr. Annamalai is literally suffering with "exacerbated and elevated Post-Traumatic stress disorder, anxiety, depression, panic attacks, nightmares, 'after' the court's "punitive criminal contempt sanction" for "belief and confusion" of the panel judges, by criminally accusing of Mr. Annamalai of "forgery". At the closing Mr. Annamalai again expressly "AFFIRM" that, he is/was entitled to fullest due process and every constitutional protections, "before" he being sanctioned sua sponte with "criminal referral", which will and also harming him as we speak with above stated mental health matters.

WHEREFORE, Mr. Annamalai the "victim", Appellant, Judgement Creditor, respectfully ask this court for the following reliefs:-

1. An order to withdraw any and all reference for criminal referral to the United States attorney office for the Northern district of Georgia;
2. An ORDER towards the appellee and also to the United States Attorney's office for the Northern district of Georgia, to "respect, obey, comply with the "equitable order of specific performance" as ORDERED by the Indiana court in "full", in which several of the past and the present employees and as well as their privies who are various Federal actors "judicially admitted/ established as "Party-in-Privity", who are "judicially obligated to "specifically perform all their admitted acts in the Indiana court's proceedings.
3. To give full faith and credit for the Evidence no(s) 7, 8 and 9, which are all the "true judicial records" of the parallel Indiana court's proceedings, under 28 U.S.C. § 1738, which also carries a "mandatory character" as "must, which removes the "discretionary authority of this court, otherwise.
4. To vacate the denial of Hyde amendment attorney fees award and Grant all the relief as asked in the Panel review or en banc determination.
5. An appointment of counsel ( except any counsel(s), who have represented Mr. Annamalai in the past, and also an evidentiary hearing, to respect the protected constitutional rights, inclusive of "complete due process" under Fifth amendment and also under sixth amendment of the U.S. Constitution. with "equal treatment" & "equal protection".
6. Any more relief, apart from the ones as expressly sought herein to do complete justice in equity, and also to reaffirm that, "no one is above the law, please.

At the closing Mr. Annamalai affirmatively say that, as a well trained Hindu High priest, a Hindu Monk, he has the "same undivided "respect" honor" to this court, in the same way he has for his GOD. Nothing stated in this brief, was/is to disrespect any one per se. All he wishes let the law and facts wins and not the lies and false at any time. Be cautious, this motion is "in addition" being filed with the response, already mailed to this court, as per its "show cause order".

Respectfully Submitted this day of 29th Januray 2023.

\_\_\_\_\_  
Annamalai Annamalai  
Victim-Appellant-Judgement Creditor  
P.O.Box-1000, Marion, IL-62959

Verification pursuant to 28 U.S.C. § 1746

I, Annamalai Annamalai verifies under penalty of perjury that, the foregoing is True and correct to the best of my knowledge and beliefs.

01.29.2023.

\_\_\_\_\_  
Annamalai Annamalai

Certificate of Service

Annamalai certifies that, this document is caused to be mailed to this court as well as to the appellee, via first class mail, postage being prepaid, by invoking Prison mail box rule.

Executed on: 01.29.2023.

\_\_\_\_\_  
Annamalai Annamalai  
Appellant-Victim-Judgement  
Creditor.

Note: Kindly excuse my English writing and  
typing. I lacks typing skills, and English is  
NOT my first language.

A P P E N D I X - 3

E V I D E N C E / E X H I B I T N U M B E R - 1

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PAGE 18/13

ATLANTA POLICE DEPARTMENT  
Statement of Victim or WitnessStatement of: Lee Hill

Date: \_\_\_\_\_

TIME: \_\_\_\_\_

Race:  W  A  M  DOD

Home Address: \_\_\_\_\_

City/State/ZIP: \_\_\_\_\_

Home Phone Number: \_\_\_\_\_

Business Name/Address: \_\_\_\_\_

Business Phone Number: 404-641-7311

On January 7, 1990 in the Federal Court house for a hearing before Judge Massey in the Bankruptcy Court Room 1404, at the conclusion of the hearing opposing counsel left the courtroom first and the Priests from the Temple left last. Because my date is still hanged up, I was last to leave the courtroom, approximately 1 minute after the others walking towards the elevator bank. As the elevator doors opened it was partially filled and several of the Priests were on the elevator. They were digging up and moving to the side to make room for me and Mrs. Selvaratnam. Mr. Rajchumaran entered ahead of me and turned back to help me through the elevator doors and then jumped forward towards me. He told voice which I used to be a complainant said something in her native language. She and the Priests were all very upset. I saw the individual who I now know as: Velumuthu Rajchumaran place his hands on her shoulders pull me towards him and shout his croak into her buttocks area about 5 times. He was yelling something in his native language which I did not understand the rest of our going. Our group then exited back into the elevator lobby leaving him alone and then he got on the elevator again. There are two elevators in that group.

Mr. Rajchumaran was not a party or a witness to any of the court proceedings.

It should be noted that earlier during the day approximately 1:30, during a lunch break from court Mr. Rajchumaran was walking around the table where Dr. Selvaratnam's husband another of our lawyers and an expert witness were sitting. He was speaking in a soft but intense tone words that Dr. Selvaratnam claimed to be calling us all because the first table, Mr. Turner repeating this same phrase.

I have read / have had read to me the above statement, and it is true to the best of my belief and knowledge and has been given freely and voluntarily by me.

Signature: \_\_\_\_\_

Date: 1/15/00 End time: 1:30

Victim: \_\_\_\_\_

Witness: \_\_\_\_\_

DCS - 00356

Exhibit - 8

Exhibit -

E V I D E N C E / E X H I B I T N U M B E R - 2

FILER  
CRIMINAL DIVISION  
2010 AUG 12 PM 3:50  
FULTON COUNTY CLERK'S OFFICE

TOYOTA

CHARLES D. SHAW, SOLICITOR GENERAL  
SG# 86-453065-A10  
PARTY ID: Q2500934

I, Carmen D. Smith, Solicitor General for the County of Marion,  
State of Georgia, in the name and on behalf of the citizens of  
Georgia do hereby charge and accuse VICTORIANA RAGINIANIAN with  
the offense of BURGLAR BATTERY, a misdemeanor of a high and aggravated  
nature for that said accused in the County of Marion, State of  
Georgia on January 7, 2010 did intentionally make physical contact by  
touching the buttocks, area of private Slivianadian without the  
consent of said person, in violation of O.C.G.A. § 16-6-22.1,  
contrary to the laws of this State, the good order, peace and  
dignity thereof.

EVEN - ANYONE THROWS EVERYBODY OUT OF THE ROOM

EVEN - ANYONE THROWS EVERYBODY OUT OF THE ROOM

• 14

State of Georgia

**IN THE STATE COURT OF WILTON COUNTY  
STATE OF GEORGIA**

Case#: CT-00-03891-FCGM Document# 328 Filed: 08/18/08 Page# 42 of 250 Case: 19-13726 Date Filed: 05/18/2020 Page: 42 of 250

E V I D E N C E / E X H I B I T   N U M B E R - 3



IT IS ORDERED as set forth below:

Date: September 22, 2012

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:

CASE NO. 09-82915

Hindu Temple and Community Center of  
Georgia, Inc.,

CHAPTER 11

Debtor.

JUDGE MASSEY

Lloyd T. Whitaker, Trustee,

ADVERSARY NO. 09-9080

Plaintiff,

v.

Annamalai Annamalai, et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT TO  
COUNTS 1, 4, 5 (as it applies to Count 4), 7, 8, 10, 11, and 13-17  
OF THE SECOND AMENDED COMPLAINT

The Plaintiff in this adversary proceeding is Lloyd T. Whitaker in his capacity as  
Chapter 11 Trustee in the bankruptcy case of Hindu Temple and Community Center of Georgia,

EXHIBIT-

Exhibit no.

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Inc. (hereafter the "Debtor"). The Debtor filed its petition initiating this Chapter 11 case on August 31, 2009. Defendants are individuals who purport to have been employed by the Debtor and corporations affiliated with the Debtor and controlled by Defendant Annamalai Annamalai.

#### **L Procedural History.**

Plaintiff filed the initial complaint in this adversary proceeding on November 9, 2009 and an amended complaint with 8 counts on December 1, 2009. On December 17, 2010, Plaintiff filed a Second Amended Complaint with 17 counts, omitting some Defendants named in the first amended complaint and adding new Defendants. Not all Defendants are named in every count, and many counts involve only one Defendant.

On April 16, 2012, the court held a trial on one of those counts, Count 12, against Defendant Hindu Temple and Community Center of High Desert, Inc. in which Plaintiff objected to proofs of claim filed by that Defendant. The court entered a partial judgment on that same date disallowing those claims. High Desert appealed the partial judgment to the U.S. District Court, which dismissed the appeal in an order entered on September 7, 2012. Doc. 17 in Civil Action 1:12-CV-2016-TWT.

On June 27, 2012, two weeks prior to the trial of this proceeding, Defendants Annamalai<sup>1</sup>, Kumar Chinnathambi, and Parvathi Siva<sup>2</sup> filed demands for a jury trial. Plaintiff moved to strike those demands as untimely, which this court granted in an order entered on July 17, 2012.

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<sup>1</sup> "Defendant Annamalai" or "Mr. Annamalai" or "Annamalai" means Defendant Annamalai Annamalai, also known as "Dr. Commander Selvam," and does not mean or refer to his son Ashok Annamalai.

<sup>2</sup> Parvathi Siva's full last name is Sivamadiyan. See, e.g., A.P. Doc. Nos. 197 and 326. She is the spouse of Mr. Annamalai.

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On July 10, 2012, Defendant Annamalai and other individual Defendants filed motions to dismiss this proceeding on the ground that Plaintiff failed to comply with an order concerning the exchange of exhibits. The court denied those motions in an order entered on July 17, 2012. Those movants have appealed that order.

Beginning on July 11, 2012, this court conducted a trial lasting two and one-half days on the remaining 16 counts of the Second Amended Complaint. The only Defendant to appear at trial was Mr. Annamalai, who participated in the trial by, among other things, cross-examining Plaintiff and Plaintiff's expert witness. The court refused, however, to permit Mr. Annamalai to introduce evidence on the claims against him because he failed to respond to any of the discovery requests served on him by Plaintiff.

At the conclusion of the trial, the court directed Plaintiff to file a post-trial brief to specify the identity of each Defendant as to which Plaintiff contends it proved its claim or claims in each Count referring to "one or more Defendants" or using similar language. The court gave Mr. Annamalai two weeks after the service of Plaintiff's post-trial brief to file a response if he desired to do so. Plaintiff filed his post-trial brief on August 17, 2012. A.P. Doc. 376. Mr. Annamalai has not filed a response.

On September 6, 2012, an entity calling itself "King Craft, LLC" with an address at 1950 Hollow Trace Way, Norcross, GA filed a petition under Chapter 7 in this court under case no. 12-72473. This is the address shown on proof of claim no. 42 filed in the Debtor's main case by Defendant Kingcraft LLC. The Secretary of the State of Georgia shows a company called Kingcraft LLC located at the same address. The court must assume that King Craft, LLC is in fact the Defendant Kingcraft LLC. On September 18, 2012, the Trustee filed an emergency

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motion in that case seeking relief from the automatic stay with respect to this adversary proceeding, which the court granted in an order entered on September 20, 2012.

The court is submitting to the U.S. District Court pursuant to 28 U.S.C. § 157(c)(1) Proposed Findings of Fact and Conclusions of Law with respect to the Counts 2, 3, 5 (as it applies to Counts 2 and 3), 6, and 9 of the Second Amended Complaint.

Based on the evidence presented at the trial, the court makes the following Findings of Fact and Conclusions of Law with respect to Counts 1, 4, 5 (as it applies to Count 4), 7, 8, 10, 11, and 13 through 17. Counts 4 and 5 will be addressed first, followed by Counts 1, 7 and 8, which are also concerned primarily with the property that is the subject of Count 4. Thereafter, Count 10 will be addressed and then the remaining Counts involving objections to claims in the order set out in the Second Amended Complaint.

### **II. Abandonment of Claims Against Certain Defendants.**

Plaintiff introduced no evidence with respect to Defendants Ashok Annaralai, Vishal Kalyani and Ravi Krishna Murthy on Counts 1, 4, 5 (as it applies to Count 4), 7, 8 and 10 and in his post-trial brief did not contend that he had proved any claim against any of these Defendants. These Defendants are entitled to a judgment on these claims for lack of evidence against them.

### **III. Counts 4 and 5 (Against Various Defendants).**

In Count 4, Plaintiff seeks to avoid post-petition transfers of property of the Debtor's bankruptcy estate alleged to have been made by the Debtor (i) to Defendants Hindu Temple and Community Center of High Desert, Inc. ("High Desert"), Siddhi America LLC ("Siddhi America"), Kingcraft LLC ("Kingcraft"), Vishal & Paru America, Inc. ("Vishal & Paru"), Shiva Vishnu Temple of Georgia, Inc. ("Shiva Georgia"), Shiva Vishnu Temple of Virginia, Inc.

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("Shiva Virginia"), and International Healing Temple and Spiritual Retreat ("International Healing"), (collectively the "Corporate Defendants"), (ii) Hindu Temple of Ohio, Inc., and Paru Selvam, Inc. (collectively the "Ohio Corporate Defendants"), (iii) Defendant Annamalai and (iv) Defendant Parvathi Siva.

In Count 5, Plaintiff seeks to recover for the benefit of the Debtor's estate the value of the property alleged to have been transferred postpetition without court authorization.

**A. Findings of Fact.**

Prior to and after the filing of the petition of the Debtor on August 31, 2009 and until November 4, 2009 when the Trustee was appointed, Defendant Annamalai controlled the Debtor and the Corporate Defendants. Defendants Annamalai, Viswanathan Lakshmanan and Kumar Chinnathambi were officers or Directors of the Debtor, as confirmed by Debtor's Statement of Financial Affairs filed on September 17, 2009. Viswanathan Lakshmanan and Kumar Chinnathambi each were also officers of High Desert.

Prior to the filing of the petition, Debtor published a magazine called the "Siddhi Times USA." Ex. 255. The Debtor also owned several web sites and telephone numbers through which the Debtor was able to solicit or attract patrons who paid for services rendered by the Debtor. At the meeting of creditors, Defendant Annamalai testified the Debtor had more than 22 web sites, which were the sources of income for the Debtor. Ex. 257, Tr. pp. 17-18.

The Corporate Defendants admitted that on or after August 31, 2009, they took control over certain of the Debtor's assets, including the "Siddhi Times USA," web sites and telephone numbers, without paying any compensation to the Debtor and then used those assets to generate income for themselves. Exs. 119, 121, 133 and 177. After the petition date, High Desert was identified in a magazine called "Siddhi Times" as its publisher. That magazine was virtually

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identical in form and general content to "Siddhi Times, USA." Exs. 256 and 257. Both magazines provided information about the web sites and the phone numbers to obtain services of the kind that the Debtor provided.

David Crumpton, Plaintiff's accountant, testified as an expert witness concerning the effect of the use of the magazine, web sites and telephone numbers by the transferees and in particular High Desert. Mr. Crumpton's testimony showed that the Debtor had used those assets prepetition to generate income for itself. He further showed that Debtor's credit card receipts decreased rapidly after the petition date, while credit card receipts deposited to an account of High Desert increased substantially at the same time. Exs. 265, 266, and 277. From the petition date through November 2009, High Desert had credit card receipts totaling \$111,298.26, attributable to its use of the "Siddhi Times USA," the web sites and the telephone numbers.

The Debtor while acting as debtor in possession surrendered control of the "Siddhi Times USA," the web sites and the telephone numbers that the Debtor had used to generate income prior to filing bankruptcy to High Desert and the other Corporate Defendants and thereby parted with effective ownership of that property. This court did not authorize the Debtor to part with or surrender control of that property. The value of the magazine, web sites and telephone numbers transferred by the Debtor postpetition to High Desert and the other Corporate Defendants was not less than \$111,000.00.

Defendant Annamalai admitted that after the petition date, he caused assets of the Debtor to be conveyed to himself, his family members, or entities that he controls, without authorization from this court. The Debtor made payments to or for the benefit of Mr. Annamalai prior to the petition date for which Mr. Annamalai gave no value. (These transfers are the subject of Counts 2 and 3.) Mr. Crumpton testified that after the petition date, High Desert made payments

to and on behalf of Annamalai totaling at least \$67,000.00, which payments were similar to those made by the Debtor to him prepetition. The source of those payments was the bank account of High Desert into which credit card receipts referred to above were deposited postpetition.

~~The Ohio Corporate Defendants and Parvathi Siva admitted that they received assets of the Debtor after the petition date without court authorization. But Plaintiff introduced no evidence to identify such assets or to establish their value.~~

~~There is no evidence that any of the transferees of estate property gave any value to the estate in respect of those transfers.~~

#### **B. Conclusions of Law.**

Section 549 of the Bankruptcy Code provides:

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate--

- (1) that occurs after the commencement of the case; and
- (2)(A) that is authorized only under section 303(f) or 542(c) of this title; or
- (B) that is not authorized under this title or by the court.

Section 549(a) of the Bankruptcy Code authorizes a trustee to recover unauthorized post-petition transfers of estate property. See 11 U.S.C. § 549(a) ("[T]he trustee may avoid a transfer of property of the estate-(1) that occurs after the commencement of this case; and ... (2)(b) that is not authorized under this title or by the court."). To avoid a transfer under Section 549(a) a trustee need only demonstrate: (1) a post-petition transfer (2) of estate property (3) which was not authorized by the Bankruptcy Code or the court. See 11 U.S.C. § 549(a) ("[T]he trustee may avoid a transfer of property of the estate-\*1259 (1) that occurs after the commencement of the case; and (2)(B) that is not authorized under this title or by the court"); *Manuel v. Allen*, 217 B.R. 952, 955 (Bankr.M.D.Fla.1998) (explaining that pursuant to Section 549, "the criteria for avoidance are (1) a transfer; (2) of property of the estate; (3) which occurred postpetition; and (4) was not authorized by the Bankruptcy Code or the court"). After the trustee makes that showing, the party asserting an established transfer's validity bears the burden of proving it valid. Fed. R. Bankr.P. 6001. Once a court finds a transfer avoidable, Section 550(a) allows the trustee to recover the property transferred from the initial transferee. See 11 U.S.C. § 550(a) ("[T]o the extent that a transfer is avoided under section ... 549 ...

the trustee may recover, for the benefit of the estate, the property transferred, or if the court so orders, the value of such property, from-(1) the initial transferee of such transfer...").

*In re Delco Oil, Inc.*, 599 F.3d 1255, 1258-1259 (11th Cir. 2010).

The term "transfer" used in section 549 is defined in section 101(54)(D) of the Bankruptcy Code to mean:

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with--

- (i) property; or
- (ii) an interest in property.

The "Siddhi Times USA," the web sites and the telephone numbers control of which was surrendered postpetition by the Debtor to the Corporate Defendants constituted property of the Debtor's bankruptcy estate prior to and immediately after the petition date. 11 U.S.C. § 541.

The Debtor's postpetition surrender of control over the "Siddhi Time USA," the web sites and the telephone numbers was a transfer of property within the meaning of section 101(54)(D).

Section 550 of the Bankruptcy Code provides:

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from--

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made.]

In his post-petition brief, Plaintiff asked for a judgment against the Corporate Defendants for the value of the unauthorized postpetition transfers, though he mistakenly concluded that the revenues derived from the use of the transferred property constituted property of the estate. He did not seek to recover the transferred property. Under section 550, Plaintiff is entitled to recover

from the Corporate Defendants, jointly and severally, the sum of \$111,000.00, representing the value of the "Siddhi Time USA," the web sites and the telephone numbers transferred by the Debtor postpetition to the Corporate Defendants without court approval.

Plaintiff proved through Mr. Crumpton's testimony that Mr. Annamalai was the person for whose benefit the unauthorized postpetition transfers were made and that the value of those transfers made to him or for his benefit totaled \$67,000.00. Plaintiff is entitled to only a single satisfaction of his claim and hence may not recover more than \$111,000.00 in total from Mr. Annamalai and the Corporate Defendants with respect to the postpetition transfers.

Plaintiff is not entitled to recover any amount from the Ohio Defendants and Parvathi Siva because he failed to introduce any evidence to identify property of the estate allegedly transferred to each of them or to show the value of such property.

#### IV. Counts 1, 7 and 8 (Against Various Defendants).

In Count 1, Plaintiff seeks a turnover of property of the estate from any Defendant in possession of property of the estate. In Count 7, Plaintiff seeks sanctions for the violation of the automatic stay with respect to the unauthorized post-petition transfers. In Count 8, Plaintiff seeks injunctive relief against various Defendants.

In his post-trial brief, however, Plaintiff limited his demand to the following:

(1) a judgment against Defendant Annamalai and other Defendants he controls in the amount of \$1,400,000.00 for the use of the magazines, web sites and telephone numbers. To compute that amount, Plaintiff asks the court to infer that Mr. Annamalai has generated \$40,000.00 per month for 35 months from the use of the magazines, web sites and telephone numbers.

(2) a judgment sanctioning Mr. Annamalai for violating the stay.

(3) a judgment enjoining Defendants from using the magazines, web sites and telephone numbers and directing the turnover of that property and the contents of a safe deposit box.

(4) a judgment against Defendant Bank of America, N.A. directing it to turn over any funds it holds in any bank account in the name of or for the benefit of any Defendant up to the amount of any judgment against any Defendant.

#### **A. Findings of Fact**

The findings of fact in Part III. A. above are incorporated here by reference. Plaintiff introduced no evidence to show that a safe deposit box controlled by any Defendant contained property of the Debtor's bankruptcy estate.

The Second Amended Complaint was served on Bank of America, N.A. by mailing copies to its registered agent. There is no evidence that the summons and first amended complaint were ever served on Bank of America, N.A., which has not appeared in this adversary proceeding.

#### **B. Conclusions of Law.**

Section 550 of the Bankruptcy Code provides alternative relief: recovery "for the benefit of the estate, [of] the property transferred, or, if the court so orders, the value of such property." The word "or" does not mean "and." A trustee must choose one or the other. *See In re C.W. Min. Co.*, 465 B.R. 226, 233-234 (Bankr.D.Utah 2011) ("It is within the court's discretion to order either recovery of the property transferred or its value." (Emphasis added.))

In seeking a money judgment under section 550 with respect to unauthorized postpetition transfers, Plaintiff elected to recover the value of property transferred and not the transferred property itself. Post-Trial Brief - A.P. Doc. 376. In doing so, he abandoned any claim to the

100%

transferred property and hence is not entitled to an injunction prohibiting the transferees from using that property or its turnover.

Plaintiff introduced insufficient evidence to identify any property of the estate in possession of any Defendant other than the "Siddhi Times USA," the web sites and the telephone numbers and is not entitled to turnover of unidentified property that may or may not exist, despite admissions of Defendants that they received unauthorized transfers of property of the estate and is not entitled to injunctive relief as to such alleged transfers.

Because Plaintiff elected a judgment for the value of the transfers avoided under section 549, he is not entitled to a judgment against Mr. Annamalai beyond that granted with respect to Counts 4 and 5. The court declines to infer from the evidence presented that Mr. Annamalai and other Defendants generated total revenue of \$40,000.00 a month after November 2009 for 35 months using the magazines, web sites and telephone numbers that belonged to the Debtor.

The court declines to sanction Mr. Annamalai for violating the automatic stay imposed by section 362 based on the postpetition transfers of the magazine, web sites and telephone numbers, notwithstanding that he controlled both the Debtor and the Corporate Defendants. Transfers in violation of the automatic stay are void. *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1308 (11th Cir. 1982). If unauthorized postpetition transfers are void as violations of the automatic stay, section 549 would serve no purpose. Hence, section 362 does not apply to transfers initiated by the debtor. *In re Schwartz*, 954 F.2d 569, 574 (9th Cir. 1992).

The court lacks jurisdiction over Bank of America, N.A., and hence Plaintiff is not entitled to a judgment against Bank of America, N.A.

**V. Count 10 (Against various Defendants).**

In Count 10, Plaintiff seeks a judgment against Defendants Indian Handicrafts, High Desert, Kingcraft and Annamalai determining that personal property, including an automobile, sold by the Trustee was property of the Debtor's estate and that these Defendants have no interest in the proceeds of the sales of such property.

**A. Findings of Fact.**

In response to question 14 on its Statement of Financial Affairs, Debtor asserted that it was in possession of statues and "stonecraft" belonging to Indian Handicrafts; desks, computers, cameras, furniture, and other equipment belonging to High Desert; leather couches and love seats belonging to Mr. Annamalai; and fencing and metal containers belonging to Kingcraft. Ex. 5.

On March 10, 2010, Mr. Whitaker, in his capacity as Chapter 11 Trustee of the Debtor, filed a motion for authority to sell at a public auction personal property of the Debtor located at Debtor's premises at 5900 Brook Hollow Parkway, Norcross, Georgia, free and clear of liens and other interests. Ex. 19. The personal property thereafter sold by the Trustee consisted of "the Debtor's business and/or religious assets," including furniture, office equipment, statues, idols, religious materials and other items (hereafter the "Personal Property"). Ex. 19.

The court held a hearing on the Trustee's motion to sell on March 25, 2010. The only party in interest that objected to the sale was Defendant Indian Handicrafts, which through counsel made an oral objection to the sale of statues, which it claimed it owned. The court granted the motion in an order entered on April 1, 2010. The order provided that the proceeds of the sale would be "held by the Trustee pending a subsequent determination by the court as to whether the proceeds should be distributed to either Indian Handicraft or the Trustee, or apportioned between the parties or otherwise." Ex. 168.

On September 15, 2010, the Trustee filed an affidavit describing the Personal Property sold by the Trustee.

Indian Handicrafts admitted that the Debtor owned all statues, idols and other Personal Property as of the petition date and that it had no ownership interest in any statues, idols or other Personal Property located on the Debtor's premises as of the petition date. Exs. 159 and 164. By failing to respond to requests to admit, High Desert and Kingcraft each admitted that neither of them owned any Personal Property located on the Debtor's premises at any time on or after the petition date, and that neither the Trustee nor the Debtor sold any Personal Property belonging to either of them at any time on or after the petition date. Exs. 77, 82, and 133. There is no credible evidence to show that any entity other than the Debtor owned any of the Personal Property or that Defendants Indian Handicrafts, High Desert, Kingcraft or Annamalai has any interest in the proceeds of the sale of Personal Property.

Pursuant to a joint motion of the Trustee and Mr. Annamalai to sell a 2008 Lexus GX470 automobile titled in the name of the Debtor and Annamalai, the court entered an order on March 24, 2010 authorizing the Trustee to sell the Lexus, pay off debt secured by the Lexus and to hold the proceeds pending a determination of the extent of the claimed interests of the Trustee and Mr. Annamalai in the Lexus. Ex. 26, 27 and 28. In refusing to answer requests to admit and to provide other discovery, Defendant Annamalai asserted a blanket claim of the 5th Amendment privilege against self-incrimination. Exs. 118 and 120. In granting motions to compel discovery, this court determined that he was not entitled to rely on a blanket claim of privilege and therefore made the requested admissions, including that all payments on the Lexus were paid by the Debtor and that the Trustee sold no property after the petition date of any person or entity other than the

Debtor. Exs. 130, 131 and 163. There was no credible evidence presented at trial showing that Mr. Annamalai had any interest in the Lexus or has any interest in the proceeds of its sale.

**B. Conclusions of Law.**

Substantial controversies exist with respect to the questions of whether and to what extent the proceeds of the sale of the Personal Property and the Lexus by the Trustee are property of the Debtor's estate. Orders of this court authorizing the sales of the Personal Property and the Lexus left open this question as to statues claimed by Indian Handicrafts and as to proceeds of the sale of the Lexus claimed by Annamalai. Plaintiff proved that Defendants Indian Handicrafts, High Desert, Kingcraft and Annamalai have no interest in the proceeds realized from the sale of the Personal Property or the Lexus, and Plaintiff is entitled to a judgment to that effect.

**VI. Counts 11, 13, 14, 15, 16 and 17 (Specific Defendants).**

Plaintiff objects to the proofs of claims filed by various Defendants in Counts 11 (Annamalai), 13 (Kumar Chinnathambi), 14 (Indian Handicrafts), 15 (Vishal & Paru, LLC), 16 (Viswanathan Lakshmanan) and 17 (Kingcraft) on the same grounds - that the Debtor's books and records show no basis for any of those claims and that each claimant has admitted that no debt of the Debtor to that claimant exists.

**A. Findings of Fact.**

**Count 11.** Defendant Annamalai filed three proofs of claim in the main case of the Debtor. None of the proofs of claim has any documentation attached showing any basis for the claim. David Crumpton, the accountant for the Trustee, testified as an expert witness that he reviewed the books and records of the Debtor and found no basis for any claim of Mr. Annamalai against the Debtor. By failing to respond to requests to admit, Mr. Annamalai admitted that the Debtor does not owe him any amount for any reason. The objections to claims in Counts 11

through 17 were added by the Second Amended Complaint. Mr. Annamalai never filed an answer to the Second Amended Complaint and therefore admitted the allegations in paragraphs 117, 118 and 119 in Count 11.

**Count 13.** Defendant Kumar Chinnathambi filed two proofs of claim in the main case of the Debtor. None of the proofs of claim has any documentation attached showing any basis for the claim. David Crumpton, the accountant for the Trustee, testified as an expert witness that he reviewed the books and records of the Debtor and found no basis for any claim of Kumar Chinnathambi against the Debtor. By failing to respond to requests to admit, Kumar Chinnathambi admitted that the Debtor does not owe him any amount for any reason. This Defendant did not attend the trial, and no evidence in support of his claim was offered at trial.

**Count 14.** Defendant Indian Handicrafts filed two proofs of claim in the main case of the Debtor. The second one, Claim no. 43, had attachments purporting to support the claim. David Crumpton, the accountant for the Trustee, testified as an expert witness that he reviewed the books and records of the Debtor and found no basis for any claim of Indian Handicrafts against the Debtor. Indian Handicrafts admitted that the Debtor owned all statues, idols and other Personal Property as of the petition date and that it had no ownership interest in any statues, idols or other Personal Property located on the Debtor's premises as of the petition date. Exs. 159 and 164. This Defendant did not attend the trial, and no evidence in support of its claim was offered at trial.

**Count 15.** Defendant Vishal & Paru filed Proof of Claim no. 18 for \$114,000.00 in the main case of the Debtor. Its proof of claim fails to state the basis for the claim and has no documentation attached. David Crumpton, the accountant for the Trustee, testified as an expert witness that he reviewed the books and records of the Debtor and found no basis for any claim of

Vishal & Paru against the Debtor. By failing to respond to requests to admit, Vishal & Paru admitted that the Debtor does not owe it any amount for any reason. This Defendant did not attend the trial, and no evidence in support of its claim was offered at trial.

**Count 16.** Defendant Viswanathan Lakshmanan filed Proof of Claim no. 40 in the main case of the Debtor purporting to replace a prior claim, apparently the claim listed in the Schedules of the Debtor. Proof of Claim no. 40 is supported by no documentation showing that Debtor is liable for the claim. David Crumpton, the accountant for the Trustee, testified as an expert witness that he reviewed the books and records of the Debtor and found no basis for any claim of Viswanathan Lakshmanan against the Debtor. By failing to respond to requests to admit, Viswanathan Lakshmanan admitted that the Debtor does not owe him any amount for any reason. This Defendant did not attend the trial, and no evidence in support of his claim was offered at trial.

**Count 17.** Defendant Kingcraft LLC filed Proof of Claim no. 42 referring to fencing but stated no amount for its claim. Its proof of claim fails to state the basis for the claim and has no documentation attached. David Crumpton, the accountant for the Trustee, testified as an expert witness that he reviewed the books and records of the Debtor and found no basis for any claim of Kingcraft against the Debtor. By failing to respond to requests to admit, Kingcraft admitted that the Debtor does not owe it any amount for any reason. This Defendant did not attend the trial, and no evidence in support of its claim was offered at trial.

#### **B. Conclusions of Law.**

Section 502(a) of the Bankruptcy Code provides that a claim, proof of which is filed under section 501 of the Bankruptcy Code, is deemed allowed, unless a party in interest objects. Under section 502(b), the court must determine the amount of a claim to which an objection is

filed and allow the claim unless "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). The objections of Plaintiff to the claims of the Defendants identified in Counts 11 and 13 through 17 are based on section 502(b)(1).

Pursuant to Rule 3003(c)(4) of the Federal Rules of Bankruptcy Procedure, the proofs of claim filed by each of the Defendants in the Counts 11 and 13 through 17 supercede the claims listed for those Defendants in the Debtor's Schedules. Hence, the proofs of claims to which the Plaintiff has objected are the only claims that these Defendants have in the Debtor's case. Up to this point those claims have been deemed to be allowed claims.

The party objecting to the claim bears the initial burden of presenting sufficient evidence to overcome the presumed validity and amount of the claim. *In re Pacific Arts Publishing, Inc.*, 198 B.R. 319, 321 (Bankr.C.D.Cal.1996) (citations omitted); *In re Challa*, 186 B.R. 750, 754 (Bankr.M.D.Fla.1995); *In re Clements*, 185 B.R. 895, 898-99 (Bankr.M.D.Fla.1995). Although that burden is easily satisfied, affirmative proof must be offered to overcome the presumed validity of the claim. *Id.* If the objecting party overcomes the *prima facie* validity of the claim, then the burden shifts to the claimant to prove its claim by a preponderance of the evidence. *Id.*

*In re Smith*, 249 B.R. 328, 332-333 (Bankr.S.D.Ga. 2000).

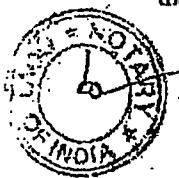
At trial Plaintiff met his burden of going forward with proof showing each claim of each Defendant named in Counts 11 and 13 through 17 is unenforceable against the Debtor. Each Defendant then had the burden of proving his or its claim or claims. None of the Defendants, except Mr. Annamalai, appeared at trial to prove their respective claims. Mr. Annamalai was not permitted to present evidence to show his claims were enforceable against the Debtor because he failed to provide discovery and was deemed to have made admissions that he had no enforceable claim. The evidence presented by Plaintiff strongly suggests that these Defendants filed fraudulent claims. Accordingly, Plaintiff is entitled to a judgment disallowing each such claim.

E V I D E N C E / E X H I B I   N U M B E R - 4

Affidavit of Mrs. Parvathi Sivanadiyan

My name is Parvathi Sivanadiyan, I'm a resident of Texas and living at 7522 Bayway Drive, Baytown, TX, 77520, I'm giving the following affidavit to the best of my knowledge and memories.

1. I'm the owner of Ashok's Spiritual Healing Center, a Texas corporation. My corporation was dragged into a lawsuit by a person named Mr. Loyd Whitaker. Who to my understanding is an appointed receiver/ship of Hindu Temple & Community Center of Georgia Inc which is still an active litigation continuing in Montgomery County common pleas court and in the second district appellate court in Ohio.
2. My business Ashok's Spiritual Healing Center is fully represented by an Ohio attorney by the name Mr. Eric J. Wittenberg. Also, I have an attorney representing my personal interest by the name Mr. Brian McEvoy Esq., who is currently located in Atlanta, GA.
3. I'm married to my husband Annamalai Annamalai for over 25 years. He was incarcerated awaiting trial November of last year initially based on the alleged bankruptcy fraud charges of approximately \$2,000. I know personally Mr. Hayden Kepner who has sued me, my minor daughter, and my son in the year 2009.
4. I own a real property on 32-24 North Main Street, Dayton, OH which was owned by my Texas entities.
5. On 7<sup>th</sup> January 2014 I was present with my son and daughter in the courtroom for my husband's hearing. Also, I was a witness intent to testify for my husband if the need arises.
6. Mr. Hayden Kepner approached me physically and threatened me in a quite voice, he told me that I need to give away my real property at 32-24 N Main Street named as "Paru Tower" to



someone whom Mr. Kepner and or Mr. Whitaker knew, so that Mr. Kepner and Mr. Whitaker would assist in the release of my husband from the criminal case. I was worried, upset, fearful about my husband's malicious prosecution at that minute. I was really shocked to see the open extortion that took inside the courtroom.

7. He also gave me his business card and advised that I contact him after that statement.
8. My Ohio office property to the best of my knowledge has a reproduction value of more than \$25 million. Having said that, Mr. Kepner gave me the feeling that my husband was up against the wall and that giving the property away was the only option to help my husband.
9. My son and I were really worried and upset that someone could approach this boldly inside the courtroom where my husband, his attorneys, federal prosecutors and others were present. However, I believed that I was sitting in a very convenient location in the back for Mr. Kepner to approach me by knowing that I have two children who can be easily intimidated, harassed, threatened, and extorted.
10. I have my son and daughter to witness for the same event.
11. Unfortunately January 7<sup>th</sup> is a memorable day for me because in 2010 in the same federal court I had a sexual assault attempt by a person by the name of Mr. Valmikinathan Ragunathan affectionately called as "Val" by Mr. Kepner and Mr. Loyd Whitaker. Again on January 7<sup>th</sup> 2014 I had another criminal incident which was an extortion attempt towards me this time by an attorney licensed to practice in Georgia.
12. According to the Georgia Bar ethics, a represented person should not be contacted by the opposing council without the concerned attorney's knowledge and/or presence.
13. I strongly urge the Honorable court to sanction Mr. Hayden Kepner and recommend him to the Georgia Bar grievance council to properly reprimand him. Also, report him for further criminal prosecution to the right authorities and agencies for openly committing extortion, black mailing and intimidation. I would also like to press criminal charges against Mr. Kepner for extortion



STATE OF \_\_\_\_\_

COUNTRY OF \_\_\_\_\_

SIGNATURE \_\_\_\_\_

SUBSCRIBED and SWORN TO before me by Parvathi on this 16<sup>th</sup> day of May 2015  
2014.



3.05.15  
16/05/15  
S. M. PRAKASH KARAN, B.A.B.L.  
NOTARY PUBLIC  
(GOVT OF INDIA) NO. 1349/192  
29, REVATHY BUILDING  
GOPALAKURAM 2nd STREET  
COIMBATORE - 641018  
CELL: 9894139173

E V I D E N C E / E X H I B I T N U M B E R -5

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GET EDUCATED A LITTLE BIT IN THE NEXT WEEK, YOU CAN LET ME KNOW.

MR. KAUSHAL: YOUR HONOR, THE REASON WE FILED THIS MOTION IS BECAUSE DEFENSE COUNSEL RAISED THIS ISSUE IN THE PRIOR FILING SUGGESTING THAT SUCH A PRIVILEGE ACTUALLY EXISTED. I THINK DEFERRING IT UNTIL LATER AND OPENING THE DOOR TO THE POSSIBILITY OF IT BEING RAISED AT TRIAL, I AM NOT SURE IF THAT MAKES SENSE GIVEN THAT DEFENSE COUNSEL HAS JUST ADMITTED THAT THERE IS NO PRIVILEGE FOR HIS CLIENT TO INVOKE.

THE COURT: RIGHT.

MR. SAMUEL: BUT WE DON'T KNOW THE ANSWER TO THAT.  
I DON'T ADMIT IT.

THE COURT: HE IS NOT QUITE -- HE IS LIKE THE GUY IN MONTY PYTHON. HIS ARMS AND LEGS HAVE BEEN CHOPPED OFF BUT HE IS NOT QUITE WILLING TO GIVE UP. HE IS STILL FIGHTING. AND I AM GOING TO LET HIM FIGHT WITH THAT CONDITION AND FIGHT IN THAT CONDITION.

THE SIXTH AND FINAL PORTION OF THE GOVERNMENT'S MOTION IN LIMINE IS THE PORTION TO ADMIT CERTIFIED BANK FOREIGN RECORDS. I THOUGHT THAT HAD BEEN RESOLVED. IS THE DEFENDANT OPPOSING THAT?

MR. SAMUEL: SORRY?

THE COURT: THE CERTIFIED FOREIGN BANK RECORDS.

MR. SAMUEL: THE CERTIFICATION APPEARS

Exhibit #

E V I D E N C E / E X H I B I T   N U M B E R - 6

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

Case no.1:13-cr-437-TCb-CMS

ANNAMALAI ANNAMALAI

Defendant.

DEFENDANT ANNAMALAI ANNAMALAI 'S " FIRST REQUEST FOR ADMISSIONS "  
& PRODUCTION OF DOCUMENTS

To:   
Lloyd T.Whitaker  
C/O James Hayden Kepner  
Attorney Atlaw  
SCORGINSON & WILLIAMSON  
4401 Northside Parkway N.W.  
Suite # 450  
Atlanta Georgia-30327

I, Annamalai Annamalai ( ANNAMALAI ANNAMALAI ) a defendant in the above captioned action, is erving this discovery requests pursuant to Federal Rule of Civil Procedure 36 ( Admissions ( and 34 ( Production of documents ), in support of pending petition of mine seeking award for attorney fees and othe expenses under Hyde Amendment Act. You have 30 days to respond or otherwise to me on these discovery requests. Please also understand about 'prison mail box rules ". Just also you know that, this discovery is directed to you on this 'ancillary proceedings', which is NOT affecting my 'liberty interests'.

Admission no.1

Admit that your name is Lloyd T.Whitaker

Response:

Admission No.2

Admit that, all the matters as stated in the underlying petition for an award of attorney fees and expenses are correct and true & nothing but True.

Response:-

Page 1 of 4

Admission No. 4:-

- Admit that, the following persons are directly and or indirectly participated and or involved with their real intent to 'unlawfully ' search and seize the personal properties of Annamalai and Sivanadiyan, and thereby, knowingly and intentionally caused an injury -in fact for Annamalai and Sivanadiyan.

- (1). Jacqueline H.Reynolds,-( U.S.Federal special Agent ) 2. John A. Moon Sr., ( lender to Mavles Yoga & spiritual - Healing center ) 3. James Hayden Kepner,( Bankruptcy - Attorney at Law in Atlanta Georgia ) NAVARRE ROBINSON PARTNERSHIP, ( the present owner of real property located at 7600 Bayway Drive, Baytown, TX-77520 ) 6. MOON CREDIT CORPORATION,( The corporation lended money to the real property located at 7600 Bayway drive, Baytown, TX-77520 ) 7. ValmiginaNath Raghunathan, ( Agent of Federal Agent Jacqueline H.Reynolds ) 8. Nathan Ravichandran, ( Agent of Federal agent Jacqueline H.Reynolds 9. Gopakumar Venugopalan, ( Agent of Jacqueline H.Reynolds 11. Douglas A. Durham, ( Attorney for MOON CREDIT CORPORATION ) 12. Joseph Salhab,(Attorney for MOON CREDIT CORPORATION 13. Samir Kaushal, ( Assistant U.S.Attorney 14. Steven D. Grimberg(Assistant U.S.Attorney ).

Response:

Admission No. 5.

- Admit that, the actual and real value of the personal properties of Annamalai and Sivanadiyan, which were, unlawfully searched and seized by YOU, with your various privles inclusive of several U.S.Government Agents and or employees, exceeds the value of \$ 5 Billion United States dollars.

Response:-

Admission No. 6:-

- Admit that Jacqueline H.Reynolds is the RICO ENTERPRISE.

Response:-

Admission no. 7:-

- Admit that, you are the employee and or an associate of the RICO ENTERPRISE as shown above herein.

Response:

Admission no.8.

- Admit that, YOU will take every necessary steps within, 30 days to return all the properties as evidenced by the "Evidence PSA-002 ", attached herewlth, towards Annamalai and Sivanadiyan respectively.

Response:

Admission No. 9.

- Admit that John A. Moon Sr and NAVAREE ROBINSON PARTNERSHIP and YOU, no one has followed the Texas property code(s) 24.002 and 24.005 et seq., ' before accessing and or entering the Real and personal properties in fact kept and or located at Baytown, TX-77520, which is also known as the Temple complex of Shiva Vishnu Temple of Tex with those properties are belonging either to Annamalai and or Sivanadiyan.

Response:-

Page 2 of 4

Admission No.3

Admit that, the defendant ANNAMALAI ANNAMALAI is an innocent Hindu High Priest, a man of honor & faith.

Response:

Admission No.4

Admit that, YOU with your privies have orchestrated a massive malicious prosecution against Annamalai ( ANNAMALAI ANNAMALAI ) and by the way harmed and injured ANNAMALAI ANNAMALAI.

Response:

Admission no.5. Admit that, YOU and or YOU with your privies in the Executive department of the UNITED STATES OF AMERICA, who is the plaintiff to this action, will take very immediate steps to dismiss the underlying indictment of this criminal case, and also take immediate actions to expunge the criminal records of ANNAMALAI ANNAMALAI, on or before November 5, 2019.

Response:

Admission no.6

Admit that, because of YOUR malicious, wilfull bad faith, vexatious and frivolous actions you have caused an irreparable harms, and loss of property and liberty interests of ANNAMALAI ANNAMALAI and his wife Parvathi Sivanadiyan, which exceeds over \$ 40 Billion United States Dollars.

Response:

Admission no.7

Admit that, YOU will take necessary steps to lawfully return any and all Trade secrets which were misappropriated by you and or by your privies which is worth over seven Billion United States Dollars, towards Annamalai and or to his wife and kids within 90 days from the mailing of this document.

Response:

Admission no.8:

Admit that, ANNAMALAI ANNAMALAI in fact DID NOT commit any criminal acts at all, and all the charhes in the case no 1:13-cr-00437-TCB-CMS are all bogus, and brought with a vexatious and bad faith intent.

Response:

Admission no.9

Admit that, Annamalai ( ANNAMALAI ANNAMALAI ) conviction with relates to counts 10-20, 21-30, and 34 all were reversed and or vacated.

## II. REQUEST FOR PRODUCTION OF DOCUMENTS:-

I, Annamalai Annamalai requests you to produce the following records pursuant to Federal Rule of Criminal Procedure 34, within 30 days from the 'mailing' of this document(s).

" Produce any and all " E-Mails " ( Electronic mails, received by you and or sent by you for/from/to any one concerning ANNAMALAI ANNAMALAI, Annamalai Annamalai, Parvathi Sivanadiyan, PĀRVATHI SIVANADIYAN, KUMAR CHINNATHAMBI, Kumar Chinnathambi, and about any of the Hindu Temples and or business entities in which the above named persons involved with. ( I am NOT requesting any privileged records, if that exists )

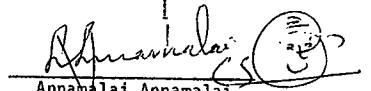
Respectfully Submitted this day of 10.01.2019.

  
Annamalai Annamalai  
P.O. Box-1000  
Marion, IL-62959

## CERTIFICATE OF SERVICE

Annamalai Annamalai certifies that this document is caused to be mailed to this court and also to the party/person as shown in the first page of this document, via first class mail, postage being prepaid, by depicting the same prison's internal mailing system for postal delivery accordingly.

Executed on: 10/01/2019.

  
Annamalai Annamalai  
P.O.Box-1000  
Marion, IL-62959

II. REQUEST FOR PRODUCTION OF DOCUMENTS:-

I, Annamalai Annamalai requests you to produce the following records pursuant to Federal Rule of Criminal Procedure 34, within 30 days from the 'mailing' of this document(s).

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Respectfully Submitted this day of 10.01.2019.

  
Annamalai Annamalai  
P.O. Box-1000  
Marion, IL-62959

CERTIFICATE OF SERVICE

Annamalai Annamalai certifies that this document is caused to be mailed to this court and also to the party/person as shown in the first page of this document, via first class mail, postage being prepaid, by depicting the same prison's internal mailing system for postal delivery accordingly.

Executed on: 10/01/2019.

  
Annamalai Annamalai  
P.O. Box-1000  
Marion, IL-62959

Admission No. 4:-

- Admit that, the following persons are directly and or indirectly participated and or involved with their real intent to 'unlawfully' search and seize the personal properties of Annamalai and Sivanadiyan, and thereby, knowingly and intentionally caused an injury -in fact for Annamalai and Sivanadiyan.

- (1). Jacqueline H.Reynolds,-( U.S.Federal special Agent ) 2. John A. Moon Sr., ( lender to Mavles Yoga & spiritual - Healing center ) 3. James Hayden Kepner,( Bankruptcy - Attorney at Law in Atlanta Georgia )  
- NAVARRE ROBINSON PARTNERSHIP, ( the present owner of real property located at 7600 Bayway Drive, Baytown, TX-77520 ) 6. MOON CREDIT CORPORATION,( The corporation lended money to the real property located at 7600 Bayway drive, Baytown, TX-77520 ) 7. Valmignathan Raghunathan, ( Agent of Federal Agent Jacqueline H.Reynolds ) 8. Nathan Ravichandran, ( Agent of Federal agent Jacqueline H.Reynolds  
- 9. Gopakumar Venugopalan, ( Agent of Jacqueline H.Reynolds 11. Douglas A. Durham, ( Attorney for MOON CREDIT CORPORATION ) 12. Joseph Salhab,(Attorney for MOON CREDIT CORPORATION 13. Samir Kaushal,  
- ( Assistant U.S.Attorney 14. Steven D. Grimberg(Assistant U.S.Attorney ).

Response:-

Admission No. 5.

- Admit that, the actual and real value of the personal properties of Annamalai and Sivanadiyan, which were, unlawfully searched and seized by YOU, with your various privies inclusive of several U.S.Government Agents and or employees, exceeds the value of \$ 5 Billion United States dollars.

Response:-

Admission No. 6:-

- Admit that Jacqueline H.Reynolds is the RICO ENTERPRISE.

Response:-

Admission no. 7:-

- Admit that, you are the employee and or an associate of the RICO ENTERPRISE as shown above herein.

Response:-

Admission no.8.

- Admit that, YOU will take every necessary steps within, 30 days to return all the properties as evidenced by the "Evidence PSA-002 ", attached herewith, towards Annamalai and Sivanadiyan respectively.

Response:-

Admission No. 9.

- Admit that John A. Moon Sr and NAVAREE ROBINSON PARTNERSHIP and YOU, no one has followed the Texas property code(s) 24.002 and 24.005 et seq., before accessing and or entering the Real and personal properties in fact kept and or located at Baytown, TX-77520, which is also known as the Temple complex of Shiva Vishnu Temple of Texas which those properties are belonging either to Annamalai and or Sivanadiyan.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA

Plaintiff,

V.

Case no.1:13-cr-437-TCb-CMS

ANNAMALAI ANNAMALAI

Defendant.

DEFENDANT ANNAMALAI ANNAMALAI 'S " FIRST REQUEST FOR ADMISSIONS "  
& PRODUCTION OF DOCUMENTS

To: Byung J.Pak  
United States Attorney  
Northern District of Georgia  
75 Ted Turner Drive S.W. # 600  
Atlanta Georgia-30303

I, Annamalai Annamalai ( ANNAMALAI ANNAMALAI ) a defendant in the above captioned action, is serving this discovery requests pursuant to Federal Rule of Civil Procedure 36 ( Admissions ) and 34 ( Production of documents ), in support of pending petition of mine seeking award for attorney fees and other expenses under Hyde Amendment Act. You have 30 days to respond or otherwise to me on these discovery requests. Please also understand about 'prison mail box rules'. Just also you know that, this discovery is directed to you on this 'ancillary proceedings', which is NOT affecting my 'liberty interests'.

Admission no.1

Admit that your name is \_\_\_\_\_

Byung J.Pak

Response:

Admission No.2

Admit that, all the matters as stated in the underlying petition for an award of attorney fees and expenses are correct and true & nothing but True.

Response:-

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- Admit that, the following persons are directly and or indirectly participated and or involved with their real intent to 'unlawfully' search and seize the personal properties of Annamalai and Sivanadiyan, and thereby, knowingly and intentionally caused an injury -in fact for Annamalai and Sivanadiyan.

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Response:

Admission No. 5.

- Admit that, the actual and real value of the personal properties of Annamalai and Sivanadiyan, which were, unlawfully searched and seized by YOU, with your various privies inclusive of several U.S.Government Agents and or employees, exceeds the value of \$ 5 Billion United States dollars.

Response:-

Admission No. 6:-

- Admit that Jacqueline H.Reynolds is the RICO ENTERPRISE.

Response:-

Admission no. 7:-

- Admit that, you are the employee and or an associate of the RICO ENTERPRISE as shown above herein.

Response:

Admission no.8.

- Admit that, YOU will take every necessary steps within, 30 days to return all the properties as evidenced by the "Evidence PSA-002 ", attached herewith, towards Annamalai and Sivanadiyan respectively.

Response:

Admission No. 9.

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Response:-

Admission No.3

Admit that, the defendant ANNAMALAI ANNAMALAI is an innocent Hindu High Priest, a man of honor & faith.

Response:

Admission No.4

Admit that, YOU with your privies have orchestrated a massive malicious prosecution against Annamalai ( ANNAMALAI ANNAMALAI ) and by the way harmed and injured ANNAMALAI ANNAMALAI.

Response:

Admission no.5. Admit that, YOU and or YOU with your privies in the Executive department of the UNITED STATES OF AMERICA, who is the plaintiff to this action, will take very immediate steps to dismiss the underlying indictment of this criminal case, and also take immediate actions to expunge the criminal records of ANNAMALAI ANNAMALAI, on or before November 5, 2019.

Response:

Admission no.6

Admit that, because of YOUR malicious, wilfull bad faith, vexatious and frivolous actions you have caused an irreparable harms, and loss of property and liberty interests of ANNAMALAI ANNAMALAI and his wife Parvathi Sivanadiyan, which exceeds over \$ 40 Billion United States Dollars.

Response:

Admission no.7

Admit that, YOU will take necessary steps to lawfully return any and all 1 Trade secrets which were misappropriated by you and or by your privies which is worth over seven Billion United States Dollars, towards Annamalai and or to his wife and kids within 90 days from the mailing of this document.

Response:

Admission no.8:

Admit that, ANNAMALAI ANNAMALAI in fact DID NOT commit any criminal acts at all, and all the charhes in the case no 1:13-cr-00437-TCB-CMS are all bogus, and brought with a vexatious and bad faith intent.

Response:

Admission no.9

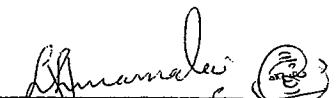
Admit that, Annamalai ( ANNAMALAI ANNAMALAI ) conviction with relates to counts 10-20, 21-30, and 34 all were reversed and or vacated.

## II. REQUEST FOR PRODUCTION OF DOCUMENTS:-

I, Annamalai Annamalai requests you to produce the following records pursuant to Federal Rule of Criminal Procedure 34, within 30 days from the 'mailing' of this document(s).

" Produce any and all " E-Mails " ( Electronic mails, received by you and or sent by you for/from/to any one concerning ANNAMALAI ANNAMALAI, Annamalai Annamalai, Parvathi Sivanadiyan, PARVATHI SIVANADIYAN, KUMAR CHINNATHAMBI, Kumar Chinnathambi, and about any of the Hindu Temples and or business entities in which the above named persons involved with. ( I am NOT requesting any privileged records, if that exists )

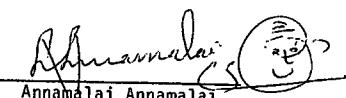
Respectfully Submitted this day of 10.01.2019.

  
Annamalai Annamalai  
P.o.Box-1000  
Marion, IL-62959

## CERTIFICATE OF SERVICE

Annamalai Annamalai certifies that this document is caused to be mailed to this court and also to the party/person as shown in the first page of this document, via first class mail, postage being prepaid, by depicting the same prison's internal mailing system for postal delivery accordingly.

Executed on: 10/01/2019.

  
Annamalai Annamalai  
P.o.Box-1000  
marion, IL-62959

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

Case no.1:13-cr-437-TCB-CMS

ANAMALAI ANAMALAI

Defendant.

DEFENDANT ANAMALAI ANAMALAI 'S " FIRST REQUEST FOR ADMISSIONS "  
& PRODUCTION OF DOCUMENTS

To: Samir Kaushal  
Assistant U.S.Attorney  
Northern District of Georgia  
75 Ted Turner Drive S.W # 600  
Atlanta Georgia-30303

I, Annamalai Annamalai ( ANAMALAI ANAMALAI ) a defendant in the above captioned action, is serving this discovery requests pursuant to Federal Rule of Civil Procedure 36 ( Admissions ) and 34 ( Production of documents ), in support of pending petition of mine seeking award for attorney fees and other expenses under Hyde Amendment Act. You have 30 days to respond or otherwise to me on these discovery requests. Please also understand about 'prison mail box rules'. Just also you know that, this discovery is directed to you on this 'ancillary proceedings', which is NOT affecting my 'liberty interests'.

Admission no.1

Admit that your name is Samir Kaushal

Response:

Admission No.2

Admit that, all the matters as stated in the underlying petition for an award of attorney fees and expenses are correct and true & nothing but True.

Response:-

Page 1 of 4

Admission No.3

Admit that, the defendant ANAMALAI ANAMALAI is an innocent Hindu High Priest, a man of honor & faith.

Response:

Admission No.4

Admit that, YOU with your privies have orchestrated a massive malicious prosecution against Annamalai ( ANAMALAI ANAMALAI ) and by the way harmed and injured ANAMALAI ANAMALAI.

Response:

Admission no.5. Admit that, YOU and or YOU with your privies in the Executive department of the UNITED STATES OF AMERICA, who is the plaintiff to this action, will take very immediate steps to dismiss the underlying indictment of this criminal case, and also take immediate actions to expunge the criminal records of ANAMALAI, ANAMALAI, on or before November 5, 2019.

Response:

Admission no.6

Admit that, because of YOUR malicious,wilfull bad faith, vexatious and frivolous actions you have caused an irreparable harms, and loss of property and liberty interets of ANAMALAI ANAMALAI and his wife Parvathi Sivanadiyan, which exceeds over \$ 40 Billion United States Dollars.

Response:

Admission no.7

Admit that, YOU will take necessary steps to lawfully return any and all 1 Trade secrets which were misappropriated by you and or by your privies which is worth over seven Billion United States Dollars, towards Annamalai and or to his wife and kids within 90 days from the mailing of this document.

Response:

Admission no.8:

Admit that, ANAMALAI ANAMALAI in fact DID NOT commit any criminal acts at all, and all the charhes in the case no 1:13-cr-00437-TCB-CMS are all bogus, and brought with a vexatious and bad faith intent.

Response:

Admission no.9

Admit that, Annamalai ( ANAMALAI ANAMALAI ) conviction with relates to counts 10-20, 21-30, and 34 all were reversed and or vacated.

Page 3 of 4

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

Case no.1:13-cr-437-TCb-CMS

ANNAMALAI ANNAMALAI

Defendant.

DEFENDANT ANNAMALAI ANNAMALAI 'S " FIRST REQUEST FOR ADMISSIONS "  
& PRODUCTION OF DOCUMENTS

To: Jacqueline H.Reynolds  
IRS Special Agent  
C/O Samir Kaushal  
Assistant U.S.Attorney  
Northern District of Georgia  
75 Ted Turner Drive S.W # 600  
Atlanta Georgia-30303

I, Annamalai Annamalai ( ANNAMALAI ANNAMALAI ) a defendant in the above captioned action, is serving this discovery requests pursuant to Federal Rule of Civil Procedure 36 ( Admissions ) and 34 ( Production of documents ), in support of pending petition of mine seeking award for attorney fees and other expenses under Hyde Amendment Act. You have 30 days to respond or otherwise to me on these discovery requests. Please also understand about 'prison mail box rules'. Just also you know that, this discovery is directed to you on this 'ancillary proceedings', which is NOT affecting my 'liberty interests'.

Admission no.1

Admit that your name is \_\_\_\_\_

Jacqueline H.Reynolds

Response:

Admission No.2

Admit that, all the matters as stated in the underlying petition for an award of attorney fees and expenses are correct and true & nothing but True.

Response:-

Page 1 of 4

Admission No. 4:-

- Admit that, the following persons are directly and or indirectly participated and or involved with their real intent to unlawfully search and seize the personal properties of Annamalai and Sivanadian, and thereby, knowingly and intentionally caused an injury -in fact for Annamalai and Sivanadiyan.

- (1). Jacqueline H.Reynolds, ( U.S.Federal special Agent ) 2. John A. Moon Sr., ( lender to Mavles Yoga & spiritual - Healing center ) 3. James Hayden Kepner, ( Bankruptcy - Attorney at Law in Atlanta Georgia ) NAVARRE ROBINSON PARTNERSHIP, ( the present owner of real property located at 7600 Bayway Drive, Baytown, TX-77520 ) 6. MOON CREDIT CORPORATION, ( The corporation lended money to the real property located at 7600 Bayway drive, Baytown, TX-77520 ) 7. Valmiginathan Raghunathan, ( Agent of Federal Agent Jacqueline H.Reynolds ) 8. Nathan Ravichandran, ( Agent of Federal agent Jacqueline H.Reynolds ) 9. Gopakumar Venugopalan, ( Agent of Jacqueline H.Reynolds ) 11. Douglas A. Durham, ( Attorney for MOON CREDIT CORPORATION ) 12. Joseph Salhab, ( Attorney for MOON CREDIT CORPORATION ) 13. Samir Kaushal, ( Assistant U.S.Attorney ) 14. Steven D. Grimberg (Assistant U.S.Attorney ).

Response:

Admission No. 5.

- Admit that, the actual and real value of the personal properties of Annamalai and Sivanadiyan, which were, unlawfully searched and seized by YOU, with your various privies inclusive of several U.S.Government Agents and or employees, exceeds the value of \$ 5 Billion United States dollars.

Response:-

Admission No. 6:-

- Admit that Jacqueline H.Reynolds is the RICO ENTERPRISE.

Response:-

Admission no. 7:-

- Admit that, you are the employee and or an associate of the RICO ENTERPRISE as shown above herein.

Response:

Admission no.8.

- Admit that, YOU will take every necessary steps within, 30 days to return all the properties as evidenced by the "Evidence PSA-002", attached herewith, towards Annamalai and Sivanadiyan respectively.

Response:

Admission No. 9.

- Admit that John A. Moon Sr and NAVAREE ROBINSON PARTNERSHIP and YOU, no one has followed the Texas property code(s) 24.002 and 24.005 et seq., before accessing and or entering the Real and personal properties in fact kept and or located at Baytown, TX-77520, which is also known as the Temple complex of Shiva Vishnu Temple of Tex with those properties are belonging either to Annamalai and or Sivanadiyan.

Response:-

Page 2 of 4

Admission No.3

Admit that, the defendant ANNAMALAI ANNAMALAI is an innocent Hindu High Priest, a man of honor & faith.

Response:

Admission No.4

Admit that, YOU with your privies have orchestrated a massive malicious prosecution against Annamalai ( ANNAMALAI ANNAMALAI ) and by the way harmed and injured ANNAMALAI ANNAMALAI.

Response:

Admission no.5. Admit that, YOU and or YOU with your privies in the Executive department of the UNITED STATES OF AMERICA, who is the plaintiff to this action, will take very immediate steps to dismiss the underlying indictment of this criminal case, and also take immediate actions to expunge the criminal records of ANNAMALAI ANNAMALAI, on or before November 5, 2019.

Response:

Admission no.6

Admit that, because of YOUR malicious, wilfull bad faith, vexatious and frivolous actions you have caused an irreparable harms, and loss of property and liberty interets of ANNAMALAI ANNAMALAI and his wife Parvathi Sivanadiyan, which exceeds over \$ 40 Billion United States Dollars.

Response:

Admission no.7

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Admission no.8:

Admit that, ANNAMALAI ANNAMALAI in fact DID NOT commit any criminal acts at all, and all the charhes in the case no 1:13-cr-00437-TCB-CMS are all bogus, and brought with a vexatious and bad faith intent.

Response:

Admission no.9

Admit that, Annamalai ( ANNAMALAI ANNAMALAI ) conviction with relates to counts 10-20, 21-30, and 34 all were reversed and or vacated.

II. REQUEST FOR PRODUCTION OF DOCUMENTS:-

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" Produce any and all " E-Mails " ( Electronic mails, received by you and or sent by you for/from/to any one concerning ANNAMALAI ANNAMALAI, Annamalai Annamalai, Parvathi Sivanadiyan, PARVATHI SIVANADIYAN, KUMAR CHINNATHAMBI, Kumar Chinnathambi, and about any of the Hindu Temples and or business entities in which the above named persons involved with. ( I am NOT requesting any privileged records, if that exists )

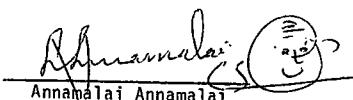
Respectfully Submitted this day of 10.01.2019.

  
Annamalai Annamalai  
P.O.Box-1000  
Marion, IL-62959

CERTIFICATE OF SERVICE

Annamalai Annamalai certifies that this document is caused to be mailed to this court and also to the party/person as shown in the first page of this document, via first class mail, postage being prepaid, by depicting the same prison's internal mailing system for postal delivery accordingly.

Executed on: 10/01/2019.

  
Annamalai Annamalai  
P.O.Box-1000  
Marion, IL-62959

E V I D E N C E / E X H I B I T N U M B E R - 8

CIVIL NOTICE  
VIGO SUPERIOR COURT 2  
33 S. Third Street  
Terre Haute Indiana 47807

Annamalai Annamalai v. Vishal Kalyani

84D02-1704-MI-002768

To: Annamalai Annamalai  
BOP ID 56820-379  
X-Unit US Penitentiary  
PO Box 1000  
Marion IL 62959

ATTORNEYS		PARTIES
Annamalai Annamalai		PLAINTIFF / PETITIONER Annamalai Annamalai
		DEFENDANT / RESPONDENT Vishal Kalyani
<u>EVENTS:</u>		
Entry Date	File Stamp/ Order Signed/ Hearing Date	Event and Comments
01/26/2023		Clerk Administrative Event (Mailed copies of records requested by Annamalai Annamalai per Order from judge on 01/12/2023. jh)

Distribution:

STATE OF INDIANA )

) SS:

VIGO COUNTY )

I, Sarah Mullican, Sole Judge of the Vigo Circuit Court, being the Forty-Third Judicial Circuit, of the State of Indiana, do hereby certify that the Honorable Bradley M. Newman whose signature appears attached to the annexed certificate was, at the time of signing the same, the Clerk of said Court; that he is the proper person to make said certificate which is due form of law, and that his signature hereto is genuine.

WITNESS, my hand and the seal of said

Court, affixed at the Courthouse in the

City of Terre Haute, Vigo County, Indiana

This 26<sup>th</sup> day of January A.D., 2023

Sarah M. Mullican

Judge of the Vigo Circuit Court

STATE OF INDIANA )

) SS:

VIGO COUNTY )

I, Honorable Bradley M. Newman, Clerk of the Vigo Circuit Court, being the Forty-Third Judicial Circuit of the State of Indiana, do hereby certify the Honorable Sarah Mullican, whose signature appears attached to the foregoing certificate was, at the time of signing the same, the Sole Judge of said Court; that she is the proper person to make said certificate which is due form of law, and that her signature hereto is genuine.

WITNESS, my hand and the seal of said

Court, affixed at the Courthouse in the

City of Terre Haute, Vigo County, Indiana

This 26<sup>th</sup> day of January A.D., 2023

Bradley M. Newman

Clerk of the Vigo Circuit Court

STATE OF INDIANA

COUNTY OF VIGO

VIGO SUPERIOR COURT #2

2020 TERM

CAUSE NO: 84D02-1704-MI-2768

ANNAMALAIE ANNAMALA

- Plaintiff

VS.

VISHAL KALYANE

- Defendant

ORDER

The Court Finds for the Plaintiff for, to EXECUTE, the Final Judgement. ALL the ACCOUNT DEBTORS, who has already admitted as "Party-in-Priority", Pursuant to INDIANA Trial Rule 36 (b) SHALL, SPECIFICALLY, Perform all the acts as per their respective admissions at this Proceedings.

ALL OF WHICH IS ORDERED by the Court of this date of November 2023. *gtd*

*CD*  
Honorable Charles D. Bryan  
VIGO COUNTY, INDIANA  
SEAL  
CLERK & SUPERIOR COURT

STATE OF INDIANA Special Judge Vigo Superior Court #2  
COUNTY OF VIGO ISS:

I, Bradley M. Newman, Clerk of the Vigo Circuit Court and Ex-  
Officio Clerk of the Superior Court, do hereby certify  
that this document is in my possession and  
and lawful custodian.

ORDER

Cause No: 84D02-1704-MI-2768  
the same appears of record in the office of the Clerk of which I am legal  
and lawful custodian.

IN WITNESS WHEREOF, I have set my hand and

official seal, this the 12th day of January 2023.

*Bradley M. Newman*  
CLERK OF THE VIGO CIRCUIT COURT AND  
EX-OFFICIO CLERK OF THE SUPERIOR AND  
COURTS OF VIGO COUNTY

E V I D E N C E / E X H I B I T   N U M B E R - 9- 13 p a c k a g e

FILED  
VIGO COUNTY SUPERIOR COURT

NOV 12 2019

*Brenda A. Faus*  
CLERK

05.24.2017

MEMORANDUM OF RECORD

Annamalai Annamalai  
P.O.Box-33  
Terre Haute  
Indiana-47808-0033

To.  
Mr. John Andrew Horn  
U.S.attorney  
75 Ted Turner drive S.W.  
Atlanta Ga 30303

Ref: cause No. 84D03-1704-MI-2768

Sub: serving Indiana Trial rule 36 and 34 discovery pursuant to local rule of the  
Court- LR84-TR26-7; LR84-TR16-5-Reg

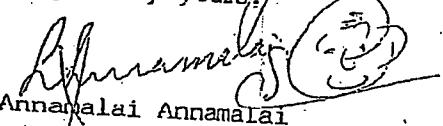
Mr.Horn:

Please find herewith the discovery requests for the following individuals directed  
to you pursuant to Civil Rule 5 and you and other following individuals also caused  
to be served via first class mail, postage prepaid.

Chandramohan Loganathan, Gopakumar Venugopalan, Valmikinathan Raghunthan, Jacqueline  
H.Reynolds, Nareshkumar Chalimeda, Steven D.Grimberg, Samir Kaushal, John A.Horn,  
Seema Patel, Teresa Louis, Baskaran vengesnam, Jagadish Thakur, Subramanian  
Annaswamy, Vanaja sekar, Packiyalekshmi Pillai, Rakesh Patel, Kuttumbarao K.  
Tummala, Kirupakaran Puvalai, Jeff Sessions, Thomas W:Dworschak, John A.Moon Sr,  
Kavita Jacobson, Suganya Prathap, Sireesha Iruvuri. Anuradha Reddy, Sukhninder K.  
Dhillon.

I would appreciate a prompt attention to this matter and I am looking forward  
to working with you.

Very Truly yours,

  
Annamalai Annamalai

Encl:

Exhibit -

23<sup>rd</sup> May 2017

To.  
Mr.Jeff Sessions  
U.S.Attorney General  
Office of the U.S.Attorney General  
900 Pennsylvania avenue N.W  
Washington, D.C.

USPS Mail Tracking Number:

9114 9014 9645 0884 1703 33

Ref: Case Number: 84D03-1704-MI-002768

sub: Serving discovery ( civil ) under Indiana trial Rule 36 and 34

Dear Mr.Sessions,

Please find herewith the true copies of the Civil discovery directed to you in your individual capacity and also as an agent and or boss of several following individuals I have already mailed the same via first class mail, postage prepaid on or about May 13 2017, as per prison mail box rule to you and to all the associated individuals as shown below. however, in abundance of precaution, I am 'again serving' the same copies on you today. I would highly appreciate either you or your office acknowledge my (this) correspondence.

1. Mr Jeff Sessions
2. Mr.John A.Horn ( U.S.Attorney, Northern District of Georgia )
3. Ms.Kathleen M Kenney ( General Consel, Bureau of Prisons )
4. Mr.Steven D.Grimberg ( Assistant U.S.Attorney, Northern District of Georgia ).
5. Mr.Samir Kaushal. ( - SAME as above - )
6. Mr. Dahil Dueno Goss ( - SAME AS ABOVE )
7. Ms. Jacqueline H.Reynolds (Special Agent-Internal Revenue Service )

If you need any assistance, do not hesitate to contact me immediately via phone and make sure and all your correspondences towards me, you should send by or via any trackable mails, to avoid any surprises towards me.

God Bless!!



Annamalai  
Annamalai Plaintiff

Encl.:

Exhibit -



U.S. Department of Justice

Mail Referral Unit

---

Washington, D.C. 20530

June 13, 2017

Aunamalai Aunamalai  
#56820-379  
FCI THA  
P.O. Box 33  
Terre Haute, IN 47808-0033

Dear Friend:

Thank you for your letter dated May 23, 2017 to the Attorney General, Deputy Attorney General, or Associate Attorney General, which was received by the Department of Justice, Mail Referral Unit, on June 13, 2017 and assigned ID number 3844725.

Your letter will be reviewed and if a response or an update is necessary it will be sent to you within 60 business days. If you have any questions, please contact us at (301) 583-7350 and refer to your ID number 3844725 when requesting any information concerning your correspondence.

Sincerely,

Mail Referral Unit  
Department of Justice

FILED  
VIGO COUNTY SUPERIOR COURT

NOV 12 2010

*Bethany M. Foy*  
CLERK

12.05.2016

MEMORANDUM OF Record

I N V O I C E #

AvT - VK-0020

Account Debtor(s)

Lloyd T.Whitaker  
&  
NEW LEAF CORPORATION  
C/O SCROGGINS & WILLIAMSON P.C.  
4401 Northside Parkway # 450  
Atlanta, Georgia 30327

Billed/Invoiced for:

Injury-in-fact caused by theft and misappropriation  
of antiques, Trade secrets, intellectual properties,  
constructive fraud, interference with business contracts and relations

11,000,000.00

Total amount due

11,000,000.00

A late interest of 21% will be charged for late payments.

By:

  
Annamalai Annamalai  
P.O. Box-33  
Terre haute  
IN-47808-0033

SWAMIJI SRI SELVAM SIDDHAR  
HINDU HIGH PRIEST  
SIDDHAR PEDAM GROUP OF TEMPLES  
ADMINISTRATIVE OFFICE:  
OLD # 48 NEW # 61 SATHYAMOORTHI ROAD  
THIRD FLOOR COIMBATORE- 641009 INDIA  
E-Mail: avtemple@aol.com Web: www.siddharpeedam.org

INVOICE

Date: May 13, 2017.

OM NAMASHIVAYAA!!

MEMORANDUM OF RECORD

AVT-VK-0044

AVT-VK-0019

INVOICE NUMBER: AVT-VK-0020

( Note:-The account debtors are responsible  
for the invoice, individually and or  
collectively )

Account Debtor(s):

Billed/ Invoiced For:-

James Hayden Kepner  
Robert Williamson  
4401 North side Parkway #450  
Atlanta Georgia 30327

Lloyd T.Whitaker  
C/O J.Hayden Kepner  
4401 Northside parkway # 450  
Atlanta, Georgia 30327

Ronald J.Kozar  
40 N.Main St  
Suite 2830  
Dayton, OH-45402

1. Partial compensatory damages for the 'theft, misappropriation,  
and usage of Trade secrets belonging to Annamalai Annamalai,  
also known as Swamiji Sri Selvam Siddhar.....>>> \$ 75 Million Dollar

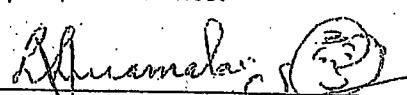
2. Partial compensatory damages for malicious, fraudulent  
prosecution of Annamalai Annamalai ( ANNAMALAI ANNAMALAI ).....>>> \$ 30 Million Dollar  
in violation of U.S. Constitution's first, fourth, fifth  
and fourteenth Amendments.

Total amount to be remitted 'within 30 days' without 10% late payment interest..... \$ 105 Million Dollar

(1) Please be advised that, this invoice is showing about your pending outstanding Debts, either for the Religious service completed under your request/order/consent and or Religious Merchandise supplied by Swamiji Sri Selvam Siddhar of Siddhar Peedam.

(2) Please be advised that we have 100% No return policy, also, once the series of rituals have been started, the same can not be paused or stopped in the middle for " any reasons "

(3) If you need a Payment plan, please contact the Siddhar Peedam Group of Temples, " Chief Priest "  
" Govindakutty ( ' Madhu ' ) Manikandan " at avtemple@aol.com

  
Swamiji Sri Selvam Siddhar  
High Priest  
Siddhar Peedam Group of Temples  
www.siddharpeedam.org

FILED  
VIGO COUNTY SUPERIOR COURT

NOV 12 2019

*Bethany M. Fawcett*  
CLERK

SWAMIJI SRI SELVAM SIDDHAR  
HINDU HIGH PRIEST  
SIDDHAR PEDAM GROUP OF TEMPLES  
ADMINISTRATIVE OFFICE  
OLD # 48 NEW # 61 SATHYAMOORTHI ROAD  
THIRD FLOOR COIMBATORE- 641009 INDIA  
E-Mail: avtemple@aol.com Web: www.siddharpeedam.org

INVOICE

Date: May 13, 2017.

OM NAMASHIVAYAA!!

MEMORANDUM OF RECORD

Account Debtor(s):

AVT-VK-0011 &  
INVOICE NUMBER: AVT-VK-0001

Billed/ Invoiced For:

(Note: This invoice is the debts to  
be settled by the account debtor(s)  
individually and or collectively )

R.L.Conway, AKA R.L.Butch Conway  
C/O 2900 University Parkway  
Lawrenceville, Georgia 30043.

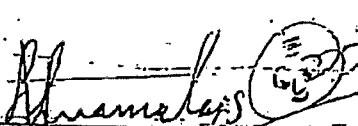
Jacqueline H. Reynolds  
C/O John A. Horn  
75 Ted Turner drive S.W.  
Suite 600  
Atlanta, Georgia 30303.

1. Partial compensatory damages for theft, destruction of personal business, temple/monastery properties, tortious interference with business relations; unjust enrichment; conspiracy to steal, misappropriate Trade Secrets, Racketeering activity; wire fraud, mail fraud, obstruction of justice, restitution for all the properties stolen by you and by your "agents"..... \$8 Billion U.S.Dollars
2. Intentional infliction of emotional distress, Negligent infliction of emotional distress..... \$750 Million U.S.Dollars

\*\*\*\* Please see, Exhibit-A, for the short list of  
Properties stolen by you with the help of your "agents"

Total amount to be remitted within 30 days without 10% late payment interest..... > \$8.75 Billion U.S.Dollars

(1). Please be advised that, if you need payment plan, please contact the Chief priest Mr. Govindakutty Manikandan at the above shown address. E-Mail: avtemple@aol.com.

  
Swamiji Sri Selvam Siddhar  
High Priest  
Siddhar Peedam Group of Temples  
www.siddharpeedam.org

SWAMIJI SRI SELVAM SIDDHAR  
 HINDU HIGH PRIEST  
 SIDDHAR.PEDAM GROUP OF TEMPLES  
 ADMINISTRATIVE OFFICE:  
 OLD # 48 NEW # 61 SATHYAMOORTHI ROAD  
 THIRD FLOOR COIMBATORE-641009 INDIA  
 E-Mail: avtemple@aol.com Web: www.siddharpeedam.org

INVOICE

Date: May 13, 2017.

OM NAMASHIVAAJII

MEMORANDUM OF RECORD

Account Debtor(s):

Billed/ Invoiced For:-

R.L.Conway, AKA R.L. Butch Conway  
 C/O 2900 University Parkway  
 Lawrenceville, Georgia 30043.

Jacqueline H. Reynolds  
 C/O John A. Horn  
 75 Ted Turner drive S.W.  
 Suite 600  
 Atlanta, Georgia 30303.

INVOICE NUMBER: AvT-VK-0001

(Note: This invoice is the debts to be settled by the account debtor(s) individually and or collectively )

1. Partial compensatory damages for the 'theft, misappropriation, and usage' of Trade Secrets belonging to Annamalai Annamalai, also known as Swamiji Sri Selvam Siddhar.....>>> \$ 1.4 Billion U S Dollars

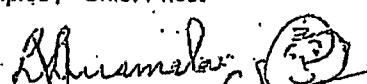
2. Partial compensatory damages for malicious, fraudulent prosecution of Annamalai Annamalai ( ANNAMALAI ANNAMALAI ).....>>> \$ 750 Million U S Dollars in violation of U.S. Constitution's first, fourth, fifth and fourteenth Amendments.

Total amount to be remitted within 30 days without 10% late payment interest.....> \$ 2.15 Billion U S Dollars

(1) Please be advised that, this invoice is showing about your pending outstanding debts, either for the Religious service, completed under your request/order/consent and or Religious Merchandise supplied by Swamiji Sri Selvam Siddhar of Siddhar Peedam.

(2) Please be advised that we have 100% No return policy, also, once the series of rituals have been started, the same can not be paused or stopped in the middle for "any reasons".

(3) If you need a Payment plan, please contact the Siddhar Peedam Group of Temples, "Chief Priest" Govindakuliy ( 'Madhu' ) Manikandan " at avtemple@aol.com .

  
 Swamiji Sri Selvam Siddhar  
 High Priest  
 Siddhar Peedam Group of Temples  
 www.siddharpeedam.org

SWAMIJI SRI SELVAM SIDDHAR  
 HINDU HIGH PRIEST  
 SIDDHAR PEEDAM GROUP OF TEMPLES  
 ADMINISTRATIVE OFFICE:  
 OLD # 48 NEW # 61 SATHYAMOORTHI ROAD  
 THIRD FLOOR COIMBATORE 641009 INDIA  
 E-Mail: avtemple@aol.com Web: www.siddharpeedam.org

INVOICE

Date: May 13, 2017.

OM NAMASHI VAAAYAA!!

MEMORANDUM OF RECORD

AVT-VK-0051 AVT-VK-0060

(INVOICE NUMBER: AVT-VK-0062

(This invoice to be settled by the account debtors, either individually and or collectively)

Account Debtor(s):

Billed/ Involved For:

Jeff Sessions  
 C/O Office of U.S. Attorney  
 General  
 900 Pennsylvania Ave  
 Washington, DC 20530

Kathleen M. Kenney  
 320 First Street  
 Washington, DC 20534

Katherine Seirevold  
 C/O 4200 Prison Road North  
 Terre Haute  
 Indiana 47802

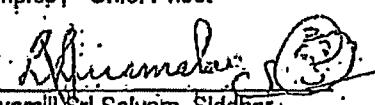
1. Partial compensatory damages for the theft, misappropriation, and usage of Trade secrets belonging to Annamalai Annamalai, also known as Swamiji Sri Selvam Siddhar. >>> \$ 1.4 Billion U S Dollar
2. Partial compensatory damages for malicious, fraudulent prosecution of Annamalai Annamalai ANNAMALAI ANNAMALAI. ....>>> \$ 750 Million U S Dollar in violation of U.S. Constitution's first, fourth, fifth and fourteenth Amendments.

Total amount to be remitted within 30 days without 10% late payment interest. ....>>> \$ 2.15 Billion U S Dollar.

(1) Please be advised that, this invoice is showing about your pending outstanding Debts, either for the Religious service, completed under your request/order/consent and or Religious Merchandise supplied by Swamiji Sri Selvam Siddhar of Siddhar Peedam.

(2) Please be advised that we have 100% No return policy also, once the series of rituals have been started, the same can not be paused or stopped in the middle for "any reasons".

(3). If you need a Payment plan, please contact the Siddhar Peedam Group of Temples, "Chief Priest" Govindakuliy ("Madhu") Manikandan " at avtemple@aol.com

  
 Swamiji Sri Selvam Siddhar  
 High Priest  
 Siddhar Peedam Group of Temples  
 www.siddharpeedam.org

E V I D E N C E / E X H I B I T N U M B E R - 14

NAMES, LOCATIONS, INVOICE NUMBERS OF THE " A C C O U N T D E B T O R S "

Case No: 84D02-1704-MI-2768 (Former case number was 84D03-1704-MI-2768)

Case Style: Annamalai Annamalai V. Vishal Kalyani

Court: State Court of Indiana, Vigo County Superior Court, Terre Haute, Indiana

Special Judge: Honorable Charles D.Bridges

Name(s) of the Account Debtor(s)	Location City & State & Country	Invoice No(s)	Remarks
Chandramohan Loganathan	Kennesaw, Georgia U.S.A.	AvT-VK-001	
Gopakumar Venugopalan	Leesburg, Georgia U.S.A.	AvT-VK-001	
Sundaram Raghunathan	Norcross Georgia U.S.A	AvT-VK-001	
Valmikinathan P.Raghunathan	Alpharetta Georgia U.S.A	AvT-VK-001	
Jacqueline H.Reynolds	Atlanta Georgia U.S.A	AvT-VK-001	
Nareshkumar Chalimeda	Alpharetta Georgia U.S.A.	AvT-VK-002	
Bhavini Subramani	Alpharetta Georgia U.S.A	AvT-VK-003	
Rajan Gopalan	Alpharetta Georgia U.S.A.	AvT-VK-003	
Samir Kaushal	Atlanta Georgia U.S.A.	AvT-VK-004	
Ganga Hospital	Coimbatore INDIA	AvT-VK-004/1	
Nathan Ravichandran AKA: N.Ravichandran	Coimbatore INDIA (also has USA Address @ C/O Mr.Valmikinathan Raghunathan)	AvT-VK-004/2	
Samson D'Silva www.gayathriashram.org www.gayathriashram.com www.gayathryashram.org www.gayathryashram.com	- Same as above -	AvT-VK-004/3	

N.Bharat & ICICI BANK	Coimbatore-641001	INDIA	AvT-VK-004/4
S.Ramakrishnan & DHANALAKSHMI BANK	Coimbatore-641009	INDIA	AvT-VK-004/5
Albert Vincent Bowden Moreira AKA: A.V. Bowden Moreira & INDIAN BANK	Coimbatore-641009	INDIA	AvT-VK-004/6
S.Ragothaman & CITY UNION BANK LIMITED	Coimbatore-641001	INDIA	AvT-VK-004/7
Timothy C. Boyd BOYD LAW GROUP	Suwanee Georgia U.S.A.		AvT-VK-005
Steven D.Grimberg	Atlanta Georgia U.S.A.		AvT-VK-006
Ananthi Palamuthu KUMON	Kennesaw Georgia U.S.A.	AvT-VK-007	See Invoice no. AvT-VK-153
John Andrew Horn AKA John A Horn	Atlanta Georgia U.S.A.	AvT-VK-008	
Dahil Dueno Goss	Atlanta Georgia U.S.A.	AvT-VK-009	
Veena Ganghadharan Gopakumar Venugopalan	Leesburg Georgia U.S.A.	AvT-VK-0010	See Invoice no. AvT-VK-154
R.L.Conway AKA: R.L.Butch Conway GWINNETT COUNTY SHERIFF'S DEPARTMENT	Lawranceville Georgia U.S.A	AvT-VK-0011	See: Another inovoice too. AvT-VK-155
Randal Self Jr	Atlanta Georgia U.S.A.	AvT-VK-0012	
Aaron Edelhart	Atlanta Georgia U.S.A.	AvT-VK-0013	
Shiv Agarwal & GLOBAL MALL	Norcross Georgia U.S.A.	AVT-VK-0014	Mr.Shiv Agarwal
	Norcross Georgia U.S.A.	AvT-VK-0015	may have differen first name also.
Kurt Hilbert & KURT R.HILBERT P.C. AKA: Kurt R.Hilbert	Atlanta Georgia U.S.A.	AvT-VK-0016	

HINDU TEMPLE OF ATLANTA INC. AKA: Riverdale Hindu Temple	Riverdale Georgia U.S.A.	AvT.VK-0017	
John Patrick O'Brien THOMPSON P'BRIEN,KEMP,NASUTI P.C.	Norcross Georgia U.S.A.	AvT.VK-0018	See: Invoice No(s) AvT-VK-61-1 & AvT-VK-108 Two Invoices with invoice no. AvT-VK-0018.
James Hayden Kepner James Robert Williamson SCROGGINS & WILLIAMSON P.C.	Atlanta Georgia U.S.A.	AvT.VK-0019	See: Invoice no(s) 0020 and 0044 also
Lloyd T.Whitaker	Symrna/Atlanta Georgia U.S.A	AvT.VK-0020	See:Invoice no. 0019,0020,0044 also
GREATER ATLANTA TAMIL SANGAM INC AKA: "GATS"	Alpharetta Georgia U.S.A.	AvT.VK-0021	
Thomas Wayne Dworschak Clifford J.White	Atlanta Georgia U.S.A.	AvT.VK-0066 AvT.VK-0022	
Mark E.Scott	Suwanee Georgia U.S.A (now moved to Arizona)	AvT.VK-0023	See: Invoice no(s) 0034 & 0035 also.
Paul Cwalina GWINNETT COUNTY POLICE DEPARTMENT	Norcross, Georgia U.S.A.	AvT.VK-0024	See: Invoice no AvT-VK-0024/1 also.
GWINNETT COUNTY GEORGIA	Norcross, Georgia U.S.A.	AvT.VK-0025	
Charlotte Mash GWINNETT COUNTY BOARD OF COMMISSIONERS	Norcross, Georgia U.S.A.	AvT.VK-0026	
Benjamin E-Hewitt ANDERSON LAKE PROPERTIES LLC	Flowrey Branch/Atlanta Georgia U.S.A.	AvT.VK-0027	See AvT-VK-0027/1.

Paul G.Drudaller	Atlanta Georgia U.S.A.	AvT-VK-0028	
Valerie K.Richmond	Atlanta Georgia U.S.A.	AvT-VK-0029	
Arti Pandya	Atlanta Georgia U.S.A.	AvT-VK-0030	The actual, present address Address may be different*****
Ravi Sharma HINDU TEMPLE OF ATLANTA INC	Atlanta Georgia U.S.A. Riverdale Georgia U.S.A	AvT-VK-0031	Joint&Several Invoice.
Gita Kotecha	Suwanee Georgia U.S.A.	AvT-VK-0031	The actual address may be different*****
Seema Patel	Hoffman Estates Illinois U.S.A.	AvT-VK-0032	
Vijayal Gopalakrishnan Gopalakrishnan Paramasivam	Bartlet Illinois U.S.A.	AvT-VK-0032	Joint & Several Invoice.**
Harshad Rami	Wheeling Illinois U.S.A.	AvT-VK-0032	
Kirupakaran Puvalai	Springfield Illinois U.S.A.	AvT.VK-0032	See another Invoice # AvT-VK-156
Suganya Prathap	Palatine Illinois U.S.A.	AvT-VK-0032	See another Invoice # AvT-VK-157
Kuttumbaro Tummala	Houston Texas U.S.A	AvT-VK-0033	See another invoice # AvT-VK-158
Rakesh Patel	Houston Texas U.S.A.	AvT-VK-0033	See another Invoice # AvT-VK-159
John A.Moon Sr,	Houston Texas U.S.A.	AvT-VK-0034	
MOON CREDIT CORPORATION	Houston Texas U.S.A.	AvT-VK-0034	
Larry Wilson	Houston Texas U.S.A.	AvT-VK-0034	

Jeanne Fogg	Houston Texas U.S.A.	AvT-VK-0034	
David G. Peake	Houston Texas U.S.A.	AvT-VK-0035	
Chris M.Flood John Timblin Flood FLOOD & FLOOD P.C.	Houston Texas U.S.A. Houston Texas U.S.A.	AvT-VK-0036 AvT-VK-0037	Jointly and or severally responsible.
Indu Subramanian Subramanian Annaswamy	Edison New Jersey U.S.A.	AvT-VK-0037	Jointly and or severally responsible.
			See, Joint invoice no(s) AvT-VK-0014, AvT-VK-101/2 AvT-VK-138 also.*****
Packiyalekshmi Pillai	Columbus New Jersey U.S.A.	AvT-VK-0038	See another invoice no. AvT-VK-160
Vanaja Sekar	Columbus New Jersey U.S.A.	AvT-VK-0038	See another Invoice no. AvT-VK- 161
PAYDOC LLC	same as above	AvT_VK-0038	See, another Invoice no. AvT-VK-161
Sridhar Vasudevan	Edison New Jersey U.S.A.	AvT-VK-0038	See, another Invoice no. AvT-VK- 162
Manisha Jasti AKA: Manisha Jasty	Edison New Jersey U.S.A.	AvT-VK-0038	See, another Invoice no. AvT-VK-163
Sonali Kraft	Edison New Jersey U.S.A.	AvT-VK-0038	See, another invoice no. AvT-VK- 163
Vasundhara Krishnamohan	Atlanta Georgia U.S.A.	AvT-VK-0038	she shall have a new address;
Gauri Thakur	Watchang New Jersey U.S.A.	AvT-VK-0039	See another Invoice no. AvT-VK-
Manojkumar Behra	Iselin New Jersey U.S.A.	AvT-VK-0040	
Kavita Jacobson Eric Jacobson (Dr)	Ozone Park New York U.S.A. OZone Park New York U.S.A.	AvT-VK-0040 AvT-VK-0040/1	See, another Invoice no. AvT-VK-164

Violet Rajkumar Chabla Rajkumar	One Park New York U.S.A.	AvT-VK-0040	See, another Invoice no. AvT-VK-166
Sireesha Iruvuri (Dr)	Bakersfield California U.S.A.	AvT-VK-0041	See, another Invoice no. AvT-VK- 167
Sukhninder Kaur Dhillon	Fairfield California U.S.A.	AvT-VK-0041	See, another Invoice no. Avt-VK-168
Anuradha Reddy	Clovis California U.S.A.	AvT-VK-0041	See, another Invoice no. Avt-VK-131
Kalavathi Baskaran Baskaran Subbiah	Orange California	AvT-VK-0041	Jointly and or severally responsible.
Hema Mehta	Frederick California U.S.A.	Avt-VK-0042	See, another Invoice no. AvT-VK-169
Nadadur Sampathkumar Vatsala Sampathkumar (Dr) Law offices of Nadadur Sampath Kumar	Los Angeles California U.S.A.	AvT-VK-0043	Jointly and or severally responsible.
Ronald J.Kozar Jonathan F.Hung GREEN & GREEN LAWYERS RONALD J.KOZAR P.C. LAW OFFICES OF RONALD J.KOZAR	Dayton Ohio U.S.A.	AvT-VK-0044	Jointly and or severally Responsible. See, Other Invoice no(s) AvT-VK-0019, AvT-VK-0020 AvT-VK-169/1
MONTGOMERY COUNTY, OHIO MONTGOMERY COUNTY TREASURER,OHIO	Dayton Ohio U.S.A.	AvT-VK-0045	See, Invoice no AvT-VK-0045/1 also.
CITY OF DAYTON, OHIO MAYOR, CITY OF DAYTON, OHIO	Dayton Ohio U.S.A.	AvT-VK-0046 AvT-VK-0046/1	
KSHETROPASANA CHARITABLE FOUNDATION Prema Panduranga Prasanth Shankaran	Maryland U.S.A. Maryland U.S.A.	AvT-VK-0047 AvT-VK-0047	See, also Invoice no. Avt-VK-0047/1

Baskaran Vengesanam Seetha Aparna Jagadeesa Raja	Herndon Virginia U.S.A.	AvT-VK-0048	See, another Invoice no. AvT-VK-0048/1 & AvT-VK-0048/2
Indu Subramanian	Edison New Jersey U.S.A.	AvT-VK-0048/1	
Richard D. Fairbank CAPITAL ONE BANK (USA)N.A.	McLean Virginia U.S.A.	AvT-VK-0049	Jointly and severally responsible. see, multiple Invoices.
Nelms David AKA David Nelms DISCOVER FINANCIAL SERVICES LLC	Riverwood Illinois U.S.A.	AvT-VK-0050	See, Invoice no. AvT-VK-0050/1 also
Jerome Brown	Marietta Georgia U.S.A.	AvT-VK-0050	
Kathleen M. Kenny FEDERAL BUREAU OF PRISONS	Washington D.C. U.S.A.	AvT-VK-0051	Jointly and or severally responsible.
Richard W. Schott Richard M. Winter	Kansas City, Mosuri U.S.A.	AvT-VK-0051	
Clifford J. White	Washington D.C. U.S.A.	AvT-VK-0051	
Matthew Robinson ROBINSON & BRANDIT, P.S.C. Wesley Robinson	Covington, Kentucky U.S.A.	AvT-VK-0052	Jointly and or severally responsible. See, Invoice # AvT-VK-0052/1
Vanaja Sekar	Edison New Jersey U.S.A.	AvT-VK-0052	See, Invoice no. AvT-VK-0038
David Schwartz SCHWARTZ & POSNOCK P.C.	Eatontown New Jersey U.S.A.	AvT-VK-0053	
Packiyalekshmi Pillai	Columbus New Jersey U.S.A.	AvT-VK-0053	See, Invoice no. AVT-VK-0038.
Teresa Louis	West Palm Beach Florida USA	Avt-VK-53/1	See, another Invoice no. Avt-VK-165

Sarah Beckett Boehm McGuire WOODS LLP Douglas M.Foley	Richmond Virginia U.S.A.	AvT-VK-0054	Jointly/Severally responsible See, Invoice no. AvT-VK-0054/1 also.
Kalichamy Iyyasamy AKA: Kaliswamy Iyyaswamy	Suwanee Georgia U.S.A.	AvT-VK-0055	new address to be updated. See, another Invoice no. AvT-VK-0055/1 also.
Senthilkumar Kandasamy AKA: Senthilkumar Kandaswamy AKA: Senthil	Suwanee Georgia U.S.A.	AvT-VK-0055	See, another associated invoice no.55/2 also.
Shubanghi Thakur (Dr)	Watchang New Jersey U.S.A.	AvT-VK-0055	
HOOVER SLOVACEK LLP Annie Catmull	Houston Texas U.S.A.	AvT-VK-0056	Jointly and or severally responsible. See, Invo # AvT-VK-0077.
Gary Burgess	Marion Illinois U.S.A.	AvT-VK-0057	See, Invo # AvT-VK-0078
Steven Harvey AKA: Stephan Harvey	Terre Haute Indiana U.S.A	AvT-VK-0058	-same as above-
Donald Franklin Samuel Bruce Harvey	Atlanta Georgia U.S.A.	AvT-VK-0059	Jointly and/or Severally
Steven Cope Todd Brown AKA: Todd C.Brown	Martinsberg W.V. U.S.A. - same as above-	AvT-VK-0060 AvT-VK-0060	Jointly and/or severally responsible.
Katherine Seirevald	Terre Haute Indiana U.S.A.	AvT-VK-0060	
Lawrence R.Sommerfield AKA: Lawrence R.Sommerfeld	Atlanta Georgia U.S.A.	AvT-VK-0061	
James B.Cash	Atlanta Georgia U.S.A.	AvT-VK-0061	

CARROLL COUNTY, GEORGIA CARROLL COUNTY SHERIFF'S DEPARTMENT	Georgia U.S.A	AvT-VK-0061-1	See, Invoice no. 108 also.
Jefferson Sessions/Jeff Sessions UNITED STATES DEPARTMENT OF JUSTICE	Washington D.C. U.S.A.	AvT-VK-0062	
Jeffrey E.Kruger	Terre Haute INDIANA U.S.A	AvT-VK-0063	
Richard W.Winter FEDEARAL BUREAU OF PRISONS	Kansas City, KANSAS U.S.A.	AvT-VK-0064	See Invoice no.
Richard W.Schott	-same as above-	AvT-VK-0065	AvT-VK-0065,
Clifford J.White	Washington D.C. U.S.A.	AvT-VK-0066	
Evelyn Keller	Terre Haute INDIANA U.S.A.	AvT-VK-0067	
Adam Marshal Hames	Atlanta Georgia U.S.A.	AvT-VK-0068	
Brian Steel Colette Resnik Steel	Atlanta Georgia U.S.A.	AvT-VK 0069	
Scott B.Riddle	Atlanta Georgia U.S.A.	AvT-VK-0070	
Margarett Strickler CONWAY & STRICKLER P.C.	Atlanta Georgia U.S.A.	AvT-VK-0071	
Rakshan Baskerville	Marion, Illinois U.S.A.	AvT-VK-0072	
William True	Marion, Illinois U.S.A.	AvT-VK-0073	
Yuvraj Vivekanandan	Simi Valley, California U.S.A	AvT-VK-0074	
Sathyaranarayanan Krishnamoorthi Sathyaranarayanan Krishnamurthi Sathyaranarayanan Krishnamurthy	Coimbatore INDIA	AvT-VK-0075	

Annie E.Catmull HOOVER SLOVACEK LLP	Houston Texas U.S.A.	AvT-VK-0077	
Viswanathan Lakshmanan AKA L.V.Sharma	Coimbatore INDIA	AvT-VK-0078	
Saravanan Balasubramanian Saravanan Balasubramanian	Coimbatore INDIA	AvT-VK-0079	
Muthukumar Sadasiwa Pattar	INDIA	AvT-VK-0080	
Aruna Kona	Cedar Rapids IOWA U.S.A.	AvT-VK-0093	
Beena Krishnamurthy	Mechanicsburg Virginia U.S.A.	AvT-VK-0093/1	
Jagadish Thakur	Watchung New Jersey U.S.A.	AvT-VK-093/1	See, Inv # AvT-VK-93/3.
Kevin Kraft	Edison New Jersey U.S.A.	AvT-VK-093/2	See, Invoice no AvT-VK-0081 also.
Jagadish Thakur	Watchung New Jersey U.S.A.		See, Inv # AvT-VK-093/1
Hema Mehta	Frederick, Maryland U.S.A.	AvT-VK-094	See, Inv # AvT-VK-0085
Anderson Lake Properties LLC	Flowery Branch Georgia U.S.A.	AvT-VK-095	
Sumanth Dhitturi	Indianapolis Indiana U.S.A.	AvT-VK-096	See, Inv # AvT-VK-0082
Sandra Detna	North Baldwin N.Y-U.S.A	AvT-VK-0097	See, Invo.# AvT-VK-0083
Sridhar Dadi	Katy Texas U.S.A.	AvT-VK-098	
Anupama Desai	Irvine California U.S.A.	AvT-VK-099	

Gordan W. Gates GATES WISENSCHOLGGER P.C.	Springfield Illinois U.S.A.	AvT-VK-100	
NAVAREE ROBBINS PARTNERSHIP Jenny R.Turner Kannan Ramanujam	Baytown Texas U.S.A. Atlanta Georgia U.S.A. INDIA & Alpharetta U.S.A.	AvT-VK-101 AvT-VK-101/1 AvT-VK-101/2	
Senthilkumar Kandasamy	C/O Suwanee Georgia U.S.A.	AvT-VK 101/3	See, Invo.# AvT-VK-084
Beena Krishnamurthi	Mechanicsburg Virginia U.S.A.	AvT-VK-101/4	See, Invo # AvT-VK-093/1
AMERICAN COMMERCE BANK	Bremen Georgia U.S.A..	AvT-VK-102	
Bruce Harvey Atlanta Bruce S.Harvey P.C. Bruce S.Harvey	Atlanta Georgia U.S.A.	AvT-VK-103	See, Invo # AvT-VK-0058
Donald Franklin Samuel GARLAND, SAMUEL, LEOB P.C.,	Atlanta Georgia U.S.A	AvT-VK-104	See, Invo# AvT-VK-0058
WELLS FARGO HOME MORTGAGE WELLS FARGO BANK	Des Moines-50306 U.S.A.	AvT-VK-105	
Scott Benjamin Riddle	Atlanta Georgia U.S.A.	AvT-VK-106	
CITY OF DAYTON, OHIO	Dayton Ohio U.S.A.	AvT-VK-107	
CARROL COUNTY SHERIFF's OFFICE CARROL COUNTY SHERIFF'S DEPARTMENT..... . .	Carrol County Georgia U.S.A.	AvT-VK-108	Jointly responsible with THOMPSON O'BRIEN KEMP NASUTI P.C.
R.W. GREEN FAMILY L.P. RICKY GREEN DR.RONDA GREEN WILBANKS & WILBANKS P.C.	Baytown Texas U.S.A. Houston Texas U.S.A.	AvT-VK-109	See, also Invoice no. AvT-VK-0076

Sallu Krishna Kunnatha	Atlanta Georgia U.S.A.	AvT-VK-110
Anish George	The Colony Texas-75056 USA	AvT-VK-111
Hemangani Patel	Gabriella Maryland U.S.A.	AvT-VK-112
Lakshmi Narashimhan Dr.Lakshmi Narashimhan	Jacksonville North Carolina U.S.A.	AvT-VK-113
Veda Pattar	Indianapolis Indiana U.S.A.	AvT-VK-114
Ravindra Pattar	Indianapolis Indiana U.S.A.	AvT-VK-115
Breinda Shah	Atlanta Georgia U.S.A.	AvT-VK-116
Nidhi Sharama	Catherpia Virginia U.S.A.	AvT-VK-117
Shobna Sedani Hasanakda	Grover City Ohio U.S.A.	AvT-VK-118
Syed Rizwan	Lawranceville Georgia U.S.A.	AvT-VK-119
Shewta Shetty	Glenview Illinois U.S.A.	AvT-VK-120
Jagadish Shanadi	Clermont Florida U.S.A.	AvT-VK-121
Shobana Shaikh	Clovery Maryland U.S.A.	AvT-VK-122
Baskaran Subbiaha Kalavathi Baskaran	Orange California U.S.A.	AvT-VK-123
Kalaiselvi Vasudevan	Woopdbridge New Jersey USA	AVT-VK-124
MICAMP MERCHANT SERVICES	Haggerstown Ohio U.S.A.	AvT-VK-126
MERCHANT WAREHOUSE	Boston Massachusetts	AvT-VK-127
ELEVON MERCHANT SERVICES INC	Melville New York U.S.A.	AvT-VK-128

UNITED BANK CARD

Allentown Pennsylvania U.S.A.

AvT-VK-129

Anuradha Reddy	California U.S.A.	AvT-VK-131 See Invo# AvT-VK-152.
Anandan Baluswamy/Anandhan Baluswamy	Sungam Coimbatore INDIA	AvT-VK-132
Vijay Bombaywala	Norcross Georgia U.S.A.	AvT-VK-133
GLOBAL PAY INC	Atlanta Georgia U.S.A.	AvT-VK-134
DISCOVER FINANCIAL SERVICES INC	Marietta Georgia U.S.A.	AvT-VK-135
Janani Ravikumar	Texas U.S.A.	AvT-VK-136 See Invo# AvT-VK-150
Jonathan F. Hung GREEN & GREEN LAWYERS	Dayton Ohio U.S.A.	AvT-VK-137
Vijayaraghavan Raghunathan	Alpharetta Georgia U.S.A. Coimbatore INDIA	AvT-VK-138 " C/O Nathan"
Vasundhara Krishnamohan	Boston Massachusetts U.S.A.	AvT-VK-138 See Invo# AvT-VK-151
Muthukrishnan Veeriah	Coimbatore India C/O Atlanta Georgia	AvT-VK-139
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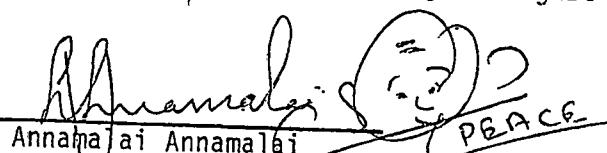
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Law Offices of Steven Berne Steven Paul Berne	Atlanta Georgia	AvT-VK-169/5
Law offices of Bruce Harvey	Atlanta Georgia	AvT-VK-169/6

Note:

Some more account debtors names and addresses are stuck in the plaintiff's legal materials boxes with his former counsel Ms. Leigh Ann Webster in Atlanta, Georgia. The rest of the account debtors details will be updated as soon as the plaintiff is able to retrieve his legal materials boxes from his former counsel to this court in a timely manner.

Respectfully Submitted, this day of August 31, 2022.

  
Annamalai Annamalai  
AKA: Swamiji Sri Selvam Siddhar  
Temporary mailing address:  
C70 P.O.Box-1000, marion, IL-62959

STATE OF INDIANA  
COUNTY OF VIGO ) SS:

I, Bradley M. Newman, Clerk of the Vigo Circuit Court and Ex-Officio Clerk of the Superior and County Courts of Vigo County, do hereby certify that this document is a full, true and complete copy of

List of Account Debtors  
Cause No. 84DD02-1704 - M1-2768

As the same appears of record in the files of this office of which I am legal and lawful custodian.

IN WITNESS WHEREOF, I have hereunto set my hand and

official seal, this the 10<sup>th</sup> day of January, 2023.



CLERK OF THE VIGO CIRCUIT COURT AND  
EX-OFFICIO CLERK OF THE SUPERIOR AND  
COUNTY COURTS OF VIGO COUNTY

Permanent Address of Judgement Creditor:  
Swamiji Sri Selvam Siddhar ( Annamalai )  
C/O SIDDHAR PEEDAM MPASTERY  
Old No.48 New No.61 Sathyamoorthi Road  
second Floor, Coimbatore-641009 INDIA  
E-Mail: sparu32@gmail.com/avtemple@aol.com  
Web: www.siddharpeedam.org

E V I D E N C E / E X H I B I T   N U M B E R -15

UNITED STATES OF AMERICA, Plaintiff - Appellee, versus ANNAMALAI ANNAMALAI, Defendant - Appellant.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT  
939 F.3d 1216; 2019 U.S. App. LEXIS 28815; 124 A.F.T.R.2d (RIA) 2019-6046; 28 Fla. L. Weekly Fed. C 363

No. 15-11854

September 24, 2019, Decided

**Editorial Information: Prior History**

{2019 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Georgia. D.C. Docket No. 1:13-cr-00437-TCB-ECS-1. United States v. Annamalai, 2014 U.S. Dist. LEXIS 108509 (N.D. Ga., July 16, 2014)

**Counsel**

For United States of America, Plaintiff - Appellee: Steven D. Grimberg, John Andrew Horn, Samir Kaushal, Lawrence R. Sommerfeld, Jenny R. Turner, U.S. Attorney's Office, Atlanta, GA.

For Annamalai Annamalai, Defendant - Appellant: Lynn Fant Merritt, Leigh Ann Webster, Strickland Webster, LLC, Atlanta, GA; Annamalai Annamalai, USP Marion - Inmate Legal Mail, Marion, IL.

**Judges:** Before WILSON and JORDAN, Circuit Judges, and MOORE,\* District Judge.

**CASE SUMMARY**Charges against defendant were properly joined under Fed. R. Crim. P. 8(a), and district court did not err in not severing some of charges under Fed. R. Crim. P. 14(a) because claims arose out of and were connected to same general fraudulent scheme, and defendant had not shown compelling prejudice with regard to denial of severance.

**OVERVIEW: HOLDINGS:** [1]-The charges against defendant were properly joined under Fed. R. Crim. P. 8(a), and the district court did not err in not severing some of those charges under Fed. R. Crim. P. 14(a) because all of the claims arose out of and were connected to the same general fraudulent scheme, and defendant had not shown an abuse of discretion or compelling prejudice with regard to the denial of severance; [2]-Defendant's prosecution, conviction, and sentencing did not violate his constitutional rights to due process and freedom of religion as the government's case was not an impermissible attack on the Hindu religion or on the truth or verity of defendant's beliefs, but rather, defendant was prosecuted for abusing his position as a Hindu priest and the government's description of defendant and his temple as a scam was a fair comment on the evidence and did not constitute an improper hostility towards Hinduism, and defendant's substantial rights were not violated by the prosecutor's improper comments.

**OUTCOME:** Judgment affirmed in part and reversed and remanded in part.

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A party cannot use Fed. R. Civ. P. 36 to request admissions to legal conclusions. Fed. R. Civ. P. 36(a)(1) authorizes a party to request admissions to facts, the application of law to fact, or opinions about either. Requests for admissions as to central facts in dispute are beyond the proper scope of Rule 36.

### ***Governments > Courts > Authority to Adjudicate***

Courts are never bound by concessions on questions of law. Rather, the determination of whether a government's prosecution was vexatious, frivolous, malicious or in bad faith is reserved for the court.

### **Opinion**

PER CURIAM:

In 2014, following a lengthy trial, a jury convicted Annamalai Annamalai of 34 criminal offenses, including conspiracy to commit bank fraud, bank fraud, filing a false federal income tax return, conspiracy to commit bankruptcy fraud, bankruptcy fraud, money laundering, making a false statement in writing, obstruction of justice, making false statements under oath during a bankruptcy proceeding, and conspiracy to harbor a fugitive. See *United States v. Annamalai*, 939 F.3d 1216, 1221-22 (11th Cir. 2019) (*Annamalai I*). On appeal, we reversed his convictions for conspiracy to commit bankruptcy fraud, bankruptcy fraud, money laundering, and conspiracy to harbor a fugitive. *Id.* at 1225-35. We affirmed his remaining{2022 U.S. App. LEXIS 2} convictions and remanded for resentencing. *Id.* at 1221, 1238-39.

Following our decision and prior to resentencing, Annamalai filed a motion for attorney's fees under the Hyde Amendment for the counts that we reversed on direct appeal, along with a related motion for summary judgment and a motion to compel production of documents. The district court denied these motions, and Annamalai appealed. After review and with the benefit of oral argument, we affirm.

#### **I. Background**

##### ***A. Annamalai's Trial and Direct Appeal***

Annamalai, "a self-proclaimed Hindu priest," ran the Hindu Temple and Community Center of Georgia, Inc. in Norcross, Georgia from 2005 to 2009. *United States v. Annamalai*, 939 F.3d 1216, 1221 (11th Cir. 2019). "The Hindu Temple generated income in part by charging fees for religious and spiritual products and services, including religious ceremonies and horoscopes." *Id.* "The evidence at trial showed that Mr. Annamalai used the Hindu Temple as part of a criminal scheme to defraud his followers and commit bank fraud." *Id.* Specifically, he made unauthorized transactions on his followers' credit cards, and then, if they complained, he would cite to the temple's "no refund" policy. *Id.* He also submitted false documents and information to banks and law enforcement to justify{2022 U.S. App. LEXIS 3} the charges. *Id.* He "used the fraud proceeds to fund a lavish lifestyle, including multiple homes and expensive cars." *Id.* The Hindu Temple filed for Chapter 11 bankruptcy in 2009 and the bankruptcy trustee closed the temple. *Id.* at 1221-22. Meanwhile, Annamalai incorporated a new temple, which also provided religious and spiritual products and services for a fee. *Id.* at 1222.

In 2013, a grand jury in the Northern District of Georgia returned an indictment against Mr. Annamalai and others. The government subsequently obtained two superseding indictments.

The second superseding indictment charged Mr. Annamalai with 34 criminal offenses: conspiracy to commit bank fraud in violation of 18 U.S.C. §§ 1349 and 1344 (Count 1); bank fraud in violation of 18 U.S.C. §§ 1344 and 2 (Counts 2-8); filing a false federal income tax return in violation of 26 U.S.C. § 7206(1) (Count 9); conspiracy to commit bankruptcy fraud in violation of 18 U.S.C. §§ 371 and 152(1) (Count 10); bankruptcy fraud in violation of 18 U.S.C. §§ 152(1) and 2 (Counts 11-20); money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (Counts 21-30); making a false statement in writing in violation of 18 U.S.C. §§ 1001(a)(3) and 2 (Count 31); obstruction of justice in violation of 18 U.S.C. §§ 1503 and 2 (Count 32); making false statements under oath in a bankruptcy proceeding in violation of 18 U.S.C. §§ 152(2) and 2 (Count 33);<sup>{2022 U.S. App. LEXIS 4}</sup> and conspiracy to harbor a fugitive in violation of 18 U.S.C. §§ 1071 and 371 (Count 34).*Id.* The monies received by the new temple served as the basis for the bankruptcy fraud charges. *Id.* A jury convicted Annamalai of all 34 counts. *Id.*

On appeal, we reversed Annamalai's convictions for substantive bankruptcy fraud (Counts 11-20), conspiracy to commit bankruptcy fraud (Count 10), money laundering (Counts 21-30), and conspiracy to harbor a fugitive (Count 34). *Id.* at 1228-35. As to sentencing, we determined that the district court erred in its loss-amount determination related to the bank fraud counts, which affected the guidelines' calculation and required resentencing. *Id.* at 1235-38. We affirmed the other sentencing enhancements and remanded the case for further proceedings. *Id.* at 1238-39 & n.5.

#### *B. The Hyde Amendment Proceedings*

Following our decision in Annamalai I and prior to resentencing, Annamalai filed a *pro se* motion for attorney's fees and expenses under the Hyde Amendment, seeking to recover fees and expenses incurred in defending against the counts of conviction that we reversed on direct appeal. He maintained that the government's prosecution on those counts was "frivolous, [v]exatious, or in bad faith" and "utterly without foundation"<sup>{2022 U.S. App. LEXIS 5}</sup> in law or fact." That same day, he filed a *pro se* notice stating that he had served the government with a request for admissions under Federal Rule of Civil Procedure 36.

Approximately a month later, he filed a *pro se* motion for summary judgment on the Hyde Amendment claim. He asserted that the government had not answered his request for admissions, and, therefore, all were deemed admitted, and he was entitled to summary judgment on his Hyde Amendment motion.<sup>1</sup> Annamalai also filed a motion to compel production of certain documents, including any e-mails, excluding privileged materials, that related to him, his wife, his former business partner, and any Hindu temples or business entities with which any of those individuals were involved—which he claimed was related to his Hyde Amendment motion.

The district court denied all three motions in an omnibus order, explaining that the Hyde Amendment allows attorney's fees if a prosecution is brought vexatiously, in bad faith, or so utterly without legal or factual foundation as to be frivolous. This is not the case here. A jury convicted Annamalai of [the reversed] counts and, although the Eleventh Circuit reversed the conviction[s], it is a far stretch from the type of prosecution for which the Hyde Amendment<sup>{2022 U.S. App. LEXIS 6}</sup> provides relief.(internal citations omitted). Annamalai, proceeding *pro se*, appealed. Meanwhile, he awaited resentencing. We appointed counsel to represent Annamalai and held oral argument.

During the pendency of this appeal, the district court held the resentencing hearing and resentenced Annamalai to 216 months' imprisonment, followed by five years' supervised release.

With this procedural background in mind, we turn to the arguments on appeal.<sup>2</sup>

## II. Standard of Review

We review the district court's award or denial of attorney's fees and costs under the Hyde Amendment for abuse of discretion. *United States v. Adkinson*, 247 F.3d 1289, 1290 (11th Cir. 2001); *United States v. Gilbert*, 198 F.3d 1293, 1296-98 (11th Cir. 1999). "An abuse of discretion occurs if the judge fails to apply the proper legal standard or to follow proper procedures in making the determination, or bases an award or a denial upon findings of fact that are clearly erroneous." *Gilbert*, 198 F.3d at 1298 (alterations adopted) (quotations omitted).

## III. Discussion

Annamalai argues that the district court abused its discretion in denying his Hyde Amendment motion because it applied the wrong legal standard and because the government's unanswered request for admissions established that Annamalai was entitled to relief.

The Hyde Amendment provides in pertinent part:

[T]he court, {2022 U.S. App. LEXIS 7} in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) . . . may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code. Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997) (reprinted in 18 U.S.C. § 3006A, historical and statutory notes). The criminal defendant bears the burden of proving by a preponderance of the evidence that he is entitled to the fee award. *Adkinson*, 247 F.3d at 1291. In order to be entitled to a Hyde Amendment award, the defendant must do more than show that he "prevailed at the pre-trial, trial, or appellate stages of the prosecution." *Gilbert*, 198 F.3d at 1299. Rather, a defendant faces the "daunting obstacle" of "show[ing] that the government's position underlying the prosecution amounts to prosecutorial misconduct—a prosecution brought vexatiously, in bad faith, or so utterly without foundation in law or fact as to be frivolous." *Id.* at 1299, 1302.

For Hyde Amendment purposes, {2022 U.S. App. LEXIS 8}

[v]exatious means without reasonable or probable cause or excuse. A frivolous action is one that is [g]roundless . . . with little prospect of success; often brought to embarrass or annoy the defendant. [B]ad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; . . . it contemplates a state of mind affirmatively operating with furtive design or ill will. *United States v. Shaygan*, 652 F.3d 1297, 1312 (11th Cir. 2011) (second and third alterations in original) (internal citations and quotations omitted). "[T]he Supreme Court has explained that, in all but an exceptional case, 'so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.'" *Id.* at 1315 (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S. Ct. 663, 54 L. Ed. 2d 604 (1978)).

The district court denied Annamalai's Hyde Amendment related motions, concluding that his prosecution was not brought vexatiously, in bad faith, or legally frivolous. The district court's decision was correct because Annamalai failed to demonstrate his entitlement to a fee award.

Although Annamalai argues that our opinion{2022 U.S. App. LEXIS 9} on direct appeal reversing the bankruptcy fraud convictions demonstrated that the government's position was legally frivolous as a matter of law, his argument is meritless. We reversed Annamalai's bankruptcy fraud convictions after determining that inclusion of the post-bankruptcy petition monies received by the new temple-the only basis for the bankruptcy fraud charges-would contravene the plain language of relevant bankruptcy statutes that defined the bankruptcy estate. Annamalai I, 939 F.3d at 1228-29. Accordingly, the bankruptcy fraud charges could not stand. *Id.* But our conclusion in Annamalai I does not demonstrate that the government's position was legally frivolous.

As we noted in Annamalai I, the bankruptcy trustee incorrectly opined that the receivables of the new temple were property of the bankruptcy estate. *Id.* at 1229. Additionally, the government believed that the Hindu temple and the new temple were essentially alter egos-i.e., that they were the same business. *Id.* at 1230-31. Although we determined on direct appeal that those conclusions were incorrect and based on a misunderstanding of bankruptcy law, *id.*, an incorrect interpretation of the law or a misunderstanding of the law does not make a prosecution legally frivolous.{2022 U.S. App. LEXIS 10} Thus, because the government legitimately believed, albeit erroneously, that the post-petition receivables of the new temple were part of the bankruptcy estate and that the Hindu temple and the new temple were alter egos, its prosecution was not vexatious, in bad faith, or legally frivolous. *Shaygan*, 652 F.3d at 1315, 1317. Accordingly, the district court had no discretion to award Annamalai fees or costs under the Hyde Amendment.

Annamalai argues that the district court applied an improper legal standard in denying his Hyde Amendment motion because the district court based its denial on the fact that he was convicted by a jury. He maintains that there is no limitation on Hyde Amendment relief for defendants that were convicted by a jury but later prevailed on appeal, and that it is entirely plausible that the government can convince a jury to convict in a legally frivolous case-as it did in his case. His argument is unpersuasive.

Although the district court mentioned in the order denying the Hyde Amendment motion that Annamalai had been convicted by a jury, the court did not improperly apply that fact in its determination of his entitlement to the fee award. Rather, the district court properly identified that the{2022 U.S. App. LEXIS 11} Hyde Amendment "allows attorney's fees if a prosecution is brought vexatiously, in bad faith, or so utterly without legal or factual foundation as to be frivolous"-which is the correct legal standard. And it applied that legal standard when it determined that Annamalai's case was "a far stretch from the type of prosecution for which the Hyde Amendment provides relief." Accordingly, the district court did not apply an improper legal standard.

Alternatively, Annamalai argues that the district court erred in denying his Hyde Amendment motion and his related motion for summary judgment and motion to compel because it ignored the fact that the government failed to respond to his Rule 36 request for admissions and therefore those admissions-which included three statements that the government's prosecution was malicious, in bad faith, vexatious, and frivolous-were admitted. Accordingly, he claims that he made the required showing for a fee award. Annamalai's argument is meritless. Even assuming that Rule 36 applies to his case-a question on which we express no opinion because we do not reach whether a Hyde Amendment motion is a separate civil proceeding or part of the underlying criminal action-a party{2022 U.S. App. LEXIS 12} cannot use Rule 36 to request admissions to legal conclusions. See Fed. R. Civ. P. 36(a)(1) (authorizing a party to request admissions to "facts, the application of law to fact, or opinions about either"); see also *Pickens v. Equitable Life Assurance Soc'y of the U.S.*, 413 F.2d 1390, 1393 (5th Cir. 1969) (holding that "requests for admissions as to central facts in dispute are beyond the proper scope of [Rule 36]"). And, regardless, even if the government were deemed to

We begin by summarizing the evidence presented by the government on the bankruptcy fraud charges.

Immediately following his appointment on November 4, 2009, the trustee closed the Hindu Temple, shut its doors, and did not conduct any further business on its behalf. See D.E. 386 at 1182, 1185-86, 1201-03, 1206-07. The trustee acknowledged at trial that Mr. Annamalai-who was not the organizational debtor-was permitted to open a new temple after the Hindu Temple filed for bankruptcy. See *id.* at 1203-06, 1211-12. So did the IRS investigator who testified for the{2019 U.S. App. LEXIS 16} government. See *id.* at 1144.

Less than a week after the trustee was appointed, Mr. Annamalai incorporated and registered a new entity called the Shiva Vishnu Temple. The physical address for the Shiva Vishnu Temple was a different location in Norcross, Georgia-a house owned by Mr. Annamalai-but the mailing address and the e-mail address apparently remained the same. See *id.* at 1095-96, 1152. After the Shiva Vishnu Temple was registered with Georgia's secretary of state, it unsuccessfully sought to transfer a merchant account that the Hindu Temple had with Global Pay/Power Pay. See *id.* at 1105-06.

In magazines distributed after the Hindu Temple filed for bankruptcy, advertisements stated that the Shiva Vishnu Temple was "also known as the Hindu Temple of Georgia" and included Mr. Annamalai in photographs. See *id.* at 1102-04. According to the IRS investigator, the Hindu Temple and the Shiva Vishnu Temple were "the same business." *Id.* at 1104.

On November 12, 2009, three days following its incorporation, the Shiva Vishnu Temple opened a new bank account at Bank of America, with Mr. Annamalai listed as one of the authorized signers. See *id.* at 1109. After this account was opened, the merchant accounts that the Hindu Temple had with American Express and with Elavon were{2019 U.S. App. LEXIS 17} changed to the name of the Shiva Vishnu Temple and the Bank of America account replaced the bank account previously on file. This ensured that any future credit card receivables from these merchant accounts would be deposited in the {939 F.3d 1227} Bank of America account. See *id.* at 1110-13, 1126-27, 1143-44. A week or so later, on November 20, 2009, the Shiva Vishnu Temple opened a new merchant account with Global Pay. See *id.* at 1120.

The trustee maintained at trial that the bankruptcy estate of the Hindu Temple included its merchant accounts, as well as all post-bankruptcy receivables that ran through those accounts (even if they were routed to the new bank account of the Shiva Vishnu Temple). See *id.* at 1185-87, 1219-20. His explanation for this legal conclusion was that "[a]ssets coming into the bankruptcy entity become property of the estate." *Id.* at 1188. The trustee testified that Mr. Annamalai had to obtain his permission to use the merchant accounts belonging to the Hindu Temple, and that Mr. Annamalai did not do so when he changed the American Express and Elavon merchant accounts from the Hindu Temple to the Shiva Vishnu Temple. See *id.* at 1220-21. The trustee asserted that if Mr. Annamalai provided services to others, the money for such services was his to keep as long as he{2019 U.S. App. LEXIS 18} was not "doing it under the auspices of the Hindu Temple of Georgia." *Id.* at 1205.

Significantly, the IRS investigator acknowledged that no funds in the merchant accounts of the Hindu Temple were moved or transferred to the Shiva Vishnu Temple. See *id.* at 1146, 1151. The receivables which formed the basis of the bankruptcy fraud charges in Counts 11-14 and 16-20 were for "new services" provided post-bankruptcy, and the receivables for those services went to the Shiva Vishnu Temple. See *id.* at 1154-55. In other words, the Shiva Vishnu Temple accepted payments for religious services it provided to followers after the Hindu Temple filed for bankruptcy. As the IRS investigator put it, it was "[n]ew money, new customers, new service, new bank account."

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*Id.* at 1157, 1160-61.

The trustee did not know the names of the followers who made payments on their credit cards to the Shiva Vishnu Temple. See *id.* at 1212-1213. He also did not know whether any of them believed that they were making payments to the Hindu Temple as opposed to the Shiva Vishnu Temple. See *id.* at 1213. The trustee opined that money that was due to the Hindu Temple "was diverted" to the Shiva Vishnu Temple, and if so it "may have been [the bankruptcy estate's] money," but he admitted that he did not "know that for{2019 U.S. App. LEXIS 19} a fact." *Id.* Indeed, when asked how he knew that someone in October of 2010 was using the name of the Hindu Temple to elicit post-bankruptcy credit card payments from followers, the trustee said he did not "know that" and could not "prove that." *Id.* at 1214.

In January of 2010, Kumar Chinnathambi, Mr. Annamalai's co-conspirator, deposited a \$3,000 check-made out to the Hindu Temple of Georgia as a donation-into the bank account of the Shiva Vishnu Temple without the trustee's knowledge or consent. See D.E. 386 at 1127. The trustee testified that he never spoke to the donors and therefore did not know "what was on their minds" when they issued the check, *id.* at 1211, and the donors did not testify at trial. The government called an agent to testify about the donation check, and he described the check, noting the account in which it was deposited and who deposited it. See *id.* at 1127-28, 1172-73.

## B

As noted earlier, 18 U.S.C. § 152(1) prohibits knowingly and fraudulently concealing from a bankruptcy trustee (and certain other persons) "any property belonging to the estate of a debtor." The elements of a § 152(1) offense in a {939 F.3d 1228} Chapter 11 context are (1) the existence of a bankruptcy proceeding; (2) the existence of property belonging to the bankruptcy estate;{2019 U.S. App. LEXIS 20} and (3) the defendant's knowing and fraudulent concealment of that property from the trustee, custodian, marshal, or other officer of the court charged with custody and control of that property. See *United States v. Spurlin*, 664 F.3d 954, 960 (5th Cir. 2011); *United States v. Wagner*, 382 F.3d 598, 607 (6th Cir. 2004). With these elements in mind, we address whether the government proved that the post-petition receivables of the Shiva Vishnu Temple charged in Counts 11-14 and 16-20 and the \$3,000 donation check charged in Count 15 constituted property of the bankruptcy estate of the Hindu Temple.

As a general matter, "[w]hether property is part of the bankruptcy estate is a factual issue for the jury." *United States v. Dennis*, 237 F.3d 1295, 1300 (11th Cir. 2001). Here, however, the evidence was insufficient as a matter of law as to the substantive bankruptcy fraud charges in Counts 11-20 because the post-petition receivables of the Shiva Vishnu Temple and the \$3,000 donation check were not the property of the bankruptcy estate of the Hindu Temple. Whatever wrongs Mr. Annamalai may have committed with respect to those receivables and the donation check did not constitute bankruptcy fraud on the evidence presented.

The Bankruptcy Code, in 11 U.S.C. § 541(a), defines what property interests comprise the bankruptcy estate. See 5 Collier on Bankruptcy ¶ 541.03 (16th ed. 2019). The{2019 U.S. App. LEXIS 21} government only relies on subsections (a)(1) and (a)(6), see Gov't Br. at 39-40, so we do not address subsections (a)(2)-(5) or (7).

We begin with § 541(a)(1), which provides that the bankruptcy estate consists of "all legal and equitable interests of the debtor in property as of the commencement of the [bankruptcy] case." 11 U.S.C. § 541(a)(1) (emphasis added). While state law generally creates and defines property interests, see *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979), the bankruptcy estate "succeeds only to those interests that the debtor had in property *prior* to the

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commencement of the bankruptcy case." *In re FCX, Inc.*, 853 F.2d 1149, 1153 (4th Cir. 1988) (emphasis added). Due to this textual temporal limitation, the bankruptcy estate under § 541(a)(1) "is determined at the time of the initial filing of the bankruptcy petition[.]" *In re Majestic Star Casino, LLC*, 716 F.3d 736, 751 (3d Cir. 2013) (quotation omitted). This has been our understanding for some time. See *Ford, Bacon & Davis, Inc. v. Holahan*, 311 F.2d 901, 902 (5th Cir. 1962) (addressing § 70(a) of the former Bankruptcy Act: "[T]he determination of what property vests in the trustee is made as of th[e] date [on which the petition is filed.]"); *Curtis v. Humphrey*, 78 F.2d 73, 74 (5th Cir. 1935) ("Any right the trustee had became fixed as of the date the bankruptcy petition was filed[.]"). Because the receivables charged in Counts 11-14 and 16-20 and the donation check charged in Count 15 did not exist in August of 2009, when the Hindu Temple filed for bankruptcy, they were not part of the{2019 U.S. App. LEXIS 22} estate under § 541(a)(1).

The post-bankruptcy receivables were in fact payments for "new services" provided to followers by the Shiva Vishnu Temple after the Hindu Temple filed for bankruptcy. See D.E. 386 at 1154-55, 57. Those services simply were not provided by the Hindu Temple, which did no more business after the trustee shut it down in early November of 2009, or its estate. Further, the trustee and the IRS investigator testified (correctly in our view) that nothing prevented Mr. Annamalai-who was not the debtor-from opening a new temple {939 F.3d 1229} like the Shiva Vishnu Temple and providing religious services to followers after the Hindu Temple filed for bankruptcy. See *BBeautiful v. Rieke-Arminak Corp. (In re BBeautiful)*, No. 2:16-bk-10799-ER, 2017 Bankr. LEXIS 615, 2017 WL 932945, at \*5 (Bankr. C.D. Cal. Mar. 8, 2017) (explaining that new post-bankruptcy business relationships established by the principal of the corporate debtor did not constitute property of the estate).

We recognize that the trustee opined that the post-petition receivables of the Shiva Vishnu Temple belonged to the estate. That opinion, however, amounted to an incorrect and unsupported legal conclusion. Cf. *Diversified Fiber Prods. v. United States (In re Thena, Inc.)*, 190 B.R. 407, 412 (D. Oregon 1995) ("Chapter 11 does not permit the estate's inclusion of property that did not exist at the time of filing, for the debtor's beneficial, equitable{2019 U.S. App. LEXIS 23} use. . . . Congress promulgated Chapter 11 to protect, rather than enhance, the debtor's estate.").

Take Count 20, which involved receivables processed and received by the Shiva Vishnu Temple on October 25, 2010, over 13 months after the Hindu Temple filed for bankruptcy and about 11 months after the trustee shut its doors. In its closing argument, the government told the jury that all of the funds generated by the Shiva Vishnu Temple constituted property of the bankruptcy estate of the Hindu Temple, no matter how much time passed, "because the bankruptcy was still pending." D.E. 390 at 2093. But the ongoing nature of a bankruptcy proceeding does not, by itself, dictate whether something is or is not property of the estate. If the government's theory concerning property of the estate were correct, the temporal limitation set out in the text of § 541(a)(1) (i.e., "as of the commencement of the [bankruptcy] case") would be rendered illusory. We decline the invitation, express or implied, to depart from the statutory language.<sup>2</sup>

The bankruptcy estate also encompasses "proceeds, product, offspring, rents, or profits of or from property of the estate." 11 U.S.C. § 541(a)(6) (emphasis added). Contrary to the government's suggestion,{2019 U.S. App. LEXIS 24} there is insufficient evidence to show that the post-bankruptcy receivables fell within § 541(a)(6). The "Bankruptcy Code takes an estate's constituent property interests as it finds them," *In re Northington*, 876 F.3d 1302, 1314 (11th Cir. 2017), and the government did not prove or explain (or cite any authority to support) how the estate (and everything it comprised at the time of filing) generated these post-bankruptcy receivables. See *In re Bracewell*, 454 F.3d 1234, 1245 (11th Cir. 2006) (explaining that under § 541(a)(6) the "proceeds must be 'of or from the property of the estate'"). The merchant accounts, even assuming

they were property of the estate, were used to process the credit card payments but not to generate them.

Likewise, the government made no attempt to demonstrate that the \$3,000 donation check was generated by property of the bankruptcy estate under § 541(a)(6). See *In re Bracewell*, 454 F.3d at 1245. Once the bankruptcy trustee shut down the Hindu Temple, it stopped serving followers. At no point, however, did the government attempt to connect the check to property of the Hindu Temple's bankruptcy estate. The agent who testified about the check at trial only related who the check was made out to, the account in {939 F.3d 1230} which it was deposited, and who deposited it. The donors of the \$3,000 check did not testify, and absent any other evidence{2019 U.S. App. LEXIS 25} from the government-as far as we can tell none was presented at trial-the jury could not find that the donation check was a proceed, product, offspring, rent, or profit generated from some activity performed by the estate or its property.

We again acknowledge the testimony of the trustee, who believed that "assets coming into the bankruptcy entity become property of the estate," and that, as a result, the donation check was property of the estate. See D.E. 386 at 1187-88. But that opinion is not evidence that the donation was in fact a proceed, product, offspring, rent, or profit "of or from property of the estate." Because the post-petition check was not part of the estate, Mr. Annamalai could not be convicted of bankruptcy fraud for misappropriating it.<sup>3</sup>

We address two other possible theories. At the end of the day, they also fail.

First, we realize that in the trustee's view all of the merchant accounts of the Hindu Temple were property of the bankruptcy estate, and that Mr. Annamalai failed to obtain his permission to modify them, transfer them, or use them. We assume without deciding that this was indeed the case, *cf. In re Thomas B. Hamilton, Inc.*, 969 F.2d 1013, 1018-21 (11th Cir. 1992) (discussing the nature of credit card merchant agreements in the{2019 U.S. App. LEXIS 26} context of a corporate bankruptcy), but this assumption does not save the bankruptcy fraud convictions. The insurmountable difficulty for the government is that Counts 11-14 and 16-20 did not charge Mr. Annamalai with misappropriating the merchant accounts. They charged him with concealing specific receivables obtained by the Shiva Vishnu Temple on certain dates after the Hindu Temple filed for bankruptcy and stopped doing business. And, as noted earlier, the government's own evidence demonstrated that Mr. Annamalai never transferred to the Shiva Vishnu Temple any money in the merchant accounts belonging to the Hindu Temple.<sup>4</sup>

Second, to the extent that the government relies on the trustee's testimony that Mr. Annamalai acted improperly by calling his new temple the Shiva Vishnu Temple when that name had been an alternative name of the Hindu Temple, that reliance is misplaced. Simply stated, Mr. Annamalai was not charged in Counts 11-14 and 16-20 with misappropriating the Shiva Vishnu Temple name.

## C

At trial, the IRS investigator testified that the Hindu Temple and the Shiva Vishnu Temple were the same business, and the government told the district court that it considered the Shiva Vishnu{2019 U.S. App. LEXIS 27} Temple to be the alter ego of the Hindu Temple. See D.E. 386 at 1116-17. At closing argument, the government asserted that Mr. Annamalai was "using the same business," including the "good will of the Hindu Temple," to run the Shiva Vishnu Temple. See D.E. 390 at 2090. He was, in other words, "continuing the business." *Id.* at 2093. On appeal the government defends the bankruptcy {939 F.3d 1231} fraud convictions on a similar alter ego theory, *see Gov't Br. at 40-41*, but due to the way this case was tried the theory is fatally flawed.

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The government seems to believe that the Hindu Temple and its bankruptcy estate were one and the same, so that any continuation of the Hindu Temple's business by the Shiva Vishnu Temple is necessarily equated with the estate and all it comprised. That belief, however, is based on a misunderstanding of bankruptcy law. A Chapter 11 estate, which is created by the filing of a bankruptcy petition, is separate and distinct from the corporate debtor, which "continues to exist as a legal entity after the filing of [the] petition, whether under [C]hapter 7 or 11[.]" 5 Collier on Bankruptcy ¶ 541.02 (16th ed. 2018). See also *Indian Harbor Ins. Co. v. Zucker*, 860 F.3d 373, 378 (6th Cir. 2017) ("Capitol's bankruptcy . . . created a new legal entity that is{2019 U.S. App. LEXIS 28} distinct from Capitol itself: the bankruptcy estate."). This misunderstanding is not necessarily fatal to the government's alter ego theory, but neither is it a good starting point.

In other bankruptcy contexts, one who seeks to pierce the corporate veil or disregard the corporate form must proceed under state law. See, e.g., *Baillie Lumber Co. v. Thompson*, 391 F.3d 1315, 1321-23 (11th Cir. 2004) (certifying to the Georgia Supreme Court the question of whether a bankruptcy trustee for a corporate debtor can assert an alter ego claim against the corporation's former principal); *In re ACME Sec., Inc.*, 484 B.R. 475, 478-95 (Bankr. N.D. Ga. 2012) (addressing the question of successor liability in a corporate bankruptcy under Georgia law). We see no reason why a different rule should apply here. The government apparently recognizes the need to satisfy state law, as it cites a case from the Georgia Supreme Court on disregarding the corporate form. See Gov't Br. at 40-41 (citing *Baillie Lumber Co. v. Thompson*, 279 Ga. 288, 612 S.E.2d 296, 298 (Ga. 2005)).

The problem, as we see it, is that the jury was not instructed on any alter ego theory of any kind. It was not, for example, told what Georgia law requires to establish that one entity (i.e., the Shiva Vishnu Temple) is the alter ego of another (i.e., the Hindu Temple or the bankruptcy estate). See D.E. 391 at 2150-78. So, even if we assume that an{2019 U.S. App. LEXIS 29} alter ego theory can be used to bring post-bankruptcy-generated income earned by a separate corporate entity back into a Chapter 11 estate-an issue that apparently no court has ever decided and one which we decline to address-the assumption is of no help to the government. In a criminal case like this one, where the government's burden is to prove guilt beyond a reasonable doubt, we cannot affirm Mr. Annamalai's bankruptcy fraud convictions on Counts 11-20 on a theory of liability not presented to the jury. See *McCormick v. United States*, 500 U.S. 257, 270 n.8, 111 S. Ct. 1807, 114 L. Ed. 2d 307 (1991) ("[T]he Court of Appeals affirmed [the defendant's] conviction on legal and factual theories never tried before the jury. . . . [F]or that reason alone . . . the judgment must be reversed."); *Jackson v. Virginia*, 443 U.S. 307, 314, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) ("It is axiomatic that a conviction upon a charge not made or a charge not tried constitutes a denial of due process."). The convictions on Counts 11-20 are reversed.

## D

At trial and on appeal, the government presented a theory of the case that relied on the same acts and evidence to prove both substantive bankruptcy fraud and conspiracy to commit bankruptcy fraud. In other words, the substantive bankruptcy fraud charges in Counts 11-20 formed the {939 F.3d 1232} basis for the illegal agreement and the overt{2019 U.S. App. LEXIS 30} acts for the conspiracy to commit bankruptcy fraud charged in Count 10. See, e.g., D.E. 390 at 2093 (explaining at closing argument that "[t]he opening of this [new Shiva Vishnu bank] account" and the "diverting of the credit card receipts" were the overt acts in furtherance of the alleged conspiracy); D.E. 227 at 5 (relying, in opposition to the Rule 29 motion for judgment of acquittal, on the same acts to demonstrate that there was sufficient evidence to prove both the substantive counts of bankruptcy fraud and the conspiracy to commit bankruptcy fraud); Gov't Br. at 36-38 (same).

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Having held that the evidence was insufficient to sustain the convictions for the substantive bankruptcy fraud charges, we necessarily conclude that the evidence was likewise insufficient to sustain the conviction for conspiracy to commit bankruptcy fraud because the alleged illegal agreement did not involve property of the Hindu Temple's bankruptcy estate. The government did not present evidence of a separate agreement to conceal other property of the estate or any other overt acts in furtherance of such an agreement. We therefore reverse Mr. Annamalai's Count 10 conviction for conspiracy to commit bankruptcy{2019 U.S. App. LEXIS 31} fraud.

#### IV

Mr. Annamalai challenges his convictions on Counts 21-30, which charged him with money laundering in violation of 18 U.S.C. § 1956. As relevant here, that statute prohibits certain transfers of money derived from specified unlawful activities, including bankruptcy fraud. See 18 U.S.C. § 1956(c)(7)(D).

Each of the money laundering charges was predicated on proceeds generated from the specified unlawful activity of bankruptcy fraud. See D.E. 86 at ¶ 32. Because we have reversed all of Mr. Annamalai's convictions for substantive bankruptcy fraud and conspiracy to commit bankruptcy fraud due to insufficient evidence, there are no specified unlawful activities which provide a basis for the money laundering charges. We therefore reverse all of Mr. Annamalai's money laundering convictions.

#### V

Mr. Annamalai contends, as he did in the district court, see D.E. 389 at 1796, that there was insufficient evidence to support his conviction on Count 34 for conspiring to harbor a fugitive in violation of 18 U.S.C. §§ 1071 and 371. We agree.

#### A

To prove a conspiracy under § 371, the government must prove that there was an agreement "between two or more persons to commit a crime," that the defendant "knowingly and voluntarily joined or participated in the unlawful{2019 U.S. App. LEXIS 32} agreement," and that "a conspirator performed an overt act in furtherance of the unlawful agreement." *United States v. Duenas*, 891 F.3d 1330, 1334 (11th Cir. 2018). The "fundamental characteristic of a [§ 371] conspiracy is a joint commitment to an 'endeavor which, if completed, would satisfy all of the elements of [the underlying substantive] criminal offense.'" *Ocasio v. United States*, 136 S. Ct. 1423, 1429, 194 L. Ed. 2d 520 (2016) (quoting *Salinas v. United States*, 522 U.S. 52, 65, 118 S. Ct. 469, 139 L. Ed. 2d 352 (1997)). So, in order to determine whether the evidence was sufficient to convict Mr. Annamalai of violating § 371, we must first consider the elements of § 1071, the object of the charged conspiracy.

As relevant here, § 1071 makes it a federal crime to

{939 F.3d 1233} harbor[ ] or conceal[ ] any person for whose arrest a warrant or process has been issued under the provisions of any law of the United States, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person[.] As a number of other circuits have explained, a straightforward reading of this statutory text establishes the following elements: (1) a federal warrant was issued for a person's arrest; (2) the defendant knew about that warrant; (3) the defendant harbored or concealed that person; and (4) the defendant did so with the intent to prevent that person's arrest{2019 U.S. App. LEXIS 33} or discovery. See *United States v. Stegmeier*, 701 F.3d 574, 578 (8th Cir. 2012); *United States v. Hill*, 279 F.3d 731, 737-38 (9th Cir. 2002); *United States v. Lockhart*, 956 F.2d 1418, 1422-23 (7th Cir. 1992); *United States v. Silva*, 745 F.2d 840, 848 (4th

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Cir. 1984). These decisions are consistent with one of our early § 1071 cases. See *Blankenship v. United States*, 328 F.2d 19, 19 (5th Cir. 1964) (upholding the § 1071 conviction of a defendant who "concealed and harbored his brother, knowing that he was a fugitive and that a felony warrant had been issued for his arrest"). See also *United States v. Deaton*, 468 F.2d 541, 544-45 (5th Cir. 1972) (holding that transporting, finding, and securing lodging for escapees constituted "harboring" under 18 U.S.C. § 1072, which prohibits the willful harboring or concealing of a federal prisoner after his escape).

Importantly, § 1071 "does not proscribe all forms of aid to a fugitive and . . . the actual harboring or concealing element requires some affirmative, physical action by the defendant." *United States v. Zabriskie*, 415 F.3d 1139, 1145 (10th Cir. 2005) (quotations omitted). *Accord Stegmeier*, 701 F.3d at 579; *United States v. Mitchell*, 177 F.3d 236, 239 (4th Cir. 1999); *United States v. Green*, 180 F.3d 216, 220 (5th Cir. 1999); *Lockhart*, 956 F.2d at 1423; *United States v. Stacey*, 896 F.2d 75, 76-77 (5th Cir. 1990). In the words of the Second Circuit, "harbor" and "conceal" are "active verbs, which have the fugitive as their object," and they refer to "some physical act tending to the secretion of the body of the offender." *United States v. Shapiro*, 113 F.2d 891, 892-893 (2d Cir. 1940) (discussing the predecessor to § 1071). See also Black's Law Dictionary 831 (10th ed. 2014) (defining "harboring" as "[t]he act of providing lodging, shelter, or refuge to a person, esp. a criminal or illegal alien," and "harboring a fugitive" as "[t]he crime of affording lodging, shelter, refuge, or [2019 U.S. App. LEXIS 34] other aid to a person seeking avoid capture or punishment").

A comparison of § 1071 cases helps to explain generally what is and is not prohibited. Cases affirming convictions include *United States v. Hayes*, 518 F.3d 989, 994 (8th Cir. 2008) (not opening the door of the place where the fugitive was hiding for over an hour after agents arrived on the scene); *Lockhart*, 956 F.2d at 1423 (allowing a fugitive to live on the defendant's lot and hiding his car); *Stacey*, 896 F.2d at 76-77 (closing and locking the door of the place where a fugitive was hiding to prevent his arrest by deputy marshals who had seen him); *United States v. Arguelles*, 594 F.2d 109, 111 (5th Cir. 1979) (purchasing cars together with a fugitive, making repairs to cars in the defendant's name but with the fugitive paying for them, and living together with the fugitive and making some rent payments); and *United States v. Whitman*, 480 F.2d 1028, 1030 (6th Cir. 1973) (renting a cabin so that it could be used by a fugitive on the run). Cases reversing convictions include *United States v. Hogg*, 670 F.2d 1358, 1361-62 (4th Cir. 1982) (making a potentially misleading statement about a car [939 F.3d 1234] that the defendant suspected was stolen by a fugitive), and *Shapiro*, 113 F.2d at 893 (making weekly payments to a fugitive: "To pay money to a fugitive so that he may shelter, feed or hide himself is not within the accepted meanings of to 'harbor or conceal' him."). Some courts draw a distinction "between paying money to a fugitive so that he may shelter, feed or hide himself, which is not harboring, and providing that shelter, food, or aid directly, which is harboring." *Hill*, 279 F.3d at 738 (internal quotations omitted). See also *United States v. Lanier*, 879 F.3d 141, 148 (5th Cir. 2018) ("provid[ing] the fugitive] with a revenue stream that funded his life on the lam" does not "qualify as harboring").

## B

The indictment charged Mr. Annamalai with conspiring, from November of 2013 to April of 2014, to harbor and conceal his fugitive business partner, Mr. Chinnathambi, for whom an arrest warrant had been issued. The other alleged members of the conspiracy were Parvathi Sivanadiyan (Mr. Annamalai's wife) and Mr. Chinnathambi himself. See D.E. 86 at ¶ 37.

According to the indictment, on November 15, 2013, Mr. Chinnathambi purchased one-way airline tickets for flights the next day from Orlando, Florida, to Chennai, India, via Chicago, Illinois, and Hong Kong. He traveled from Orlando to Chicago but did not board the flight to Hong Kong. See *id.*

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at ¶ 41. On November 16, 2013, Mr. Annamalai-after his own arrest and while detained-had a conversation with his wife. During this conversation, he instructed her to tell someone named "Sheshamani" (an alias for Mr. Chinnathambi) that he "should use cash and not a debit card." {2019 U.S. App. LEXIS 36} *Id.* at ¶ 42. Later that same day, his wife sent an e-mail to Mr. Chinnathambi instructing him "to use cash." *Id.* at ¶ 43.

Several months later, Mr. Annamalai's wife spoke to federal agents. She falsely told them that she did not have contact with Mr. Chinnathambi since her husband's arrest; that she never sent an e-mail to Mr. Chinnathambi and did not know his e-mail address; and that she did not have a telephone number for Mr. Chinnathambi. See *id.* at ¶ 44.

The evidence at trial, as was to be expected, tracked the allegations in the indictment. See, e.g., D.E. 387 at 1403-11. But the evidence, like the indictment, did not make out an unlawful agreement to violate § 1071.

As explained above, § 1071 requires some affirmative physical act to help harbor or conceal a person for whom a warrant has been issued. A § 371 conspiracy to violate § 1071 therefore requires an agreement or understanding that one or more of the conspirators will commit such an act. See *Ocasio*, 136 S. Ct. at 1429. There was no such agreement here.

First, Mr. Annamalai's instruction to Ms. Sivanadiyan that she tell Mr. Chinnathambi to use cash and not a debit card, and her compliance with that instruction, are insufficient. We can find no cases holding that the mere {2019 U.S. App. LEXIS 37} giving of advice to a fugitive, without providing some sort of material or physical assistance, constitutes harboring or concealing within the meaning of § 1071. An agreement to provide such advice therefore is not an agreement to violate § 1071. The government, tellingly in our view, does not cite any § 1071 cases or other authorities to support its sufficiency argument on this theory. Cf. *Piquett v. United States*, 81 F.2d 75, 81 (7th Cir. 1936) (agreeing to alter a fugitive's "facial features and finger lines" suffices to constitute a conspiracy to harbor and conceal a fugitive).

{939 F.3d 1235} Second, Ms. Sivanadiyan's false statements to the agents about Mr. Chinnathambi and his whereabouts also do not constitute harboring or concealing. The decisions from our sister circuits, which we find persuasive, make that clear. See *Stacey*, 896 F.2d at 76-77 ("Failure to disclose a fugitive's location and giving financial assistance do not constitute harboring[.]"); *United States v. Magness*, 456 F.2d 976, 978 (9th Cir. 1972) ("[A] false statement, standing alone, . . . could not constitute the active conduct of hiding or secreting contemplated by the statute."); *United States v. Foy*, 416 F.2d 940, 941 (7th Cir. 1969) ("[W]e do not think that a failure to disclose the location of a fugitive is the type of assistance contemplated by 'harbor and conceal' as used in § 1071.").

Third, we are not persuaded by the government's {2019 U.S. App. LEXIS 38} reliance on the airline tickets that Mr. Chinnathambi purchased (and partially used). The government says that the tickets show that Mr. Chinnathambi sought to flee the United States. See Gov't Br. at 53. The jury easily could have found as much, but even so, the evidence on Count 34 was legally insufficient. For starters, the trip took place before Mr. Annamalai instructed his wife to tell "Sheshamani" to use cash. But even if the alleged conspirators had previously agreed about the trip, the flight-with tickets Mr. Chinnathambi purchased himself-did not constitute the harboring or concealing of him by Mr. Annamalai and his wife. We have not located any cases or authorities to the contrary, and the government has not pointed us to any. Congress knows when to make flight from arrest or prosecution a federal offense, see, e.g., 18 U.S.C. § 1073, and it did not use the word flight in § 1071. And even if we assume, contrary to cases like *Shapiro*, that providing money to a fugitive can sometimes be sufficient to convict under § 1071, there is no any evidence (direct or circumstantial) that Mr. Annamalai or his wife provided (or agreed to provide) the funds used by Mr. Chinnathambi

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