25-5806

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RICKY DIXON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

FROM THE ELEVENTH CIRCUIT COURT OF APPEALS

Mr. Ricky Dixon # 55900-509

FPC-Morgantown/ P.O. Box 1000

Morgantown, WV 26507

QUESTION(S) PRESENTED

QUESTON NUMBER ONE:

Whether the district court abused its discretion and the Eleventh Circuit affirmance of the lower court's failure to conduct an Evidentiary Hearing as to Ground One, thus, did he suffer from pre-trial ineffective assistance of counsel in which violated his Sixth Amendment rights of the U.S. Constitution ?

QUESTION NUMBER TWO:

Whether the district court abused its discretion and the Eleventh Circuit affirmance of the lower court's failure to conduct an Evidentiary Hearing as to Ground Two, thus, did he suffers from Guilty Plea ineffective assistance of counsel in which violated his Sixth Amendment rights of the U.S. Constitution ?

QUESTION NUMBER THREE:

Whether the district court abused its discretion and the Eleventh Circuit affirmance of the lower court's failure to conduct an Evidentiary Hearing as to Ground Three, thus, in light of the U.S. Supreme Court's Ruling in **Dublin,** 216 L. Ed. 2d 316 (2023), he stands actually innocent of his Aggravated Identity Theft as to Count 29, to prevent a clear miscarriage of justice his guilty plea should be withdrawn ?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A, to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 04, 2025

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) in Application No. ___ A_____.

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (1).

[ ] For cases from **state courts:**

The date in which the highest state court decided my case was _____.

A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PAGE NUMBER

STATEMENT OF THE CASE

On January 04, 2024, Petitioner Dixon filed his 2255 Motion to Vacate and Affidavit (Doc. # 800). The Government filed their Response Brief opposing relief being granted on May 03, 2024 (Doc. # 986). In mid-July of 2024, Petitioner Dixon filed his 2255 Reply Brief to conclude briefing schedule. On September 30, 2024, the U.S. Magistrate Judge's Report and Recommendation to deny Dixon's 2255 Motion to Vacate and declined to grant a Certificate of Appealability (Doc. # 1132). Timely R. & R. Objections were filed by Mr. Dixon. On December 04, 2024, the district court issued a Final Report and Recommendation adopting the U.S. Magistrate Judge's Report and Recommendation (Doc. # 1132). A timely Notice of Appeal was filed and on June 04, 2025, the Eleventh Circuit Court of Appeals denied Petitioner Dixon's request for a Certificate of Appealability and issued a 1-page Denial of COA Opinion in the case at bar.

Petitioner Dixon asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One, Two, and Three or as this Supreme Court deems warranted in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Dixon, acknowledges that a review on a writ of

certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Dixon respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, and Three as relevant to question # 1, Ricky Dixon asserts that Count 29, Conspiracy to Commit Wire Fraud and Count 62, Aggravated Identity Theft legally insufficient and fail to charge a federal offense, thus, his former attorney provided him with ineffective assistance of counsel by failing to conduct legal research and file a pretrial Motion to Dismiss Second Superseding Indictment in violation of his Sixth Amendment rights. It was abuse of discretion for the district court to deny a prompt Evidentiary Hearing and the Eleventh Circuit to affirm such decision. Regarding question # 2, Ricky Dixon argues that his former attorney provided him with ineffective assistance of counsel by failing to object to him pleading guilty to Counts 29 and 62, in which were constructive/ impermissible amendment through Guilty Plea appraisal of the essential elements regarding counts plead guilty, and renders his guilty plea involuntary violation of his Sixth Amendment rights. It was abuse of discretion for the district court to deny a prompt Evidentiary Hearing and the Eleventh Circuit to affirm such decision. Regarding question # 3, Ricky

Dixon argues that in light of an intervening change in law by the U.S. Supreme Court in Dublin v. United States, 216 L. Ed. 2d 136 (2023), thus, he is actually innocent of his conviction for Aggravated Identity Theft as to Count 29, to prevent a clear miscarriage of justice in which entitles him to have his guilty plea withdrawn and sentence vacated. Consistent with 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in **Slack** and **Miller-El,** thus, Ricky Dixon is entitled to issuance of Certificate of Appealability as to Questions 1, 2, and 3, in the matter herein.

QUESTION NUMBER ONE:

Whether the district court abused its discretion and the Eleventh Circuit affirmance of the lower court's failure to conduct an Evidentiary Hearing as to Ground One, thus, did he suffer from pre-trial ineffective assistance of counsel in which violated his Sixth Amendment rights of the U.S. Constitution ?

Question Number One Is Debatable Or Wrong Among Jurists Of Reason

Petitioner Dixon asserts that on August 10, 2021, the Grand Jury returned a Second Superseding Indictment (Doc. # 290), and he plead guilty as to Counts 29, Aggravated Identity Theft and Counts 62, Conspiracy to Commit Money Laundering (Doc. # 290, Page 53 of 82; and Page 72 of 82 through Page 74 of 82). See Appendix C.

holding as follows:

"Movant's first issue with the language of the Indictment is that, according to him, Count 29 of the Indictment failed to further allege that he knew that the means of identification belonged to another individual, which Movant contends is a requirement under the law. [Doc. 1137, pp. 2-5]. However, as the Magistrate Judge determined, the authority which Movant cites, the unpublished case United States v. Becerra-Rodriguez, No. 21-10930, 2021 WL 5145248 (11th Cir. Nov. 5, 2021), stands only for proposition that the prosecution's burden to establish guilt at trial requires the Government to establish such knowledge. See Flores -Figueroa v. United States, 556 U.S. 646, 657 (2009). The standard for evaluating the sufficiency of an indictment is not so demanding. The Magistrate Judge explained that because the Indictment tracks the statutory language and approximately states the time and place of the alleged offense, the Indictment is sufficient. See United States v. Moore, 954 F.3d 1322, 1332 (11th Cir. 2020) (citing United States v. Brown, 752 F.3d 1344, 1353 (11th Cir. 2014)). Count 29 of the indictment satisfies that standard.

Movant also objects that the Magistrate Judge relied on an Eighth Circuit Court of Appeals opinion for the proposition that an indictment which charged aggravated identity theft was sufficient where, although the indictment did not plead knowledge as discussed by the United

States Supreme Court in Flores-Figueroa, it tracked the language of 18 U.S.C. 1028A (a) (1). [Doc. 1132, p. 5-6]; United States v. Prelogar, 996 F.3d 526, 532 (8th Cir. 2021). However, binding precedent from the Eleventh Circuit Court of Appeals requires only that the indictment track the language of the statute. See Moore, 954 F.3d at 1332. Since there appears to be no Eleventh Circuit case directly on point, the Magistrate Judge's reliance on persuasive authority does not render her conclusion incorrect.

Moreover, at Movant's change of plea hearing the Government properly recited the elements that it must prove to establish Movant's guilt as to Count 29, including that Movant "knew that the means of identification belonged to an actual person." [Doc. # 642, pp. 13-14]. Accordingly, this Court agrees with the Magistrate Judge that Movant's counsel had no reasonable basis to challenge Count 29 of the Superseding Indictment.

See Appendix B.

The Eleventh Circuit Court of Appeals affirmed the district court's 2255 Denial Opinion by declining to issue a certificate of appealability. See Appendix A.

The U.S. Supreme Court and the Eleventh Circuit Court of Appeals have both held that Aggravated Identity Theft **requires** as an essential element **"the defendant knew that the means of identification at**

issue belonged to another person." Flores-Figueroa v. United States, 556 U.S. 646, 657 (2009); and United States v. Barrington, 648 F.3d 1178, 1192 (11th Cir. 2011).

The Eleventh Circuit has held that Aggravated Identity Theft includes the essential element of **"knowledge"** and at the plea hearing, the district court confirmed that Becerra-Rodriguez had reviewed the indictment (**which included the pertinent knowledge element**) with his lawyer. The district court also advised Becerra-Rodriguez that the charged offense included an allegation that Becerra-Rodriguez **knew** "that the means of identification belonged to another actual person." See United States v. Becerra-Rodriguez, 2021 U.S. App. LEXIS 32950, at *7-8 (11th Cir. 2021). It is black-letter law that an indictment must allege "the elements of the offense charged," thus, if it does not such indictment is subject to dismissal. See United States v. Debrow, 346 U.S. 374, 375 (1953) ("An indictment is required to set forth the elements of the offense sought to be charged"); United States v. Resendiz-Ponce, 549 U.S. 102, 108, 127 S. Ct. 782, 166 L. Ed. 2d 591 (2007) (criminal indictment must set forth all elements of the charged crime); United States v. Gbenedio, 95 F.4th 1319,1328-29 (11th Cir. 2024) (the Eleventh Circuit held that: "An indictment presents the essential elements of the charged offense," "notifies the accused of the

charges to be defended against," and enables the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense." **Jordan,** 582 F.3d at 1245); United States v. Demmons, 483 F.2d 1093, 1095 (8th Cir. 1973) (the failure to allege an essential element makes the indictment fatally defective and requires dismissal thereof); and United States v. Spinner, 180 F.3d 514, 515 (3rd Cir. 1999) (an indictment that fails to contain elements of a crime requires per se shall remain "a vital part of our Federal criminal jurisprudence (decided after **Neder**).

The fatal defect that exist within Count 62, of his Second Superseding Indictment are as follows:

(1) Fails to charge the essential element of "voluntarily," see United States v. Dohan, 508 F.3d 989, 994, at * 10 (11th Cir. 2007) (The appropriate mental state for convicting under 18 U.S.C. 1956 (h) is merely "knowingly" and **"voluntarily."**).

See Appendix C.

The district court denied Ground One, defect number one as it relates to Count 62, Conspiracy to Commit Money Laundering by holding as follows:

Movant also contends that Count 62 of the Indictment failed to allege the element that his participation in the conspiracy was voluntary. [Doc. 1137, pp. 7-8]. However, as with Count 29, Count 62

tracks the language of the statute, and, as the Magistrate Judge determined, the word "knowingly" used in Count 62 is the well-understood equivalent to "voluntarily" under Eleventh Circuit precedent. See United States v. Woodruff, 296 F.3d 1041, 1047 (11th Cir. 2002). In objecting, Movant mostly repeats the arguments made in his Motion to Vacate, and his contentions that Magistrate Judge erred are conclusory. Having reviewed the matter, this Court agrees with the Magistrate Judge, and first objection to the R. & R. is unavailing.

The Eleventh Circuit Court of Appeals affirmed the district court's 2255 Denial Opinion by declining to issue a certificate of appealability. See Appendix A.

As it relates to Ground One, defect number one as to Count 62, Conspiracy to Commit Money Laundering the Eleventh Circuit Court of Appeals has long held that the appropriate mental state for convicting under 18 U.S.C. 1956 (h) is merely **"knowingly and voluntarily,"** see United States v. Dohan, 508 F.3d 989, 994, at * 10 (11th Cir. 2007).

As the result of "voluntarily" being an essential element of Count 62, Conspiracy to Commit Money Laundering it had to be included within his Count 62, Indictment, see United States v. Steele, 178 F.3d at 1233-34 (By now, it is axiomatic that an indictment is sufficient if it "(1)

presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enables the accused to rely upon a judgment under indictment as a bar against double jeopardy for any subsequent prosecution for the same offense.); and Hamling v. United States, 418 U.S. 87, 117 (1974) ("An indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense."). The law relied upon by the U.S. Magistrate Judge, the District Court, and the Eleventh Circuit's affirmance as it relates to Count 62, as to Ground One does not support the district court's denial of relief as to Ground One to deny relief to Mr. Dixon and the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing is warranted as to Ground One, as it relates to Count 62, in the case at bar. See Fontaine v. United States, 411 U.S. 213, 215 (1973); and Schiro v. Landrigan, 550 U.S. 465, 474 (2007) (emphasis added).

As it is at least debatable among jurists of reasons that Mr. Dixon suffered from ineffective assistance of counsel, thus, a denial of his Sixth Amendment rights of the U.S. Constitution. See **Barefoot,** 463 U.S. 880, 893-94 & f.n. 4 (1983) (the U.S. Supreme Court held that a petitioner must demonstrate that the issues are debatable among

jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are' adequate to deserve encouragement to proceed further."); and **Slack,** 529 U.S. 473, 484 (2000) (same) (emphasis added).

QUESTION NUMBER TWO:

Whether the district court abused its discretion and the Eleventh Circuit affirmance of the lower court's failure to conduct an Evidentiary Hearing as to Ground Two, thus, did he suffers from Guilty Plea ineffective assistance of counsel in which violated his Sixth Amendment rights of the U.S. Constitution ?

Question Number Two Is Debatable Or Wrong Among Jurists Of Reason

In the second objection, Movant argues that his trial counsel was ineffective for failing to object to what Movant claims was the Government's constructive amendment of Count 29 of the indictment. [Doc. 1137, pp. 9-10]. The Magistrate Judge determined that Movant failed to show a constructive amendment of the Indictment because the elements of Count 29 recited at the change of plea hearing did not "broaden the possible bases for conviction beyond what is contained in the indictment." United States v. Philpot, 773 Fed. Appx. 583, 589 (11th Cir. 2019) (quoting United States v. Behety, 32 F.3d 503, 508 (11th Cir. 1994)). In this objection, Movant appears to assert more

narrowly that he is entitled to a certificate of appealability regarding this claim. See [Doc. 1137, pp. 9-10]. However, Movant has not shown how the Indictment was constructively amended, and this Court agrees with the Magistrate Judge that Movant's second objection has no debatable merit. See [Doc. 1132, pp. 16-17]. As a result, Movant has not shown that he is entitled to a Certificate of Appealability.

Accordingly, Movant's second objection to the R. & R. is **OVERRULED.**

See Appendix B.

The Eleventh Circuit Court of Appeals affirmed the district court's 2255 Denial Opinion by declining to issue a certificate of appealability. See Appendix A.

The Change of Plea Transcripts accurately reflect that this Court instructed AUSA Kitchens to state the elements of the offense to which you're pleading guilty. In fact, the Government appraisal of the essential elements as it relates to Counts 29, and 62, is actually different than what is charged within his Second Superseding Indictment, see Doc. # 290, Page 53 of 82, and Page 74 of 82 through Page 75 of 82, see Appendix C, compared to the Rule 11 Plea Colloquy appraisal, see Doc. # 642, Page 13, line 10-25; Page 14, line 1-25; and Page 15, line 1, see Appendix D. It follows that his Second Superseding Indictment was constructively or impermissibly amended

Rule 11 Plea Colloquy through the appraisal of the essential elements of the offense in violation of his Fifth Amendment Rights of the U.S. Constitution, and renders his guilty plea unknowingly and unintelligently entered in which is **VOID** in the case herein.

Petitioner Dixon, argues that the U.S. Magistrate Judge and the district court's decision denying 2255 Motion to Vacate as relates to Ground Two is wrong or debatable as to whether Mr. Dixon's Sixth Amendment rights were violated in the case herein. In fact, the Sixth Circuit has reversed convictions and remanded for further proceedings when an Indictment was impermissibly amended through the Plea Agreement and Judgment In A Criminal Case. See United States v. Williams, 475 Fed. Appx. 36, 40 (6th Cir. 2012) (The Sixth Circuit held that the district court improperly amended the superseding information when it "literally altered" through the Plea Agreement and Judgment in Criminal Case. This amendment is per se prejudicial to Williams and constitutes plain error.); United States v. Daniels, 252 F.3d 411, 413 (5th Cir. 2001) ("A criminal defendant has a Fifth Amendment right to be tried only on charges presented in a grand jury and may not amend an indictment once it has been issued."); United States v. Diaz, 941 F.3d 729, 736 (5th Cir. 2019) ("A constructive amendment occurs... when the Government is allowed to prove an essential element of the crime

on an alternative basis permitted by the statute but not charged in the indictment."); United States v. Bizzard, 615 F.2d 1080, 1082 (5th Cir. 1980) (noting that because "the defendant was charged by the court with an additional element not presented by the grand jury" and "the jury might have convicted the [defendant] on that extraneous element, the district court's error is clearly reversible."); and United States v. Floresca, 38 F.3d 706, 714 (4th Cir. 1994) (en banc) ("[C]onvicting a defendant of an unindicted crime affects the fairness, integrity, and public reputation of judicial proceedings in a manner most serious.") (emphasis added).

Mr. Dixon, argues that a Certificate of Appealability should issue as to Question Number Two as it is adequately to deserve encouragement to proceed further in the case herein. **Slack,** 529 U.S. 473, 484 (2000) (adequate to deserve encouragement to proceed further).

QUESTION NUMBER THREE:

Whether the district court abused its discretion and the Eleventh Circuit affirmance of the lower court's failure to conduct an Evidentiary Hearing as to Ground Three, thus, in light of the U.S. Supreme Court's Ruling in **Dublin,** 216 L. Ed. 2d 316 (2023), he stands actually innocent of his Aggravated Identity Theft as to Count 29, to prevent a clear miscarriage of justice his guilty plea should be withdrawn ?

Question Number Three Is Debatable Or Wrong Among Jurists Of Reason

The U.S. Magistrate Judge recommended that the Dixon's collateral attack waiver provision precluded granting relief as to Ground Three and also the issue was "procedurally defaulted." The district court went further addressing the merits of Ground Three, "actual-innocence" claim by holding in relevant part as follows:

However, even if Movant is right that the waiver and procedural default should not apply—which this Court does not concede—this Court disagrees with Movant's argument that **Dublin** renders him actually innocent of aggravated identity theft. At the change of plea hearing, the Government explained how Movant, without authorization, used the means of identification of an individual with the initials S.R. on an SBA 7A Paycheck Protection Program loan request, falsely identifying S.R. as the owner of the company applying for the loan. [Doc. 642, pp. 17-18]. In other words, Movant used the identity of another, without that person's consent, to fraudulently obtain money from the Government. According to the Supreme Court, "identity theft is committed when a defendant uses the means of identification itself to defraud or deceive." **Dublin,** 599 U.S. at 123. At the change of plea hearing, Movant admitted that he used S.R.'s name and social security number in a fraudulent and deceitful manner which was

clearly at the crux of his efforts to wrongfully obtain Paycheck Protection Program funds. See [Doc. 652, pp. 21-22]. This Court thus concludes that **Dublin** does not change the nature of Movant's crimes, and his third objection fails even if he can overcome the waiver he signed and the default of his claim.

Accordingly, Movant's third objection to the R. & R. is **OVERRULED.** See Attachment A.

The U.S. Magistrate Judge Report and Recommendation and the district court's agreement with that Report and Recommendation as to the waiver provision and procedural default, however, it should be recognized that Mr. Dixon has argued that he stands "actually innocent" of Count 29, Aggravated Identity Theft based upon the U.S. Supreme Court's Ruling in **Dublin.** The U.S. Magistrate Judge stated that: that Dixon's collateral-attack waiver provision barred him from raising his claim of "actual-innocence" of his Count 29, Aggravated Identity Theft in which requires a mandatory minimum sentence of two years of imprisonment and the Magistrate Judge claims that Mr. Dixon did not address the collateral-attack waiver provision, however, (although not argued specifically but Mr. Dixon did in fact rely upon applicable case law that covers procedural default and that the plea agreement waiver provision was unenforceable as to collateral-attack waiver provision), the actual-innocence exception prevents

enforcement of the collateral-attack waiver provision under the miscarriage of justice exception especially since as mandatory minimum sentence is required. See Thompson v. United States, 2020 U.S. Dist. LEXIS 67583, 2020 WL 1905817 (N.D. TX., Apr. 17, 2020) (The 5th District Court **GRANTED** 2255 Motion to Vacate after the Government argued procedural bar (as to Thompson's unlawful conviction), however, the Court held that: The Court finds that Thompson was convicted under an indictment that did not charge a valid offense, and that he is actually innocent of the charged offense. Under these circumstances the miscarriage of justice applies, and Thompson's collateral-review waiver is not enforceable). The Eleventh Circuit has applied the actual-innocence exception for the crime of conviction and actual innocence of a capital sentence. See McKay v. United States, 657 F.3d 1190, 1196-97 (11th Cir. 2011). However, Mr. Dixon states that the actual innocence exception applies under the miscarriage of justice exception as he stands INNOCENT of his conviction for Count 29, Aggravated Identity Theft, thus, a prompt Evidentiary Hearing is warranted in the case herein. See Bonilla v. United States, 2020 U.S. Dist. LEXIS 15896, 2020 U.S. LEXIS 15896, 2020 WL 489573, at * 3 (E.D.N.Y., Jan. 29, 2020) (granting a 2255 motion and vacating Section 924 (c) conviction based upon **Davis** (2019), despite post-conviction waiver); United States v. Brown, 415 F. Supp. 3d 901, 2019 WL 6521942, * 4 (N.D. Cal., Nov. 8,

2019) (granting 2255 motion challenging Section 924 (c) conviction based on **Davis** (2019), concluding that petitioner's collateral-review waiver cannot be enforced). The Ninth Circuit precedents in which holds that an appellate waiver will not be enforced when a defendant is subject to a sentence that violates the law, see United States v. Bibler, 495 F.3d 621, 624 (9th Cir. 2007) (emphasis added).

Alternatively, Movant Dixon, argues that at minimum Ground Three requires this Court to overrule the Magistrate Judge's recommendation and issue a Certificate of Appealability as to his actual-innocence claim as it is debatable among jurists of reason as to whether Dixon being actually innocent renders his collateral-attack waiver provision unenforceable under the miscarriage of justice exception. See Stevens v. United States, 466 Fed. Appx. 789, 790 (11th Cir. 2012) (the district court granted him a certificate of appealability ("COA") as to the following issue:" [W]hether 'actual innocence' applies to a career offender sentence that has been final for nine years after a plea agreement that waived an appeal."); and United States v. Barker, 2023 U.S. Dist. LEXIS 210185, 2023 WL 8189756 (Dist. OR., Nov. 27, 2023) (the district court denied 2255 Motion to Vacate in light of an intervening change in law by the U.S. Supreme Court in **Taylor** but granted a COA as to whether defendant's collateral attack waiver may be enforced against his 2255 motion)

(emphasis added).

Petitioner Dixon, argues that Ground Three claim is raised as a claim of "actually-innocent" of his crime of conviction in light of the U.S. Supreme Court Ruling in **Dublin,** 216 L. Ed. 2d 136 (2023), thus, on January 27, 2023, Mr. Dixon was sentenced to 100 months of imprisonment. The U.S. Supreme Court Ruling was handed down in **Dublin** on June 8, 2023, thus, Mr. Dixon did not have the benefit of such Ruling before his federal sentencing hearing and as the result of him not filing a Direct Appeal proceedings his 2255 Motion to Vacate was his first opportunity to present a claim in the wake of the U.S. Supreme Court's Ruling in **Dublin,** 216 L. Ed. 2d 136 (2023). Any procedural default as argued by the Government is cured by his claim of "actual-innocence" consistent with the "miscarriage of justice exception" as to Aggravated Identity Theft conviction. See Murray v. Carrier, 477 U.S. 478, 496 (1985) (The Supreme Court, although cautioning that it would not always be true, instructed that "where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default."); United States v. Reece, 938 F.3d 630, 634 & f.n. 3 (5th Cir. 2019) (The government contends that Reece's petition is procedurally barred because he did not raise a constitutional challenge to § 924(c)(3)(B) in either of his direct appeals. "[A] collateral challenge may not do service for an appeal." *United States v. Shaid*, 937 F.2d 228, 231 (5th Cir. 1991) (en banc) (internal quotation marks and citation omitted). "A section 2255 movant who fails to raise a constitutional or jurisdictional issue on direct appeal waives the issue for a collateral attack on his conviction,

unless there is cause for the default and prejudice as a result." *United States v. Kallestad*, 236 F.3d 225, 227 (5th Cir. 2000). That standard imposes "a significantly higher hurdle than the plain error standard" that governs direct appeals. *United States v. Pierce*, 959 F.2d 1297, 1301 (5th Cir. 1992) (internal quotation marks and citation omitted). The "cause and prejudice" test applies absent an "extraordinary case" of actual innocence. *See Murray v. Carrier*, 477 U.S. 478, 496, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986).

Here, however, the cause and prejudice standard does not apply. As *Davis* reaffirmed, "a vague law is no law at all." *Davis*, 139 S. Ct. at 2323. If Reece's convictions were based on the definition of [COV] articulated in § 924(c)(3)(B), then he would be actually innocent of those charges under *Davis*. The government's brief recognizes as much.); and Thompson v. United States, 2020 U.S. Dist. LEXIS 67583, 2020 WL 1905817 (N.D. TX., Apr. 17, 2020) (The 5th District Court **GRANTED** 2255 Motion to Vacate after the Government argued procedural bars (as to Thompson's unlawful conviction), however, the Court held that: The Court finds that Thompson was convicted under an indictment that did not charge a valid offense, and that he is actually innocent of the charged offense. Under these circumstances the miscarriage of justice applies, and Thompson's collateral-review waiver is not enforceable.) (emphasis added).

The Merits Of Question Number Three

Petitioner Dixon, asserts that he seeks the benefit of an intervening change in law by the Supreme Court in **Dublin v. United States,** 216 L. Ed. 2d 136 (2023), in which announced a new rule of substantive law that applies "retroactive" on collateral attack at least for the first 2255 Motion, see **Welch v. United States,** 578 U.S. 120, 136 S. Ct. 1257, 1264 (2016) (the Supreme Court has declared that "new substantive rules generally apply retroactively.") (emphasis added).

The Supreme Court narrowed the applicability of 18 U.S.C. 1028A, thus, in the wake of the Supreme Court's Ruling in **Dublin,** however, a "genuine nexus between the use of the means of identification alleged

in (Count 29), and the predicate offense." **Dublin,** 143 S. Ct. at 1565 (2023). Thus, a defendant "uses" another person's means of identification "in relation to" a predicate offense when this use is at the crux of what makes the conduct criminal." **Dublin,** 143 S. Ct. at 1573 (emphasis added).

Petitioner Dixon, contends that as accurately reflected by his Change of Plea Hearing Transcripts, see Doc. # 642, at page 17, "On or about June 16th, 2020, a PPP loan application for ML Exotic was submitted to Harvest Small Business Finance, a **non-FDIC insured lender.** The PPP loan application identified SR as ML Exotic's owner.

On June 22nd, 2020, Mr. Dixon sent Mr. Thomas an e-mail with the subject line "Revised New Docs For ML Customs." That e-mail attached a partially completed PPP application that identified co-defendant Ryan Whittley, not SR, as ML Exotic's owner.

On or around June 26th, 2020, ML Exotic submitted a PPP location application to CDC identifying what—Mr. Whittley as ML Exotic's owner. That PPP loan application represented that ML Exotic had $318,910 in average monthly payroll and 65 employees, and that ML Exotic would use the funds for payroll, lease and mortgage interest and utilities. Those employee and average monthly payroll figures, however, were false.

See Change of Plea Hearing Transcripts, see Doc. # 642, at page 17,

lines 4-19. See Appendix E.

Petitioner Dixon states that the June 16, 2020, PPP loan application was submitted to a **non-FDIC insured lender in which the federal government has no jurisdiction to prosecute him at the federal level, and no PPP loan money was given based upon the June 16, 2020, loan application, thus, as the result of the means of SR's identification specifically was not the key mover in the criminality in which renders Ricky Dixon "actually innocent" of his Aggravated Identity Theft conviction. Dublin,** 143 S. Ct. at 1568-70 (2023) (emphasis added).

Petitioner Dixon, argues firmly that he stands "actually innocent" of his Count 29, Aggravated Identity Theft conviction in light of the U.S. Supreme Court's Ruling in **Dublin,** 216 L. Ed. 2d 136 (2023), and his Guilty Plea should be withdrawn to prevent a clear miscarriage of justice in the case herein. See Davis v. United States, 417 U.S. 333, 346 (1974) (The Supreme Court held when the petitioner sought Section 2255 relief after a subsequent interpretation of the statute, under which he was convicted, established that his conviction and punishment were "for an act that the law does not make criminal." Id. at 346. The Supreme Court concluded that "[t]here can be no room for doubt that such circumstances inherently results in a complete miscarriage of justice." Id. at 346) (bold emphasis added).

Mr. Dixon, argues that a Certificate of Appealability should issue as to Question Number Three as it is adequate to deserve encouragement to proceed further in the case herein. **Slack,** 529 U.S. 473, 484 (2000) (adequate to deserve encouragement to proceed further).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Rocky Dixon

Date: 08/31/2025