

24-7383

NO. \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
FILED

JUN 02 2025

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT TIMOTHY BLAKE ,

PETITIONER ,

VS.

UNITED STATES OF AMERICA ,

RESPONDENT .

ON PETITION SEEKING AN EXTRAORDINARY WRIT  
OF HABEAS CORPUS

A PRISONER IN FEDERAL CUSTODY ,

ROBERT TIMOTHY BLAKE

46959380

LOW SECURITY CORRECTIONAL INSTITUTION

POST OFFICE BOX 999

BUTNER , N C 27509

QUESTIONS PRESENTED

ONE

Were the constitutional rights of Robert Timothy Blake violated when his Trial Attorney failed to notice, dispute, or Challenge the validity of the Search Warrant in this case ?

TWO

Were the defendant's constitutional rights violated, when his password protected e-mail account was accessed by the FBI without a valid Search Warrant with Probable Cause ?

THREE

Was the defendant prejudiced and denied due process, when the Government's Attorney withheld & denied the defendant discovery of specific requested document's and evidence, that was clearly requested by the defence attorney prior to the Suppression of Evidence hearing, and the defendant's change of Plea ?

FOUR

Were this defendant's constitutional rights violated when the FBI agent's own notes of an interrogation that was not recorded, will be modified and adjusted with false information and evidence, that will compose the factual basis written into the Plea agreement, and establish the only knowingly aspects of this case to show a concerning "Scienter ?" where the "knowingly conditions are a fabrication that is not supported by the evidence or testimony in the record.

FIVE

Did the FBI provide knowingly false statements and knowingly unreliable evidence, in reckless disregard to the validity of the information to, obtain a search warrant for this defendant's home ?

SIX

Did the defendant's attorney provide constitutionally competent assistance of counsel by not seeking or understanding the e-mail evidence in this case, prior to advising the defendant to Plea Guilty, Or before attempting to defend the defendant of the e-mail evidence and distribution charges at sentencing ?

SEVEN

Did the government's attorney interfere with the fair administration of justice at a constitutional level, by presenting, and purposfully allowing the Sentencing Court to depend upon false and altered information and evidence that the Attorney will know to be false and unreliable, and not known to the defendant at any previous time ?

EIGHT

Did the Fifth Circuit Court of Appeals properly deny this defendant's second-in-time- application for habeas relief, in an effort to raise claims for relief, that were not known, at any previous time before he will file his initial habeas petition in the District Court ?

Was this petitioner denied a full and fair opportunity to, present previous claims denied as "Premature" ?

LIST OF PARTIES

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

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### APPENDIX ATTACHMENT

A : Documents concerning No.24-50530 / 24-50269, as petitioner's attempt to seek permission to file in the District Court. Where he wants to present grounds for relief : denied as PREMATURE in No.20-50659. (To re-raise , as NOW RIPE .)

B : Circuit Court Denial concerning No.24-50530,10/16/24. Is Petitioner's Second Attempt to Raise "PREMATURE" claims for relief. Circuit Court will NOT notice petitioners attempt to raise previously unavailable or known claims, earlier denied as Premature.

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C : Circuit Court of Appeals will DENY the Petitioners attempt to raise previously unknown claims for Relief as "Premature" in No. 20-50659 , 09/01/2020 .

D : Document 198, 11/21/22. District Courts denial of Initial Motion 2255, after the COA, and Evidence Hearing.

E : E-Mail Evidence that will contradict PSR information, and the AUSA's Statements at sentencing concerning This Defendant , Rhode Island , and alleged reasons for a Divorce & his ex-wife.  
\* Document Affidavits concerning Defendant's Trial Attorney Plea Advice.  
\* Document Affidavit concerning the Alteration of the Record in the Court, Not Harmless. As Judicial misconduct complaint,Nos.05-90102 and 05-24-90130.

F : Document 118, 12/11/2019. District Court Order to DENY Initial Motion 2255. Contains Evidence of Bias , " Concerns a CONFESSION ", and information Contradicted by NEW , and Or Withheld Document's/ Evidence.(as presented in this petition).

G : Case No.19-51187 , A Circuit Court Order on 03/24/21, to Grant a COA , and Hearing. (Was Not Properly Resolved , and the record was Altered by Deleted Testimony). 60(b) motion and Appeal DENIED.

H : Document 117, 12/11/2019. District Court will DENY defendant the " Search Warrant Probable Cause Affidavit ", that was requested early in his Initial Motion 2255 (during briefing). Notice Defendants Subsequent EFFORTS to aquire this Document (Doc.03), which is NOT available until after the Initial Motion 2255.

I : Document 03, 12/02/2014. Includes the FBI,"Probable Cause Affidavit ", and is the Subject of this Petition , and Fourth Amendment Search Violations. And Also Brady v. Maryland violations,(as presented).

J : Request Letter from Trial Attorney Cavazos to AUSA T.Thompson on 02/13/2015. Cavazos is requesting very specific Items in this Case, including the Search Warrant Probable Cause Affidavit:(Doc.No.03). Before he will file a Suppression of Evidence motion. Document/letter is New Evidence Aquired By FOIA after Petitioners initial Motion 2255.

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K : E-Mail response by AUSA, T.Thompson to the Cavazos request. On 02/17/2015 the AUSA will inform the Trial Attorney the Search Warrant is NOT Available, and makes NO MENTION to any requested " AFFIDAVITS ", that the Trial attorney asked for, Clearly. (on,02/13/15).  
This Document/E-Mail is New Evidence Aquired by FOIA after Petitioners initial Motion 2255.

L : Document, Mag No. SA: 14-MJ-1155, 12/02/2014, Is a Motion From AUSA T.Thompson , requesting to SEAL Search Warrant Documents, including the AFFIDAVIT the Trial Attorney Requested on 02/13/15. Document SHOWS :" except for two copies of each ".  
This Document was Aquired by FOIA after petitioners initial motion 2255.

M : Mortgage Document for the Blake's Residence on 07/24/13., Settlement Date, Of,Search Warrant Target Residence in this Case. & Insurance Document on 07/19/13,for same.

N : Document No.05 ,01/06/2015. Is Affidavit of Criminal Complaint by FBI Agent ,R.Miller . Information is Not tested by Attorney Cavazos.

O : Pages from Doc.No. 96 & Doc.No. 112, 12/21/19. Created during initial Motion 2255, will reveal to Defendant where the PSR e-mails are altered and Modified,without the Court's Notice. Is NEW Evidence, Not ruled on., Despite being presented in Doc.No.112).  
Doc.96 f/n will also implicate USPO & AUSA in Collusion.

P : FOIA return:EOUSA-2023-000260 , 12/20/24. Is New Evidence, and reports NO PEER-TO-PEER programs related to this Case." & Doc.No.73,Pg.3,at5.) that shows how the Sentencing Court relied on "peer-to-peer",in error. (P-5). Newly discoverd evidence, not previously available.

Q : Sex Offender report for Louis W. Darling, I.D.46702 after 08/20/19. Is New Evidence, that shows Mr.Darling is NOT reported for any Child Prnography ,Or Computer Use in his criminal History. (Contradicts FBI information in the "Search Warrant Affidavit".

R : Documents Obtained by Attorney Cavazos on 05/15/2024, are New Evidence to Defendant. Was known by AUSA and FBI during Trial, and cited to by Government at Sentencing, unknown to Defence & Defendant at Sentencing. Never Revealed to the Court at any Time by document's, or tested testimony. Contradicts PSR.

S : U.S. Sentencing Commission Coments on Child Pornography Sentencing, and harmful applications of Guidelines. 08/07/1991. Please Take Judicial Notice.

\* T : SUPPORTING LEGAL OPINIONS FOR THIS PETITION. \*

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7. U.S. v. Dillingham, 320 F.Supp.3d 809, 2018 LEXIS 892727...	38.
8. U.S. v. Dorvee, 616 F.3d 174, 2010 U.S.App.LEXIS 16288 (2nd Cir. NY, May 11, 2010).....	37.
9. U.S. v. Dost, 636 F.Supp.828 (S.D. Cal 1986) No. 86-0036-GT (Dost Factors).....	IIX, 29.
10. Felker v. Turpin, 518 U.S. 651, 654-664, 116 S.Ct. 2333, 135 L.Ed.2d (1996) .....	2.
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12. Floyd v. Vannoy, 887 F.3d 214, 2019 U.S. App LEXIS 8780 (5th Cir., L.A. Apr. 6, 2018).....	*
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15. Illinois v. Gates, 462 U.S. 213, 236, 103 S.Ct. 2317, 76 L.ED.2d. 527, (1983).....	*
16. Johnson v. U.S., 333 U.S. 10, 92 L.Ed.436, 68 S.Ct. 367.....	*
17. Kimmelman v. Morrison, 477 U.S. 365, 383-87, 106 S.Ct. 2574, 91 L.Ed.2D. 305 (1986).....	28.
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22. <u>New York v. Ferber</u> , 458 U.S. 747, 73 L.Ed.2d 1113, 102 S.Ct. 3348 (1982) & (Ferber at 765).....	37.
23. <u>P.J. Video</u> , 475 U.S. at 876-77, 89 L.Ed.2d 871 (1986)....	* (!)
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27. <u>Strickland v. Washington</u> , 446 U.S. 668-687, 80 L.Ed.2d. 674, 104 S.Ct. 2052 (1984) .....	* (!)
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34. <u>Naupe v. Illinois</u> , 360 U.S. 264, 3 LED2D 1217, 79 S.Ct. 1173 (1959).....	25, 38.
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37. <u>Panetti v. Quarterman</u> , 551 U.S. 930, 127 S.Ct. 2842, 168 L.Ed.2d 662 (2007).....	7,
* # 'S 4, 11, 12, 13, 15, 16, 21, 23, 24, 26, 27 & 18, 19, 36, 37. Attachment "T".	

STATUTES AND RULES

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1.) 18 USCS § 2252 .....	2,21,34,36.
2.) 18 USCS § 2255 .....	1,3,5, <u>40.</u>
3.) 28 USC § 1651(a) .....	2.
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1.) USSG 2G2.2 .....	25,37, .
2.) " Dost Factors ". U.S. v. Dost, 636 F.Supp.828(S.D.Cal 1986).....	<sup>29.</sup>
3.) In The Fifth Circuit Court of Appeals, No.21-50215, Dkt.88, 01/05/2022. Is petitioner's Comprehensive brief, with exhibits concerning Bias and Partiality of the District Court in this case. (Petitioner will Provide on request).	
4.) <u>18 USCS § 3553(a)</u> ,Sentencing Factors.....	40.

OPINIONS BELOW

1. Denial Order from the Fifth Circuit Court of Appeals on November 5, 2024, concerning No. 24-50530, in RE: Robert Blake. A request for a rehearing En-Banc, and Judicial Notice. This Order may not be Published. (Attachment A).
2. Denial Order from the Fifth Circuit Court of Appeals on October 16, 2024, concerning No. 24-50530, in RE: Robert Blake. A motion/ Application for permission to present a second in time motion 2255 to the District Court, to remedy his previous petition that was considered as "Premature".(No.20-50659). \* This Order is marked as Unpublished. (Attachment B).
3. Denial Order from the Fifth Circuit Court of Appeals on September 1, 2020, concerning No. 20-50659, in RE: Robert Timothy Blake. Is a request to present Claims for habeas Relief that were unknown and unavailable to this Defendant before his initial Motion 2255. Claims that received not any consideration from the District Court, at any previous time. \* This Request / Application was dismissed as " Premature " by the Fifth Circuit Court of Appeals, with not Opinion. This Order may Not be published. (Attachment C).
4. Denial Order from the District Court on November 21, 2022, concerning No. SA-18-CV-994-XR, in RE: Robert Timothy Blake v. The United States Of America. The Court will Deny the Motion 2255 on remand, by the adoption of the Magistrate Judge's Report and Recommendation. Unknown if this Order is Published. (Attachment D), (Doc.198).

\*CONSTITUTIONAL PROVISIONS

1. AMENDMENT IV , "The Right of the people to be Secure in their persons, houses,papers, and effects,against unreasonable searches and seizures,shall not be violated...".
2. AMENDMENT V , " No person... Shall be compelled in any criminal case to be a witness against himself...".
3. AMENDMENT VI , " In all criminal prosecutions, the accused shall enjoy... to have the assistance of counsel for his defence." " Not to be deprived of life liberty or property, without due process of the law...".
4. AMENDMENT I , " 18 USCS § 2252 , is Unconstitutional."
5. AMENDMENT XIV , " Protections of Due Process ".

JURISDICTIONAL STATEMENT

This court's Jurisdiction is invoked pursuant to 28 U.S.C. § 1651(a). THE SUPREME COURT OF THE UNITED STATES may exercise it's discretion to grant an Extraordinary Writ when habeas relief of a Constitutional magnitude, can not be obtained in any other form in any other court. And, THE SUPREME COURT OF THE UNITED STATES is not restricted from entertaining a habeas corpus petition filed as an original matter in the Supreme Court.

Felker v. Turpin, 518 U.S. 651, 654-664, 116 S.Ct. 1333, 135 L.Ed(1996).

And,

May This Court on it's Own/ Grant Review of the issues presented , as the Appellate Court in this position, where as, the issue of the Denial of this Petitioners Application's for relief in the lower Court may present a question to be resolved.

RULE 20(1) STATEMENT

This Defendant present's a petition for Habeas Relief, he is unable to obtain from any other court. The Writ will be in Aid of this Court's Jurisdiction, where this Court is in a Supervisory position of the Fifth Circuit Court of Appeals, Who will deny this Defendant to present a second-in-time habeas petition to the District Court, for issues and claims of a Constitutional magnitude, that were unknown to the Defendant when he filed his initial habeas Motion in the District Court. Claims that have received no consideration from any court. Exceptional Circumstances warrant the Excercise of this Court's discretionary powers, when the Violations in this case will directly impact the Evidence as a whole, as unreliable, and obtained by Police and Prosecutorial misconduct in violation of the United States Constitution. That 28 U.S.C. § 2244(b) restrictions should not apply, for these claims, as presented.

" The overriding responsibility of The Supreme Court is to the Constitution of the United States, no matter how late it may be that a violation there of is found to exist."

Chessman v. teets,354 U.S. 156,1 L.Ed.2d.1235,77 S.Ct.1127(1975), at 165 & Headnote No.8.

RULE 20(4)(a): This Petitioner has been prevented from making a Second -in- time Motion for habeas relief in the District Court, when his Application is denied as "Premature", and not allowed when presented as Ripe for review at the conclusion of his initial Motion 2255.

STATEMENT OF THE CASE

Robert Timothy Blake pleaded Guilty to, and was convicted of one count of distribution of child pornography in violation of Title 18, United States Code, Section 2252(a)(2), and one count of possession of child pornography in violation of Title 18, United States Code, Section 2252A(a)(5)(B).

He was sentenced to 262 months in prison, and a lifetime of supervision. On December 4, 2014 the San Antonio division of the FBI executed a search warrant at the residence of Robert Timothy Blake. The FBI had been provided information that Mr. Blake was trafficking in child exploitation material with others using the internet. The FBI had been provided e-mail correspondence between Mr. Blake and others in which Blake distributed and received files depicting the sexual abuse of prepubescent children on numerous occasions between June 2013, and September 2013, from his home at San Antonio ,Texas.

During the execution of the search warrant at Blakes residence, the FBI seized a large number of CD media, desktop computers, and a lap -top computer. Two occupants were residing at the residence, including Robert Blake. Blake was interviewed and identified the computers and digital devices he used to access and download media from the internet. The FBI reports, that Blake identified various e-mails he used to distribute and receive child exploitation materials.

## PROCEDURAL HISTORY

### ISSUES PRESENTED ON DIRECT APPEAL

Mr. Blake will hire Attorney John Convery to perfect a Direct Appeal. Counsel will present subject matter concerning the judgement and conviction, including the imposing of the sentence to include:

- 1.) Whether the Government breached the Plea agreement at the sentencing hearing.
- 2.) Whether the sentence was reasonable.
- 3.) Whether the sentencing court subjected appellant's sentence to the thorough adversarial testing contemplated by, Federal Sentencing Procedure.

The Fifth Circuit Court of Appeals will affirm the conviction, and only find where the waiver in the plea agreement, prevents the Defendant's Appeal.

United States v. Blake, 697.F.App'x 401(5Th.Cir.2019)(Dkt.No.68).

No.: 16-50874.

### INITIAL MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT A SENTENCE BY A PERSON IN CUSTODY

On 09/19/2018 , Petitioner Robert Timothy Blake will file a Pro-Se Motion 2255 in the District Court. No.:5:18-CV-994-XR. (Doc.No.93). Based upon the record and evidence known to, and available to the defendant at this time, He will present several Claims and Issues before the District Court, as Follows:

- 1.) Trial counsel improperly informed Movant/Defendant that he would receive Probation if he Pleaded Guilty.
- 2.) Trial counsel failed to adequately inform defendant of the consequences of accepting the plea bargain.
- 3.) Trial counsel failed to have any member of the defence team actually look at the photographs allegedly found on the computer at issue, when said pictures were available.
- 4.) Trial counsel failed to investigate defendants theory that the images got on his computer by sources other than him.

- 5.) Trial counsels failure to present defendants witnesses at sentencing hearing, even though defendant's witnesses were present at the courthouse for the purpose of testifying. They were told to wait outside the court room, and were not present at any of the hearing.
- 6.) Trial counsels failure to object to the government's misrepresentation of evidence at the sentencing hearing.
- 7.) Counsel failed to object to the government's introduction of improper evidence at the sentencing hearing.
- 8.) Counsel failed to adequately explain the Federal Sentencing Guidelines to defendant.
- 9.) Counsel advised defendant to accept a plea deal after defendant informed counsel that portions of the allegations were not true.

After the Briefing period, the District Court will deny the Motion 2255, and not issue a COA. (Doc.118)(attachment F).

CERTIFICATE OF APPEAL GRANTED

Defendant will request a COA from the Fifth Circuit Court of Appeals. The Circuit Court will grant a COA on the issue where Attorney Cavazos was ineffective during the plea negotiations. (ECF.No. 134, on 03/24/2021), (Attachment G ). However the District Court will narrow the Scope of the COA, and deny any relief based upon a credibility determination, even after the hearing it is evident by testimony, that the Attorney did advise the Defendant as presented, without corrections.

Motion is Denied, as tested. (ECF.198).

\*)DEFENDANT PRESENTS CLAIMS FOR RELIEF PREVIOUSLY UNAVAILABLE

During the Briefing period of the initial Motion 2255, this petitioner will discover various document's and evidence, that were unknown to him at any previous time, and not revealed to him by his Trial Attorney at any previous time. Not before his time required to file his Initial motion 2255. The various

claims and issues for relief that this petitioner will discover will transpire during his initial motion 2255 briefing period, and are the reasons for his application to present the Claims for relief that were previously not known to this Defendant.

1.) During the Circuit Courts consideration on a COA request, this Defendant will attempt to present his previously unknown Claims for habeas review, and will be barred from doing so, as "Premature ", SEE: No.:20-50659. (Attachment C).

2.) At the Conclusion of the initial motion 2255, this petitioner will re-new his Premature Application, and is Denied. No. 24-50530 (Attachment B).

3.) Additional attempts by this petitioner to present his application to the Circuit Court of Appeals for the Fifth Circuit have been denied an opportunity ,where this Defendant can raise Constitutional Claims for habeas relief, that were previously unknown to him during his initial motion 2255. Claims he tried to present without any delay, and was prevented from doing so.

May this Court please notice where this defendant has not had a fair opportunity to have his claims for relief properly examined by the District Court. Now I bring this Petition, Respectfully.

Please Consider: " Panetti v. Quarterman... Holds, That a petitioner bringing a claim that was not ripe when petitioner filed his first-in-time petition is not second-or-successive."

And, " That reasoning applies with full force to Brady Claims... where the state unlawfully failed to disclose evidence favorable to the defence, and the petitioner is not aware of that evidence until after his first-in-time petition." (emphasis in original).

Bernard v. United States,141 S.Ct.504,506-07(2020).

Bernard and this matter are similar situations in the Fifth Circuit.

CLAIMS AND GROUNDS PRESENTED

1. GROUND ONE:

The Federal Government will Violate this defendant's Constitutional Rights when the FBI will access this defendant's private, password protected e-mail Account with out a search warrant, or probable cause approved by a Judge.

2. GROUND TWO:

The United States Attorney will Violate Brady V. Maryland in this case by withholding requested discovery document's from the defence attorney at a critical stage in this case.

3. GROUND THREE:

The Trial Attorney( will not provide effective Assistance of counsel, as contemplated by the U.S Constitution, and Strickland V. Washington, when the attorney failed to notice or challenge the Search Warrant in this case, or it's evidence. Where the Attorney failed to explain or educate the Defendant on e-mails, or their evidence when he encouraged the defendant to Plea Guilty to facts, and evidence unknown to him.

4. GROUND FOUR:

The FBI Agent who is the lead agent in this Case will compose the Search Warrant Probable Cause affidavit, and Provide Knowingly False statements in it's Affidavit to intentionally mis-lead the Magistrate Judge, Who will approve a Search Warrant for the defendants residence.

5. GROUND FIVE:

The Government will withhold very specific evidence and information in this case, that is evidence of actual innocence and would of

provide the defence with objective factual evidence, that will show how the defendant did NOT KNOW , Or " Knowingly " willfully Receive, Possess, or Distribute any child Pornography.

6. GROUND SIX:

New Evidence , will reveal where the ASUA's statement's at Sentencing were careless, misleading, knowingly False, and Not supported by the record.

7. GROUND SEVEN:

The Defendant's , Fifth Amendment Constitutional Rights were violated , when he was " compelled to be a witness against himself " by Pleading to Facts that are the product of the FBI interview during the Search Warrant Action. Facts that are NOT true, and are a fabrication by the FBI Agent's.

8. GROUND EIGHT:

The District Court , will violate Rule 11(b) at the Plea Hearing, And Make A decision on a Distribution" Charge / Enhancement, when the Court will rely upon Altered and misinformed e-mail evidence, and Evidence that is NOT in the Record.

9. GROUND NINE:

New Evidence , will reveal where the FBI and the AUSA will Aid And Assist the defendant's Ex-Wife Betty Perry to defeat a Child Custody dispute, and it is this alliance that will bring about this case, Not the e-mail reports the FBI wants to rely on. This Misconduct will also infect the District Court's ability to remain impartial, and free from Bias.

GROUND ONE AND SUPPORTING FACTS

I. The Federal Government will violate this Defendant's Constitutional Rights, when the FBI will access this defendant's Private, password protected e-mail Account without a search warrant, or probable cause approved by a Judge.

1. During this Defendant's Initial Motion 2255 he was denied the Search Warrant Document's in this Case, including the FBI's Probable Cause Affidavit used to obtain the Search Warrant.(ECF.117). Eventually this defendant will aquire the " Probable Cause Affidavit ", that was composed by the lead FBI Agent,Rex Miller. Within this Affidavit this petitioner will notice for the first time, various errors, and false statements composed by the FBI to include evidence where the FBI will access and gain private information from the area of the defendant's e-mail account, that is Password Protected. At a Section of the e-mail account that is NOT available to any third Party without a password to access a secured and LOCKED area of the e-mail account.

a. The Evidence is located in the Agent's Testimony ,  
within : No.5:14-mj-01155-JWP\*SEALED\*, Document 3, Filed 12/02/14.

(Attachment I ). On Page 16 : " DETAILS OF THE INVESTIGATION " Paragraphs 17,18,19,20 will discuss an investigation in the State of Pennsylvania concerning a Mr. Robert K.Swartzfager,Sr.

b. The FBI will explain how " Mr. Swartzfager " is located, and where search warrants were issued only for Swartzfager and his e-mail account of bied1965@gmail.com . (Doc.3,pg.17,at 19).

c. The FBI will next explain how Mr.Swartzfager might of communicated with the e-mail tommyhartford4624@gmail.com on thirteen e-mails , sent between the two e-mail accounts. The

FBI will write:

" Analysis performed on Swartzfager's e-mail account, biedl965@gmail.com..." (emphasis added)  
(Doc.03,pg17, at 20).

Next the FBI will write: "The E-mails are described below:

a. On June 11,2013 at 8:36 PM, tommyhartford4624@gmail.com received an e-mail from Silke-XXL@t-online.de with the subject, "Nude Kids" and in the details section stated, "Nude Kids Boys-Girls Fotos?"

(emphasis in original) ( SEE: Doc.03,Pg.17,at 20(a.) )(Attachment I ).

d. The Above listed e-mail is presented by the FBI, and will NOT indicate where a "Search Warrant" was obtained for the e-mail account of, tommyhartford4624@gmail.com. However the FBI is able to determine the CONTENTS of the first e-mail listed in this case. The Contents of the tommyhartford4624@gmail account, that are secured and locked in a Password protected area of the e-mail account.

1.) The FBI reports that tommyhartford4624@gmail.com "RECEIVED" an e-mail from Silke-XXL@t-online.de with the " SUBJECT ", "Nude Kids". It is the Subject" line in an e-mail that is only exposed to a Third Party, and is NOT secure. There is NO Privacy for this portion of the e-mail message, or account. True.

2.) However, the FBI will continue and write: ".:and in  
the details section stated,"Nude Kids Boy-Girls Foto's?"

It is the "DETAILS" section of the e-mail account that is NOT exposed to any Third Party, without a Password. The Details of an e-mail are within it's closed areas, and are the message and attachment's, which are secured and private, with password protection. (See Attachment T, pg.2,at 11).

e. The FBI will Access the e-mail account of tommyhartford4624@gmail.com without any permission, or a search warrant.

Also, The e-mail at issue here is the first e-mail listed by the FBI in this case , where the FBI only had a search warrant for Mr. Swartzfager's e-mail account: bied1965@gmail.com, NOT for any e-mail called: Silke-XXL@t-online.de. \*\*

f. The FBI can NOT know about the e-mails ,that tommyhartford 4624@gmail.com RECEIVED from Swartzfager's bied1965@gmail.com when it is the first e-mail in this case, and it is NOT connected to Mr. Swartzfager's e-mail account.

g. The FBI will NOT properly report the e-mails in this case, and reveal how there is a fabrication and misinformed evidence concerning the e-mails presented in it's Probable Cause Affidavit. The FBI can not rely upon inevitable discovery or Good Faith when the Lead Agent in this Case will reveal that the e-mail listed above was accessed at it's secured area without a search warrant. This is a Violation of this Defendant's Fourth Amendment rights. And all information and evidence that is Obtained after the FBI accessed this e-mail account illegally, Should be considered as the " Fruit of the Poisonous Tree ", and be considered as Police Misconduct.

Please Also Consider

The above e-mail at issue, is one of Three (3) e-mails which are not reported correctly. The first three e-mails are not connected to the " Swartzfager " investigation in P.A. (Doc. 03,Pg.17,at 20,a.-c.)(Attachment I ).

\*\* The fir4st three e-mails are listed as, to be connected to a Silke-XXL@t-online.de , which is not mentioned at any other time

in this case., including the P.S.R. at sentencing.(Doc.No.59).  
The argument is, The FBI will have to access the defendant's e-mail account (tommyhartford4624@gmail.com), at it's initial Log-In page in order to independently determine the Entire content's and activity of the e-mail account, including and specifically the Details concerning any Messages ":Tommyhartford" would of Received at any given time. This logic will fully negate any imaginable , Third Party access due to the investigation of Swartzfager's "biedl1965@gmail.com".

This means, the FBI will have to defeat the Password protection to gain full unrestricted access to the tommyhartford4624@gmail.com account at it's main Log-In Page. This intrusion can NOT be cured by any search warrant for Swartzfager's Emails.

There is not document or evidence to show how the FBI will gain a legal Search Warrant for the defendant's e-mail account in this case. A Fourth Amendment search.

This Issue has not been presented to the District Court at any previous time, Or ruled upon at any other time.

Please Consider the Following Legal Citations:

1.) " When an individual "seeks to preserve something as private and his expectation of privacy is " One that society is prepared to recognize as reasonable, "we have held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause."

Smith v. Maryland,442 U.S. 735,99 S.Ct.2577,61 LED2D 220(1979).

2.) " As with the content of paper letters and telephone conversations, a reasonable expectation of privacy exists in Subject-Matter lines of e- mails."

U.S. v. Davis,785 F.3d 498, May 5,2015/F.N.5,QUARTAVIOUS, 11 Cir. Miami, EN-Banc, ACLU.

And,

3.) "A subscriber enjoys a reasonable expectation of privacy enjoys a reasonable expectation of privacy in the contents of e-mails, that are stored with, or sent or Received through a commercial ISP."

Vista Mktg., LLC v. Burkett 812 F.3d 954, 2016 U.S. APP LEXIS 1880 (11th.Cir. Feb 4, 2016).

GROUND TWO AND SUPPORTING FACTS

II. The United States Attorney will violate Brady v. Maryland in this case by withholding requested discovery document's from the defence Attorney at a critical stage in this case.

1. After this defendant had already filed his initial Motion 2255, he initiated several FOIA/PA request wanting to obtain the Search Warrant documents in this case. Inadvertently the U.S. Attorney's Office will provide e-mail communications that took place between the AUSA and the Trial Attorney in this case. These e-mails were unknown to this defendant, and were not discussed with him by his Attorney. The Revealed e-mails are not in the Record, and are New Evidence. This Evidence will reveal where the defendant's attorney was denied Document's, Evidence, and the Search Warrant Probable Cause Affidavit's by the AUSA.

a. Trial Attorney , Jamie Cavazos will send a specific and detailed discovery request to the AUSA T.Thompson on 02/13/2015. This request is made prior to the Suppression of Evidence Motion is filed in the District Court. (ECF. 23, 03/11/2015).

1.) The Attorney's request will include the Search Warrant Evidence, and information concerning the e-mails in this case, and the knowingly false testimony the FBI will provide to the Magistrate Judge to Obtain the Search Warrant for this Defendant's Home, and including the " Swartzfager " investigation in P.A. (Probable Cause Affidavit)(Doc.No.03)(Attachment I ).

(SEE: Attorney's Letter request for Discovery, 02/13/2015,) (Attachment J ). Within this letter/e-mail request for discovery that is made by Attorney Cavazos, it clearly shows how the Attorney is seeking very specific Case information: including as follows: "...any and all Reports... on any of the digital evidence involved in this case, and the case that led to the basis of the search warranted in this case. " AND, "Lastly, I am in need of all Search Warrants (including the defendant's warrant, service provider warrant and any third party warrants) involved in this case, including but not limited to the actual warrant(s), Affidavits, and returns. " (emphasis in Original). (Attachment J ).

2.) There is NO evidence in the record to show where the defence attorney will receive any of his request at any time before he will file a motion for a Suppression of Evidence Hearing , Or even before the Attorney advised the defendant to Plea Guilty. The e-mails in this Case were NEVER tested.

b. The AUSA, Ms.Thompson will respond to the Request made by Attorney Cavazos. The AUSA will provide an e-mail on 02/17/2015. This e-mail is designated: "RE: Robert Blake-discovery ."

(SEE: AUSA e-mail 02/17/2015, response)(Attachment K ).

1.) The AUSA will not satisfy the Trial Attorney's Request. The AUSA will claim where the " Search Warrant " is not available. The AUSA will NOT directly address the Specific request made by Attorney Cavazos concerning the " Search Warrant Probable Cause Affidavit(s) " in this Case. Instead the AUSA will Provide the Attorney with instructions to visit the FBI Office?

2.) There is NO indication from any document or record to show that Attorney Cavazos will ever receive the information he requested, Specifically, the " Search Warrant Probable Cause

Affidavit ", Or any e-mail evidence at any time , and including before the Suppression Hearing , and Plea Negoations , Or Sentencing Hearing. This withholding of requested document's and evidence by the AUSA is misconduct, and a *Brady v. Maryland* violation. The AUSA will interfere with the administration of Due Process at a Critical Stage of the Case, and Prevent the Defence from Obtaining Critical evidence and information.

This issue has not been presented to the District Court at any previous time, Or ruled upon at any other time.(Attachment T.pg.1,at2).

Please consider the following Legal Citations:

1.) " Government violates the right to effective assistance when it interferes in certian way with the ability of counsel to make independent decisions about how to conduct the defence."

Strickland v. Washington 466 U.S.,at 686. & Headnote.No.6.

2.) " Precluding Brady Claims that a petitioner could not have discovered through due diligence impedes finality interests"... " Panetti's use of ripeness in it's analysis compels the conclusion that a Second-in-Time Brady Claim that could not have been discovered earlier is not " Second or Successive."

Velez Scott V. United States,890 F.3d 1239(11Th.Cir.2018).

3.) " A reasonable probability of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial."

Kyles v. Whitley,514 U.S. 419,131 L Ed 2d 490,115 S.Ct.1555(1995).

Headnotes :Constitutional Law § 840.2-duty of prosecution to disclose evidence. Petitioner was denied a Fair Trial.

Please Notice:

The AUSA will inform Attorney Cavazos where the Search Warrant document's are not available on 02/17/2015. However the AUSA's OWN MOTION on 12/02/2014 will contradict this. The Government's attorney will File A Motion to SEAL the Document's, " Except

For Two Copies of Each to be issued to the Affiant." (Attachment L ). (Mag No.SA 14-MJ-1155 , 12 /02/2014). This Magistrate docket is not in the record.

GROUND THREE AND SUPPORTING FACTS

II. The Trial attorney will not provide effective assistance of counsel, as contemplated by the U.S. Constitution, and Strickland v. Washington, when the attorney failed to notice or challenge the Search Warrant in this case, or it's Evidence. The Attorney failed to explain or educate the defendant on the e-mail evidence in this case when he encouraged the Defendant to Plead Guilty to evidence and Facts unknown to him.

1. Attorney Cavazos will not test or challenge the Search in this case at any time, including the Suppression of Evidence Hearing at the District Court. 03/11/2015.(ECF.23).

The Search Warrant is never discussed at any point during the hearing that will question it's Validity, or Accuracy.

The Search Warrant is not examined at any time concerning the e-mail evidence in it's Affidavit, Or the reason for Probable Cause provided by the FBI to the Magistrate Judge.

a. Attorney Cavazos , failed to present and dispute where the FBI Agent will provide false and misleading information in his Sworn Affidavit used to obtain a search Warrant for the Target Residence of this Defendant. (Attachment T, pg.1,at 6).

1.) The FBI will list e-mails in the Affidavit that were exchanged with tommyhartford4624@gmail.com (alleged), on June 11,2013 until, July 1,2013. Listed are Thirteen(13) seperate and random e-mails, Reported as Communications with a Mr.Swartzfager in Meadville Pennsylvania(PA), as biedl1965@gmail.com., And only Mr. Swartzfager is investigated for Child Pornography at this

time. (Doc.No.3, Pgs. 17-19, at 20,(a.)-(m.)) (Attachment I ).

b. Attorney Cavazos, will fail to notice or present critical errors in the Affidavit. Errors that will seriously question the FBI and their Evidence, and the Magistrates ability to make a wise and properly informed decision to issue the Warrant.

Concerning the Listed e-mail as presented:

- 1.) The First e-mail (a.) is accessed at it's Password Protected areas without a search warrant. As Presented in Ground One above.
- 2.) The First Three(3) e-mails (a.,b., & c.) are not from the agent's investigation with Swartzfager in P.A. as reported.
- 3.) The Thirteen (13) listed e-mails are NOT, NOT sent or received at the Target Residence for this defendant in San Antonio. The Defendant did not own this house in June or July of 2013. (SEE: Attachment M)(House Documents).
- 4.) The same thirteen(13) e-mails are to be False as reported by the FBI Agent, because there was NO internet Service at the Target residence until 09/15/2013, for I.P. # 68.206.100.58 . (SEE: Doc.No.3.Pg.21, at 26.) Shown is the FBI's Own information, that states the Internet Account for this residence is not Activated until September 15, 2013. (actually the Service was delayed until the second week in October due to connection issues).

Concerning the above e-mails and Dates, the FBI will Reveal where the investigative information is False and Misleading as Follows: (Attachment T, pg.2, at 8 & 13 ).

2. Had Attorney Cavazos, been provided with the Probable Affidavit (Doc.03), he would of been able to discover the false information provided by the FBI Agent, Rex Miller, and impeach the Evidence and information in the Affidavit Attorney Cavazos did have the Criminal Complaint for the Arrest Warrant before he filed for a Suppression of Evidence Hearing. (Doc.No.05).(Att:N). The Attorney did not compare the two Documents and notice the errors, As Follows:

\*\*

a. A simple comparison of Doc.No.03 , and Doc.No. 05. will reveal where the FBI Agent is providing false evidence and testimony in his Affidavit's Knowingly. With RECKLESS Disregard for the TRUTH.

b. The False Statements made by the FBI Agent is not available to Attorney Cavazos at a critical stage of this Case, and will not be available to this Defendant until after he receives the Search Warrant Probable Cause Affidavit, of which he was DENIED. (SEE: Doc.No.117). After his Initial Motion 2255.

The FBI Agent will write, as Follows: (In Doc.No.5),(Att:N).

" 3. In November 2013, the Pittsburg Division of the Federal Bureau of Investigation(FBI), identified the e-mail address tommyhartford4624@gmail.com as having sent and received child exploitation material to an individual residing in Pennsylvania. Analysis performed on the e-mail account of the individual in Pennsylvania revealed thirteen e-mails sent between biedl1965@gmail.com and tommyhartford4624@gmail.com that contained child exploitation material."

And, " 4. Through Subpoenas served on Google and Time Warner Cable, the FBI was able to determine the IP ADDRESS used to send and receive the child exploitation material was being used by an individual located at XXXX Roan Ldg., San Antonio ,TX 78251. " (Doc.No.05,Pg.2-3,at 3-4)(Jan 06,2015)(Attachment N ).

(emphasis added). \*\* Attorney Cavazos had only this Document for his suppression of evidence motion.(DID NOT HAVE DOC.NO.03).

c. The Above is Not Correct, and is knowingly false by the FBI Agent. When This Statement is Compared to the Probable Cause Affidavit, there will be obvious errors, that can not be correct. The First Question Attorney Cavazos Should Ask , and did Not , is: How will the Pennsylvania , bied1965@gmail e-mails show a connection to Time Warner Cable or XXXX Roah Ldg, San Antonio, TX 78251. "In November 2013 ", for e-mails that took place in June & July 2013 , From an I P ADDRESS that was not active before 09/15/2013 , for the Target residence? (Never Asked ?). SEE: (Doc.No.03,Pg.17-19,at 20)(Attachment I ),& (Doc.No.03,Pg.21,at26). The Agent's own statement's will be in conflict with both documements at issue here. Moreover, the Blakes lived in another State at the time the FBI agent states " The IP Address used to send and Receive child exploitation Material was being used by an individual located at xxxx Roan Ldg, San Antonio 78251."(Doc.05).

( SEE: Blake's House Document's/settlement 07/24/2013)(Attachment M ).

1. The FBI Agent will not provide this Information in good faith, and will not reveal how the FBI can know the Blakes will reside in San Antonio, Use Time Warner Cable, or connect tommyhartford4624@gmail.com to the Blakes before 09/15/2013. Unless the FBI is conducting warrantless intrusions into the Defendant's e-mail account at a passwrd protected area, or by other covert means. Or just a Blantant Fabrication of facts and evidence motivated by Betty Perry, Blakes EX-Wife who is fighting a Custody Dispute with the Defendant at this same time. Either Way the FBI has acted with foul intent and gross misconduct the AUSA knows about. Is Not Harmless.

3. The Other Misleading evidence reported in the Probable Cause Affidavit by the FBI agent, that Attorney Cavazos failed to notice of challenge is as Follows:

a. The reported Images evidence are not identified as verified or known images of child pornography as defined by Statute: 18 USCS §§2252 and 2252A, relating to material involving the sexual exploitation of minors. The Affidavit will NOT contain any indicative file names, Database Verifications of known images, explicit descriptions of sexual activity, Or NCMEC reports concerning the Target Residence or Defendant's e-mails.

1.) Attorney Cavazos will not present where the Magistrate Judge will Not have Suficient information provided for a finding of probable cause., To Issue a Search Warrant in this Case.

2.) Attorney Cavazos will not notice that the FBI will state how the Defendant was under surveilience for 16 months, and NOT report on any criminal activity related to or concerning the Defendant, His Residence, or his e-mail's the entire time he was living at the Target residence.16 months and no new information.

3.) It will not be shown how the FBI can connect the Target residence with a Louis Darling, and his e-mails, to be reliable probable Cause for the search warrant at the Defendant's Residence. There is NO reported Child Pornography listed within the e-mails between tommyhartford4624@gmail.com and yuclbe4me@yahoo.com.

(SEE:Doc.No.03,Pgs.19-20,at.22, a,,b,,c,,)(attachment I ).

4.) Most Importantly, The Magistrate Judge will NOT look at \* any of the alleged images listed in the Probable Cause Affidavit.

The Factfinder will not make an independent study of the images.

\*(Attachment T,pg.1,at 3-5 & pg.2 at 9,12).

4. Attorney Cavazos failed to explain or educate the defendant on the e-mail evidence in this case when he encouraged the defendant to plead guilty to evidence and facts unknown to him.

1.) The images listed in the Probable Cause Affidavit are the only e-mail evidence in this case. The listed evidence in the e-mails have never been verified as Child Pornography at any time. Specifically before the Attorney Advised this defendant to plead guilty to the e-mails and their evidence. Untested.

a. The Record will reflect , that the Attorney will never challenge the e-mails, or their images evidence at the Suppression hearing, Or any time after. (\*SEE Also : Attachment E ,pg.e6-e7).

b\* The defendant will refuse the Plea Facts , and demand for the attorney to look at the e-mails / Images. The Attorney will Promise to look at the e-mails / Images and dispute them at sentencing, after a Plea is Accepted. Attorney Cavazos did not do this as he promised to do, and this was extremely concerning to this Defendant prior to sentencing. Also, at the Change of Plea Hearing the District Judge did not ask the defendant if any Promises were made to him, that caused him to plead Guilty. This Defendant was still expecting the Attorney to look at the e-mails and their evidence, at this time , however the Court Never asked this Question, a Rule 11(b) violation Occured. This Defendant was unaware of this Rule, until his Initial Motion 2255 was already decided for a COA. Attorney Acosta will discover this during the discovery for the COA Evidence Hearing.(ECF.No.197.Pg12,10/27/2022). This Rule 11(b) violation was not decided upon by the Court, and was NOT harmless to the Defendant. ( Attachment T,pg.1 at 1).

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c. The Trial Attorney did not look at or test the e-mails, e-mail's images, or any information, computer Data, Internet Searches, web site visits, or any data or device in this case related to the Receipt Or Distribution of Child Pornography in this Case, including especially the "Search Warrant Probable Cause Affidavit", the only place reporting e-mail evidence. (Doc.No.03)(Attachment I ),( The Attorney will NOT receive any E-Mails, Computer Data-Files, Internet Activity, or the Search Warrant Document's during his visit at the FBI office with the Forensic Specialist, and the AUSA.(Doc.No.96-1).

PREJUDICIAL EFFECT

1.) The Attorneys errors will impact this case at a Constitutional level, where the Attorney will not explain the Evidence to the Defendant he advised him to Plea to, and the Sentencing hearing is not reliable when the Attorney can not know the evidence, or how it is presented in the PSR. When the Attorney will not notice when the AUSA is providing False Testimony to the Court. When the Attorney will not know that the Court wants to Consider "PEER - TO - PEER" Evidence that is NOT in the record, or in this case, at any Place, or any time. The Defendant's Sentence is greatly impacted by False, and unreliable information provided to the Court. The Court will develop an Opinion, and Bias at sentencing this Defendant can not overcome, and this Defendant was harmed by the Following:

a.) The Sentencing Court will rely on the PSR e-mails. The e-mails composed into the PSR, by the Probation Officer are not reported properly, or accurately. The PSR e-mails will

not resemble the e-mails in the Probable Cause Affidavit.

The Probation Officer will leave out details from the FBI evidence, that is Material to the e-mail evidence. The PSR information is altered at a signifigant level to cause concern, where the Trial Attorney can not notice the difference. The Court was provided with Altered evidence at sentencing from the actions of the Probation Officer who received the evidence from the AUSA and the FBI. (PSR,Dkt.No.59,Pg.4)

The Evidence (e-mails) in the PSR is placed there by the Court Officer. The Same e-mails are listed in the Government's pleadings on 12/21/2018 during the Motion 2255 briefing,(Doc.No.96,Pg.7). The e-mails listed in Doc.No.96, are3also different from the PSR, and the Probable Cause Affidavit. They all do Not Match.

Moreover, Please Notice: The Footnote (3) in Doc.No.96,pg.7, will reveal how the e-mails are summarized by the USPO, and cite the PSR. It shows where the PSR writer had more info than they allowed the Court to see at sentencing.(Doc.No.96.Pg.7.f/n3). The information in the Government's Pleadings in Doc.No.96.Pg.7 will be the first time this defendant can compare the P.S.R. e-mails, and notice the dissimilar information. The Critical evdience information was altered knowingly, in order to influence the sentencing Court. Attorney Cavazos did NOT notice, and the AUSA caused "invited Error" on the Court. This is NOT harmless.

Please Compare the Document's with e-mail evidence:

(Doc.No.03.)(Attachment I )-(Doc.No.96.Pg7.)( Attachment O ),& (PSR: Doc.No.59,)(Secured from inmate). No listing is Similar.

This Defendant will discover this Alteration of the evidence during his Initial Motion 2255, and this issue has not been ruled

on by the District court , even despite this defendant will raise this finding in (Dkt.No.112)(Attachment O ).

4. Other details the Trial Attorney will not notice, did have a Prejudicial impact on this Case.

1.) The Probation Officer, like the FBI will fail to Qualify the image evidence as verified, and known Child Pornography, as Defined by Statute: 18USCS § 2256 , that are presented in the PSR , Specifically concerning the e-mail evidence.

2.) The Sentencing Court will rely on it's own understanding where the Judge thinks the Defendant used "PEER-TO-PEER" file share networking programs to traffick child Pornography. However, there is no , not any:Peer - to - peer information in this case . The Court will have NO information to rely upon concerning this finding, at sentencing, in order to up-hold a +5 point (2G2.2) Guidelines enhancement. This is not harmless. \*\* Also, NO Attorney will correct the Court on this, Nor will the Probation Officer, at sentencing. The Defendant will not notice this until he will receive a FOIA return on 12/20/2024 /EOUSA-2023-000260, that shows " (NO) Peer-to-Peer programs related to case No.

5:15-CR-00066-XR.) (Attachment p ). (SEE: Doc.No.73.Pg^, 2-3 at 23 &1) (Attachment p ). This Detail has not received any attention from the District Court, and Attorney Cavazos will NOT notice this Error. That is FALSE, and is Harmful !

3.) The Trial Attorney will not notice that the PSR information presented to the Sentencing Court will be False and Misleading

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\*\* Invited Error. (Naupe v. Illinois,360 U.S. 264, at 269.)  
(Citation at Pg.38 above).

concerning a Mr. Louis W. Darling , who is the Subject in the Probable Cause Affidavit concerning specific e-mails in this case. E-mails that are not properly reported by the FBI, or the PSR writer (USPO). Importantly: The FBI reports on e-mails in the Search Warrant Affidavit from August 28,2013 - to September 23,2013 , and will NOT show how the E-mails are connected to the Target Residence , or how the E-mails Contain Child Pornography. (Doc.No.03,Pg.19-20,at 22.)(Attachment-I ). These E-mails will NOT appear in the PSR, as listed, However the USPO will put in the PSR : " Darling utilized e-mail address yuclbe4me@yahoo.com, to e-mail videos and images of child pornography "... (emphasis added)(Doc.No.03.Pg.19,at21). (Attachment I ). The Sentencing Court will Only be provided this portion of the Evidence in the PSR, concerning these e-mails, that DONT include the " September 22,2013 " e-mail. Neither , Trial Attorney Cavazos, Or the Court will Notice that the listed e-mails in the Probable Cause Affidavit , on these dates:as they appear in the FBI Affidavit. Or how the USPO will not properly report to the PSR, and the Court. But the AUSA will know the difference, as well as the USPO. & FBI.

a. Had the Trial Attorney , investigated the "LOUIS W. DARLING" information and e-mails in the Search Warrant Affidavit, he would of known how the PSR was False and Misleading.

1.) The Attorney would of known there is NO Child Pornography, or a connection to the target resigence in the e-mails that the Magistrate Judge can rely upon as Probable Cause to issue a search warrant at the defendants residence in San Antonio,TX.

2.) The Attorney would of known that Mr.Darling was not charged with any child pornography, or computer crimes , and he never sent or received child Pornography with the Defendant, or anyone else, as the FBI wishes to report.(SEE Attachment Q ), is a report this Petitioner has obtained regarding Mr.Darling. It is his Offender Supervisor Report in Buffalo N.Y. in 2019, that shows "NO PORNGRAPHY" & "NO COMPUTER USED" , in his offender Status. (Attachment Q ). Is New Evidence.

3.) Attorney Cavazos will not notice when the AUSA will cite to the " Search Warrant Affidavit ", at sentencing, and speak to the Louis Darling e-mails, that are NOT in the PSR, or in the Record. (ECF.No.73.at 36) (Doc.No.117,12/11/2019),(Attachment H ). This Citation by the AUSA will influence the Court, as also shown by the Court's later Opinion's:

1. Doc.No. 117 the Court will Depend Upon the AUSA's statement to deny this Defendant the " Probable Cause Affidavit ".

2. The District Court will Deny the Motion 2255 and State:

" Blake was charged with distributing child pornography on September 22, 2013. " (emphasis added). (Doc.No.118,pg.20)

(Attachment F ). The Court will NOT, NOT see this e-mail & images.

Prejudicial effect , will infect the integrity of this case at Various levels, including the Attorney's ability to understand the evidence and facts in this case, and where the Court Officers will willingly and knowingly interfere with the Information the Court will rely on to sentence this Defendant. This Is Not Harmless to this Defendant, and this Issue has Not been decided on at any previous time by the Court.

(ECF .117 & 118 ,12/11/19: Denied on same day).

Legal Citations

1. " Counsel's Conduct did so undermine the proper functioning of the Adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668,686,80 L.Ed.2d.674, 104 S.Ct.2025(1984).
2. " A failure to file a motion to Suppress that is based on a lack of knowledge of the state of the Evidence due to counsels misunderstanding or ignorance of the law or failure to conduct adequate investigations can satisfy Strickland's deficiency Prong." \*Kimmelman v. Morrison, 477 U.S. U.S. 365,383-87, 106 S.Ct.2574,91 L.Ed.2D. 305(1986).

May this Reviewing Court please consider the above Grounds for relief, where the NEXT GROUNDS to be presented will

Rely upon the Pleadings and Evidence, as it is presented above ,  
Respectfully.

GROUND FOUR AND SUPPORTING FACTS

IV. The FBI Agent, who is the lead Agent in this case will compose the Search Warrant Probable Cause Affidavit, and provide Knowingly False Statements in it's Affidavit to intentionally mis-lead the Magistrate Judge, who will approve a Search Warrant for the Defendant's residence.

1. The Lead FBI Agent ; R.Miller will provide the Magistrate Court with a Probable Cause Affidavit for the Search Warrant in this Case. The information provided by the Agent is not correct and it is also false as presented, and knowingly by the Agent, who has had over 16 Months to investigate this case, and it's evidence. The actions and conduct of the FBI /Police will violate this defendant's Constitutional rights, and Cause the Magistrate Judge to rely upon LESSER THAN, ACCURATE OR HONEST affidavit testimony. Please Notice these specific details below in Review:

a. The FBI will present details of a Mr. Louis W. Darling,  
from a New York investigation, and write in the Affidavit:

" Darling utilized e-mail address, yuclbe4me@yahoo.com, to e-mail videos and images of child pornography over the Yahoo! System. A Search Warrant was issued...to Yahoo! ." (SEE: Doc.No.3, Pg.19,at 21)(Attachment I ).

1.) The Agent will fail to report, or show how any of the e-mail evidence from the above statement relates to any Verified Child Pornography for the target residence, and this "Darling" information in the Affidavit. The Magistrate Cannot, Not logically find probable cause to be sufficient from this information.

2.) The Agent will neglect to reveal information to the Magistrate Judge ,That the Agent knows about concerning "Darling".

On July 7,2014 , Mr. Darling was Convicted of the Crime: Promote A Sexual Performance by A Child." , and there is NO Child Pornography , and NO computer use in his Criminal History, including July 7,2014. This Information was known by the FBI SIX (6) months, before the Application for a search warrant for Blake's Residence. (SEE: Attachment Q ). Furthermore ,the e-mails reported concerning yuclbe4me@yahoo.com, do NOT contain any pornography information the Magistrate can rely on as child pornography. No verification of images, file names, descriptions, or where the Magistrate will look at any images to confirm how they meet the Statutaory Requirements by definition in 18 USCS § 2256 , or the "DOST FACTORS", for child pornography images. \*

b. The FBI Agent will , provide in his own affidavit ,that the internet for the Target Residence was not in existence at this residence by "Time Warner", for the Blakes at any time before 09/15/2013.( Doc.No.3.Pg.21,at 26. ). The Magistrate could NOT

\*U.S. v.Dost,636 F.Supp.828(S.D.Cal 1986).

Legally find Probable Caused by any other e-mails in the FBI Agents Affidavit listed before 09/15/2013 , for IP#68.206.100.58 with time Warner , At the Target Residence. (SEE:Doc.No.5.Pg.2-3 at, 3&4)(Attachment N ). This Document " 5 " the Arrest and criminal Complaint Warrant/Affadavit, is Composed by the same Agent, R.Miller , with the support of the AUSA, T.Thompson, who BOTH know the IP connection statement is FALSE. And will know where the Magistrate is being Mis-led to issue a Warrant.

1. The Agent who composed the Affidavit for the Search Warrant will knowingly and willingly disregard the truth in the facts as he will know them ,in a pattern and practice intended to deceive the Justice, and develop the record with false evidence and manufactured facts. This Pattern and Practice is supported by the AUSA knowingly,in efforts to secure convictions, that otherwise may be highly questionable. This is Not harmless to this Defendant. Will infect , and impact the Grand Jury evidence. =====

2. The FBI agent will conduct surveilence for an extended period of time concerning the Target Residence, prior to the search warrant Application, and neglect to report at any time where the Blake's did not own the Target residence, or Occupy the target Residence during the time when the Agent will report Criminal Avtivity (Alleged) in June & July 2013. The Blakes did not take possession of the Home in San Antonio until the second week in August 2013. The home was Vacant June & July 2013.(SEE: Attachment M ). The Magistrate has No Probable Cause to validate the Warrant in this case., Absent Police Misconduct supported by the AUSA knowingly. This is Not harmless to this defendant.

c. The FBI agent , will also know, at the time of his Probable Cause Affidavit" , that there is nothing criminal at the target residence for the ENTIRE time after the Blake's move into this home and activate the "Time Warner Internet".  
The FBI will conduct Sixteen (16) months of constant surveillance at the target residence, and have access to the "Target" e-mail of tommyhartford4624@gmail.com , which is, IT IS complete access at it's password protected "Private Areas" of the e-mail account. However the FBI will not present a single event of anything criminal to have transpired at the Target Residence for over a years time, after the Blakes Move into this House, with the " Time Warner Internet ". There are NO NCMEC reports for this Defendant or his e-mail accounts. Nothing NEW. The Magistrate Judge will Issue a Search Warrant with no showing of Probable Cause by the FBI, that is reliable, or True , and the Agent and AUSA will know this, and conspire this action. This Claim for relief Above has Not been tested at any previous time by the District Court, and was unknown to this defendant until after he will file his Initial Motion 2255.

Please Consider the Following Legal Citations:

1. " Warrant invalid because ,Fact that there was ample evidence to beleive defendant engaged in criminal Activity in California was insufficient to support infrence that incriminating evidence would be found at residence in Florida." United States v. Green,634 F.2d. 222,226(5th.Cir1981).
2. " The Court must consider whether the Magistrate issuing the warrant had a substantial basis believing there was Probable Cause for the Search." United States V. Allen,625 F.3d 830,835(5th.Cir.2010).

( Please Consider: Attachment T ,Pg. 2 , 8-13).

GROUND FIVE AND SUPPORTING FACTS

V. The Government will withhold specific evidence and information in this Case, that is evidence of " Actual Innocence", and would of provided the defence with Objective Factual Evidence, that will show how the defendant did not know, Or "Knowingly" willingly receive, Possess, Or Distribute Child Pornography. This is a Brady Violation , Withholding Evidence.

1. This defendant will inform the FBI Agent's and his Attorney on December 4,2014 (same Day of Search Warrant), that HE will receive no less than three (3) large ZIP Folder Files in his e-mails, Just the Day before on 12/03/2014.

a. That he did download the Zip Files , only to discover how they are PASSWORD locked, and unable to be opened by him. Where, he had NO idea of their contents , and thought they were "STAR TREK " videos he had been looking for.

b. That he requested , the Password from the sender by e-mail, How he copied the Zip Files to DVD ROM disk, and his Home Computer to save space on his (acer) Lap-top, on 12/03/2014. That he never had knowledge of the contents, when there is NO Contents discription, Preview, or revealing file names.(locked)

C. Defendant informed the Attorney , about the above information he did share with the FBI Agents about the ZIP Files that were NO less than 2 GIGABYTES in size (very Large), and Never Opened,Or Viewed at any time Before the FBI confiscated the Media devices less than 24 hours later, as well as the FBI was fully informed of the files (ZIP), and they wrote down this into the "Notepad" during the Interrogation of this Defendant, in his home that early day. By force, and asking incriminating questions,not recorded.

2. The FBI Agent's will never report on these ZIP files that are within this defendant's Computers,e-mail, and writeable DVD/ROM media disk's. This interrogation information is not in the FD-302, or in any Confiscated Evidence including e-mails. This Defendant will not know how the FBI failed to include this information in the FD-302's, Not until after 12/15/2023 when he received his FOIA return from the FBI, FOIA # 1467387. Neither the Trial Attorney (Cavazos) Nor the AUSA will disclose any detail or evidence that the : "Very large, and unopened, locked ZIP files "  
were confiscated by the FBI from this Defendants residence.

3. This is NOT harmless, because the Government has not provided any evidence, None that shows where this Defendant did " VIEW " any child Pornography images, or Videos, at any time, in any way.

- a. There is NO evidence of searching and seeking, or visiting any Web-Sites,For or About anything concerning Child Pornography.
- b. There is NO " VIEWING " history, or computer Logging Reports showing how this defendant was " LOOKING " at such images , and then wanting to keep them, or trade them.
- c. There is NO " Google Searches " reported, or Affirmative internet searching of any kind, that is indicating such material/ images of Children in Sexually Explicit Conduct, for this Defendant. Being sought out, wanted or expected !
- d. There are NO " Cyber-Tip " Reports, Or NCMEC reports at any time, in any way, connected to or concerning this defendant, or his Actions.

Only the FBI wants to report on the FD-302 interrogation and provide  
\*\* Attorney Cavazos never showed or discussed the FD-302's, NEVER.

the record in this case with Speculations, and False information that was never challenged or tested. The ZIP files are large and have the potential to contain thousands of digital images. Also, it is logical to consider where the FBI already know that this Defendant has not Trafficked, or Aquired any Child Pornography for 16 Months at the Target residence, while under FBI Survelence, and when the FBI has "WARRANTLESS" Aceess to his Password areas of his e-mail account. It is Suspicious to this Defendnat how the ZIP files arrive, just a Few Hours before the Execution of the "Search Warrant ".? Did the ~~FBI~~ send the ZIP files, as the Unknown sender of the Password Protected "LOCKED" Data folders to this Defendant ?! (Attachment T,pg.1,at 2,6,7 & pg.T-3,at 14.)

4. The evidence reported in this case will not authenticate its Origin concerning its importation /capture, or if it was Ever Viewed or know by this Defendant. This Implicates Knowledge, and Scienter required by , 18 USC §§ 2252 & 2252A. This is not harmless to this defendant, and the Existence of the ZIP files is NOT revealed or reported by the FBI , despite how this was reported to them at the interrogation by this defendant, and then to his Attorney, on the Same Day. The ZIP files are Suppressed.

" Under the Due Process Clause, the prosecution must turn over to criminal defendant any significant exculpatory evidence." -(Brady v. Maryland,373 U.S. 83),

And, " The duty to disclose such evidence is applicable even though there has been no request by the accused...and that the duty encompasses impeached(ment) evidence as well as exculpatory evidence." Brady v. Maryland,373 U.S.83,at 437-438).

#### GROUND SIX , IS NEW EVIDENCE

WILL REVEAL WHERE THE AUSA's STATEMENTS AT SENTENCING, ARE FALSE CARELESS, MISLEADING, And not supported by the record.

1. Defendant will Aquire an E- Mail Sent by his EX-WIFE (PERRY), After Mr. Blake moved to the Maryland area in March 2010, pending a divorce. The E-Mail will show where Betty Blake (Perry) is sending the Minor Daughters on a Southwest Flight alone, in order to spend a week with their father, Alone.(SEE: Attachment E ).

a. This e-mail is evidence , that will contradict the PSR and the AUSA's Statement's and presentations at Sentencing. (ECF.73).

1.) This Logic will fully hold the AUSA in liability by providing False testimony to the Sentencing Court, and the record, and demonstrates how the AUSA will abuse power, une Challenged to influence the Court and conspire with Betty Blake (Perry) to provide False information in this Case.(ECF.No.59 at 19) &, (ECF.NO.118,Pg.15, F/N 1). & (ECF.NO.118,Pg.18)(Attachment F ).  
21.)

The Airline reservations were created before the Divorce in  
=====  
May 2010, and Blake's Ex-Wife was faced with Custody, and Alimony issues in May ,which Dissolved any cooperation from her, and \* initiated False Allegations. The FBI and the AUSA will know this aspect, and create an alternative narrative to prosecute. This is flagrant Misconduct and abuse of Power, ignored by the District Court. This is NOT harmless to this Defendant.

#### GROUND SEVEN AND SUPPORTING FACTS

VII. Defendant is Compelled to be a witness agianist himself.

1. The Plea Facts are composed from the FBI interrogation, that was NOT recorded, with NO miranda. These Plea Facts are called a Confession that is made by this defendant from this FBI interview. This Is Not Harmless. (SEE: ECF.No.118,Pg. 12,13,18)(PSR:No.59,at 6).

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\* Threats of False and Contemptous allegations of child abuse, if Mr.Blake insisted to pursuit Custody, and Alimony.

a. As presented above , This defendant was Compelled to Plea to facts untested, and facts he reported as un-True. There is New testimony from his Attorney concerning this at the Evidence Hearing for the COA on 02/2022. And the Only " KNOWINGLY " element in this case is established by the FBI reports from the Search Warrant Interrogation, as presented.

1..) There is NO evidence anywhere, that shows this defendant will Knowingly, Download, Receive (willingly), Keep (with Intent), or Seek- Out , View, or want any Child Pornography.(Attachment T,pg.2@10).

2.) However the FBI will report on a BOLD and "GUT-Spilling" (!!) Confession, along with Positive Identifications and Affirmance to e-mails and images, Wanting Child Prnography . This is very False, and concerning. The FBI Agents Cause the Knowingly aspect of this case, with NO testing or Questions Asked. (NO Confession) (SEE: Attachment E, Pg.6-15). Interrogation Not Recorded or verified.

Actual Innocence is Implicated / NO reliable Scienter Element.

1. Section 18 USCS § 2252 , is UN-constitutional , and Violates the First Amendment in this Case. Absent the FBI's Wrong and False Reports, there is NO intent, or knowledge from this Defendant about Child Pornography. The Police information in, the PSR & Plea Facts are "Vauge", and Materially False, concerning Scienter.

2. The term " Knowingly in 18 USCS § 2252{a}{1},{2} must be established to both, explicit nature of the material and to " the age of the performers to be Constitutional.(X-Citement Video).

3. There is No information in the " Search warrant Probable Cause Affidavit " that, Once Properly tested, Nothing it contains can support Scienter , and Knowingly concerning this Defendant. The FBI FD-302 is a made up story, they are never challenged.

No Evidence, reports, or Tested facts " Show Viewing of images".

4. Whether or Not, the Government's Misconduct, and False reporting, or the Trial Attorney's Failures to properly test the FBI and it's Evidence, This Defendant is Impacted by the actions of the FBI, and AUSA at a Constitutional Level. Is Prejudiced, and Denied Due Process, and Assistance of Council, that is anything , But Reliable and True.

Please Notice, New Evidence that shows how the Information about a RUSSIAN WEB=Site is False.(Attachment A, Pgs.8-11). It Has NO Child Pornography or " CHAT ". (Doc.No.5, & PSR). is a Contradiction, The Above issue has NOT received any attention from the Court's at any previous Time. The Above is Not Harmless to this Defendant.

Please Consider the Following Legal Citations.

1. " Section 2252 of the Act is Unconstitutional on it's Face because it does not require Scienter."

United States V. X-Citement Video,982 F.2d 1285,9th Cir. 1992.

And, " The term "Knowingly" in 18 USCS § 2252(a)(1),(2) must be established to both, explicit nature of the material and to the age of the performers, to be Constitutional.

United States V. X-Citement Video,inc, U.S.,115 S.Ct. 464,472 130 L.Ed.2d 372(1994).

2. " Under a Child Pornography Statute, " as with obscenity laws, criminal responsibility may not be imposed without some element of Scienter." (Ferber at 765).

New York v.Ferber, 458 U.S. 747,73 L.Ed.2d 1113,102 S.Ct.3348(1982).

The Guidelines for 2G2.2 , Are, insidious by their very nature, and can easily be abused by the AUSA, as they were in this Case. The AUSA abused the responsibility of his Office, to Cause Mr. Blake Harm. (Attachment S ).

FOR JUDICIAL NOTICE: , "U.S. v. Dorvee,616 F.3d 174,2010 U.S.App. LEXIS 16288 (2nd.Cir.NY,May 11,2010).

&: Spriggs v. U.S ,666F.3d 1284 (11th.Cir.2012.

Distribution and PEER-TO-PEER Case concerning,2G2.2 enhancement's.

May this Court find this case to be unusual, and the merits of this Petitioners Claims for relief do have serious Constitutional implications, that have not had a full and fair Opportunity to be presented or litigated at any previous time. This Case is ripe for review of these Claims, if left unresolved could represent a miscarriage of Justice, where a 2G2.2 guidelines sentence can result in a shocking outcome of a Prosecution, that otherwise would not of taken place except for the Government's actions that will Violate the protections of the Constitution, and cause false information and Evidence to influence the Record, the Court, the Plea, and Pervert Justice., Without the Competent Assistance of Defence Counsel.

Please consider the following legal citations:

1. (Judicial Notice):" In assessing the sufficiency of the evidence to support an infrence of knowledge". (Very Similar case)!  
U.S. v. Dillingham, 320 F.Supp.3d 809, 2018 LEXIS 892727.
2. "Fourteenth Amendment Violation"  
"The Suppression by prosecution of evidence favorable to and requested by an accused violates due process where the evidence is material to guilt or to punishment, irrespective of the good faith of the prosecution."  
Maryland v. Brady, 373 U.S. 83, at 87 (headnote, 3).
3. " A conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under due process clause of the Fourteenth Amendment , the same result obtains when the state, although not Soliciting false evidence, allows it to go uncorrected when it appears."  
Naupe v. Illinois, 360 U.S. 264, 3LED2D 1217, 79 S.Ct.1173(1959) at 269 .
4. " When a petitioner could not have resonably been expected to discover an actionable Brady Violation before filing his first Federal collateral-review Motion, precluding the filing of a Second -in-time petition addressing the newly discovered violation is doubly wrong,. It rewards the government for it's unfair procection..." Velez Scott, 890 F.3d 1239, 2018.

GROUND EIGHT

The District Court will Violate Rule 11(b) , at the Plea Hearing, and rely upon False information at Sentencing, that the Trial Attorney "Promised" to dispute in order to get this Defendant to accept the Plea.

1. Defendant's Attorney (Cavazos) will present a plea document to the defendant, and encourage him to accept it, .The Defendant will refuse, because the Attorney did not report on any e-mail evidence.  
a. Attorney Cavazos will , Promise to look at the e-mails and their evidence before sentencing, and dispute this evidence as an enhancement at sentencing, and argue to have the "Distribution" charges removed. This did not happen.(SEE: Attachment E,Pg.E-6,E-7).

2. This is impactful, because the District Court will Not be aware of this Promise to induce the Plea, and that this promise was not fulfilled by attorney Cavazos.

3. Without this Condition of this Promise, this defendant would not of pleaded guilty to charges he did not do, or agree with, and would of insisted on a trial. This is Not Harmless.

b. This Rule 11 Violation was not noticed , by any Attorney, the Officers of the Court, or this Defendant (who would not notice).

1. The Rule 11 Violation was noticed by Attorney Acosta, who will represent this defendant at his Evidence hearing on COA Remand: (SEE: ECF.No.197,pg.12 ,10/27/2022).

This Issue has Not received any Attention or review from the Lower Court's in this Case at any previous time. This is Not Harmless and has an impact on the Plea, as well as the Court's understanding of the e-mail evidence at sentencing. Without this error the resultsa of this case would of been different.

GROUND NINE

New Evidence will reveal where the FBI and the AUSA will Aid and Assist the Defendant's Ex-Wife Betty Perry, to defeat a child

Custody dispute. Where Government Misconduct is involved with the pretense of this case. And the District Court is infected with influence and Bias from this Disinformation.

1. The FBI and the AUSA will allow the defendant's Daughter to be an victim unwittingly, an exploited.

a. The Government SHUNS their responsibility to properly verify the allegations from Betty Perry, who will utilize the Daughter as a weapon in her efforts to avoid a custody dispute. This is NOT harmless, and should be Considered Criminal, and Morally Reprehensible.

b. A Police Report, from Rhode Island is revealed to this Defendant for the very first time, as aquired by Attorney Cavazos on 05/15/24. This report is made by a friend to Betty Perry, who owes Perry \$4,000.00- at this time. The report is a BOGUS Fabrication, Never revealed to the Defence, However it is Cited to by the FBI, and the AUSA, and the PSR. ( SEE: Attachment R ).

c. These Reports , are contradicted by the Airlines Reservations, that are proof the Mother (Perry), was sending the Daughters Alone to Visit their Father in Maryland, After the BOGUS Police Report. This Is NOT Harmless.(SEE: Attachment E). The Sentencing Court was Provided large ammounts of false information by the Government.

The Sentencing Court will use False and Misleading information to be wrongfully guided when imposing the Sentence, and the 18 USCS § 3553 (a) factors. This Defendant was Prejudiced.

#### CONCLUSION

May this Court please find merit in the above pleadings, and notice where the Claims and Issues presented have not had a full and Fair Opportunity to be presented at any previous time. To please find that the second-in-time restrictions, concerning 28 USC § 2244(b) (B)(ii), for this Case are fundamentally Untenable. Because this conviction is based upon Deceptive and Contemptuous Facts and Evidence, unknown to this Defendant before his Initial Motion 2255. Petitioner here prays this Court will VacatesHis Sentence and Remand to correct his condition, accordingly. *Robert T. Blake 5/29/25.*  
Please Notice Attachment T, pg.3,at 15,16). Respectfully Submitted.

A petition for an Extraordinary Writ for Habeas Corpus relief is respectfully submitted to this Honorable Court, on this day.

Dated: May 29, 2025 Respectfully Submitted,



Robert Timothy Blake  
Pro-Se Prisoner in  
Federal Custody.  
#46959380

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