No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re TODD BRITTON-HARR,
Petitioner.

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

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A. QUESTION PRESENTED FOR REVIEW

Whether the court of appeals improperly denied the Petitioner's application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence (pursuant to 28 U.S.C. § 2255) in light of the newly discovered evidence submitted by the Petitioner establishing that the loan application that was the basis for the Petitioner's conviction was forged.

B. PARTIES INVOLVED

The Petitioner is a criminal defendant currently serving the supervised release portion of his federal sentence.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, TODD BRITTON-HARR, respectfully requests the Court to grant this petition for a writ of habeas corpus.

D. BASIS FOR JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241 & 1651(a) and Article III of the Constitution. *See also Felker v. Turpin*, 518 U.S. 651 (1996).

E. STATUTORY PROVISION INVOLVED

28 U.S.C. § 2255(h) states in relevant part:

> A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain –
>
> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense . . . .

F. STATEMENT OF THE CASE

The Petitioner was charged in federal court (Northern District of Florida) in a two-count indictment with execution of a fraudulent scheme ("count one") and making a false statement for the purpose of influencing a federal financial institution ("count two"). The Government's theory at trial was that the Petitioner, acting as a real estate agent and power of attorney for Codefendant Karyn J. Britton,[1] along with Ms. Britton, were alleged to have knowingly made false statements on Ms. Britton's loan application to acquire real estate located at 13555 Perdido Key Drive, Unit A19U,

[1] Ms. Britton is married to Stephen F. Britton, the Applicant's adoptive father.

Pensacola, Florida ("henceforth "Unit A19U") in the Purple Parrot Condominiums. The alleged false statements related to Ms. Britton's other financial liabilities, her expression of intent to occupy the property as a primary residence, and the relationship of the parties involved.

The Presentence Investigation Report states the following regarding the alleged facts that formed the basis for the charges in this case. In September of 2009, a representative from Wells Fargo Bank contacted the FBI regarding a purported mortgage loan fraud which exposed Wells Fargo to a potential loss in excess of $308,000. The purportedly fraudulent mortgage loan was obtained by Ms. Britton for Unit A19U in the Purple Parrot Condominiums. Ms. Britton had also obtained other loans around the same time period and she purchased three units at the Purple Parrot, without disclosing her prior liabilities. The loan application for Unit A19U identified three properties owned by Ms. Britton: two units at Purple Parrot, identified only as Units A and B2; and her residence in Bradenton, Florida. In the declaration on the loan application, Ms. Britton indicated that Unit A19U would be occupied as a primary residence. The Petitioner signed the loan application for Ms. Britton. An independent post-underwriting review conducted by the mortgage insurance company ("Radian") identified misrepresentations made by Ms. Britton and issues with the loan, including that Ms. Britton did not disclose on her loan application that she had obtained two mortgage debts before submitting the loan application to Wells Fargo, when in fact she had obtained a mortgage in the amount of $420,000 on July 31, 2006, for Unit B10, and a mortgage in the amount of $261,000 on August 3, 2006, for Unit C46U. A final

judgment of foreclosure in the amount of $328,390.29 was entered in the First Judicial Circuit in Escambia County Florida in April of 2008.

Ms. Britton entered a plea of guilty pursuant to a written plea agreement and cooperated with the Government. The Petitioner proceeded to trial in January of 2012. The Petitioner's defense at trial was that Ms. Britton was solely responsible for providing the information to Wells Fargo Bank and confirming that all documents signed by the applicant were true and correct. At the conclusion of the trial, the jury acquitted the Petitioner of count one and returned a verdict of guilty with respect to count two. The Petitioner was subsequently sentenced to forty-eight months' imprisonment.

The Petitioner was released from prison on February 21, 2017. Upon being released from prison, the Petitioner began further investigation of his case – an investigation that he could not conduct while he was in prison. During the trial, Ms. Britton's loan application that is the subject of the charge in this case was introduced as an exhibit (A-7).[2] The loan application was allegedly signed by Wells Fargo Bank employee Gary Owens (who purportedly talked to Ms. Britton on the telephone and obtained information from her regarding the loan application). During the trial, the Government presented the testimony of Cheryl Woodbury, an underwriting manager for Wells Fargo Bank. During Ms. Woodbury's testimony, she stated the following:

> Q [by defense counsel]: . . . Let me ask you this, because I'm not

[2] References to the documents included in the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

trying to trick you here. This particular application, if you go to the last page – or excuse me. On page 3, if you go to the bottom, it's signed by Gary Owens; is that correct?

A. Correct.

Q. And it's dated July 25th of 2006; is that correct? To the right of Gary Owens –

A. I believe that says 7/25/06.

Q. '06, right?

A. Yes.

Q. And then off to the left over there of his signature, do you see telephone?

A. Correct.

Mr. Kypreos: Your Honor, may we publish this?

The Court: Your wish.

Mr. Kypreos: Thank you, Your Honor.

By Mr. Kypreos:

Q. You see the checkmark for telephone that's checked, right?

A. Yes.

Q. And then that's Gary Owens' signature there; is that correct?

A. That's correct.

Q. Okay. Now, what is that signifying to you in terms of your internal recordkeeping? When you see Gary Owens' signature on this document and you see telephone checked, what does that tell you?

A. It tells me as an underwriter that the application was taken via telephone and Gary was the HMC on the loan.

Q. That the application was taken –

A. Via telephone.

Q. Is there any indication on the application where he took the – who he took the application from?

A. Only based on the application that I have, it would be from Karyn Britton.

Q. And you would assume that because going back to page 1 of the exhibit, her name appears as the borrower; is that correct?

A. That's correct.

Q. So just based on the document alone, you would assume that he had contact with Karyn Britton; is that correct?

A. She's the only applicant on this loan, correct.

(A-69-71). Notably, Mr. Owens was never called as a witness at trial.

As part of his investigation upon being released from prison, the Petitioner contacted Mr. Owens (in the hope that Mr. Owens would confirm the Petitioner's innocence). Specifically, the Petitioner drafted an affidavit for Mr. Owens to sign (which detailed what actually happened in this case) and provided Mr. Owens with the loan application that was utilized at trial so that he could review the application. However, after making contact with Mr. Owens in October of 2017 and showing him the application in question, Mr. Owens stated (via text message) that the signature on the loan application is *not* his signature (i.e., someone else signed/forged Mr. Owens' name on the loan application). Copies of both Mr. Owens' text and the loan application were attached to the § 2255 application filed with the court the appeals and both are included in the appendix to this petition (A-6, A-7). Prior to being released from prison,

the Petitioner had no ability to contact Mr. Owens.[3]

Based on the foregoing, the Petitioner filed an application with the court of appeals seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence (pursuant to 28 U.S.C. § 2255) in light of the newly discovered evidence of the forged loan application (i.e., Mr. Owens' recent statement that it is not his signature on the loan application). On March 30, 2018, the court of appeals denied the Petitioner's application. (A-1).[4]

[3] Contrary to what was presented by the Government at trial, the Petitioner had *never* communicated with Mr. Owens prior to the text communications in October of 2017.

[4] As required by Rule 20.4 and 28 U.S.C. §§ 2241 and 2242, the Petitioner states that he cannot present this petition in the district court because the court of appeals denied his application.

G. REASONS FOR GRANTING THE WRIT

1. The question presented is important.

This case provides the Court with an opportunity to clarify the "newly discovered evidence" standard set forth in 28 U.S.C. § 2255(h). 28 U.S.C. § 2255(h) states in relevant part:

> A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain –
>
> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense . . . ..

As explained above, in the instant case, the Petitioner has presented evidence that the key document that the Government relied upon to obtain a conviction was falsified. In the order denying the Petitioner's application to file a second or successive § 2255 motion, the court of appeals stated that the Petitioner "has not made a *prima facie* showing that his claim meets the statutory criteria" of § 2255(h):

> Britton-Harr does not explain how [Gary] Owens's alleged forged signature negates the jury's finding that he made a false statement on Karyn's loan application, as he does not allege that the entire loan application was forged or that his signature on behalf of Karyn was forged. *See* [*In re*] *Boshears*, 110 F.3d [1538,] 1541-43 [(11th Cir. 1997)]. Instead, it merely calls into question the integrity of the document without otherwise negating the jury's finding that Britton-Harr made a false statement. *See id.*; 28 U.S.C. § 2255(h)(1).

(A-3-4).[5] Contrary to the court of appeals' conclusion, Mr. Owens' recent statement/text

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[5] The court of appeals also stated the following in its order:

> Initially, it is unclear that Owens actually alleged that his signature was forged in his text message exchange with Britton-Harr, as he stated that

satisfies the standard for obtaining authorization to file a second or successive § 2255 motion based on newly discovered evidence: (1) the evidence was discovered since the date of the judgment (and was discovered within the last year – October of 2017); (2) the Petitioner exercised due diligence in discovering the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the new evidence would produce a different outcome at trial. *See, e.g., Waddell v. Hendry County Sheriff's Office*, 329 F.3d 1300, 1309 (11th Cir. 2003). In light of Mr. Owens' recent statement/text, no reasonable factfinder would have found the Petitioner guilty for the following reasons:

- The Government utilized Cheryl Woodbury from Wells Fargo to testify at trial as to the mortgage application being truthful and that Mr. Owens had signed the application. Hence, the jury was told that Mr. Owens signed the document and that not having the other mortgages on the application made it false. This at bare minimum tainted the jury.
- The Petitioner's signature of the loan application at the real estate

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> his signature was not on the application, not that his signature was false. It is possible that Britton-Harr sent Owens the application without Owens's signature on it, instead of the one with it.

(A-3). The Petitioner respectfully submits that this assertion is illogical. The whole purpose of the Petitioner's application is to obtain relief in the district court pursuant to a second or successive § 2255 motion. If the Petitioner had actually "sent Owens the application without Owens's signature on it, instead of the one with it," then this misconduct would be immediately exposed during the district court proceedings and would result in swift denial. To be clear, the Petitioner sent Mr. Owens the loan application included in the appendix to this petition (i.e., the loan application containing a signature that Mr. Owens has asserted is not his).

closing was contingent on the identical previously-prepared loan application being signed by Mr. Owens.

- It has now been established that Mr. Owens did *not* sign the application – even though Ms. Woodbury told the jury that Mr. Owens' signature was on the document. The document was therefore forged.

Notably, the court of appeals acknowledged that Mr. Owens' recent statement/text "*calls into question* the integrity of the" loan application that was the key piece of evidence in this case. (A-6) (emphasis added). This finding alone meets the minimal threshold for allowing the Petitioner to proceed with a second or successive § 2255 motion. The Petitioner is not requesting either the court of appeals or this Court to vacate his conviction; rather, he is simply seeking leave to pursue a second or successive § 2255 motion in the district court based on the newly discovered evidence in this case. Whether the Petitioner can meet his burden to have his conviction set aside will be a decision for the district court to make after considering all of the evidence. But at this stage of the proceedings, the Petitioner has satisfied the requirements for certification pursuant to § 2255(h).

The Petitioner therefore asks this Court to address this issue by either accepting this case for plenary review (and clarifying the standard set forth in § 2255(h))[6] or

[6] In *Miller-El v. Cockrell*, 537 U.S. 322 (2003), the Court accepted review of a case to clarify the standard that applies when a court of appeals considers whether to grant a certificate of appealability ("COA"). *See Miller-El*, 537 U.S. at 327 ("At issue here are the standards [Antiterrorism and Effective Death Penalty Act of 1996] imposes before a court of appeals may issue a COA to review a denial of habeas relief in the district court."). Similarly, the Petitioner requests the Court to accept review

remanding this case to the court of appeals (or the district court) for the consideration it deserves.

2. The exceptional circumstances of this case warrant the exercise of this Court's jurisdiction.[7]

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). The Court has the authority to entertain original habeas petitions. *See Felker v. Turpin*, 518 U.S. 651, 660 (1996).

The Petitioner's last hope for review lies with this Court. His case presents exceptional circumstances that warrant the exercise of this Court's discretionary powers.

"The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defence of personal freedom." *Ex parte Yerger*, 8 Wall. 85, 95, 75 U.S. 85, 95 (1868). "[F]undamental fairness is the central concern of the writ of habeas corpus." *Strickland v. Washington*, 466 U.S. 668, 697 (1984). In *Harris v. Nelson*, 394 U.S. 286, 292 (1969), the Court stated the following regarding the "Great Writ":

> There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of

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in the instant case to address the standard that § 2255(h) imposes before a court of appeals may authorize a district court to consider a second or successive § 2255 motion based on newly discovered evidence.

[7] Rule 20 of this Court requires a petitioner seeking a writ of habeas corpus to demonstrate that (1) "adequate relief cannot be obtained in any other form or in any other court;" (2) "exceptional circumstances warrant the exercise of this power;" and (3) "the writ will be in aid of the Court's appellate jurisdiction."

> habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law. This Court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves: The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary.

(Citation omitted). The Petitioner's case presents the exceptional circumstances for which the "Great Writ" was intended to apply.

H. CONCLUSION

The Petitioner respectfully requests the Court to grant the petition for a writ of habeas corpus. The Petitioner submits that he has shown exceptional circumstances that warrant relief/review in this case. Adequate relief cannot be obtained in any other form or from any other court.

Respectfully Submitted,

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