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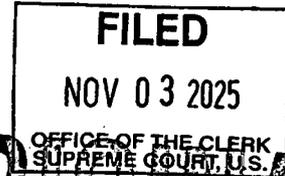
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IN THE SUPREME COURT OF THE UNITED STATES

Jessica Arong O'Brien,  
Petitioner,

v.

United States of America,  
Respondent.



**ORIGINAL**

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On Petition for a Writ of Certiorari to the United States Court of  
Appeals for the Seventh Circuit (No. 24-1207)

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PETITION FOR A WRIT OF CERTIORARI

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Jessica Arong O'Brien,  
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November 3, 2025

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## QUESTIONS PRESENTED

### INTRODUCTION

This case exemplifies the convergence of prosecutorial misconduct, judicial abdication, and systemic failure of post-conviction review. Petitioner's conviction and restitution judgment rest on a fabricated "financial institution" element, premised on Citibank, N.A., an entity with which Petitioner had no relationship, knowledge, or involvement. Knowing the weakness of their case, the prosecution manufactured that connection through suborned perjury and falsified exhibits to create the appearance of jurisdiction where none existed. The lead prosecutor, motivated in part by the visibility of prosecuting a sitting judge, knowingly elicited false testimony to sustain an element the government could not otherwise prove.

That this level of deceit occurred in a high-profile prosecution underscores a far deeper problem. If federal prosecutors can fabricate evidence and suppress truth in a case that was publicly scrutinized and judicially monitored, there is little hope for accountability in the thousands of lesser-known prosecutions that pass unnoticed. The miscarriage of justice here is not an anomaly, it is a symptom of a broader erosion of due process that affects defendants nationwide, especially the unrepresented.

On direct appeal, the government conceded that no evidence connected Petitioner to Citibank, N.A., yet a new attorney repeated the same false narrative, allowing the Seventh Circuit to affirm a conviction resting on an element never proven. The result was a fraud on the court that carried over from the jury, to the

trial judge, to the appellate panel: a constitutional failure that this Court's review is uniquely positioned to correct.

In her §2255 proceedings, Petitioner presented unrebutted documentary and testimonial evidence, including sworn affidavits, title records, and government e-mails, demonstrating that the prosecution had misrepresented key facts, concealed exculpatory evidence, and relied on perjured testimony. Yet the district court denied an evidentiary hearing and a certificate of appealability, and the appellate court affirmed in a summary order that ignored the jurisdictional and constitutional implications of those findings.

This petition raises questions of exceptional national importance. It illustrates how prosecutorial deception, unchecked by judicial review, can distort jurisdictional elements, sustain unlawful convictions, and perpetuate false restitution orders. It also highlights a growing circuit conflict over when federal courts must grant evidentiary hearings under *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) and *Buck v. Davis*, 580 U.S. 100, 115 (2017), when a petitioner presents unrebutted evidence of constitutional violations. Without this Court's intervention, the resulting divide will continue to deny due process to countless defendants, particularly pro se petitioners, whose cases, like this one, reveal that truth and fairness are being supplanted by expedience.

With that in mind, Petitioner presents the following questions for review:

1. Whether the lower courts erred in denying a certificate of appealability under 28 U.S.C. § 2253(c) and an evidentiary hearing under § 2255 where Petitioner's unrebutted documentary and testimonial evidence, including affidavits, the lead AUSA's own emails, and a tampered trial exhibit given to the jury,

established that the prosecution engaged in serious misconduct in presenting the "financial institution" element of bank and mail fraud, and, if credited, would compel vacatur of the conviction.

2. Whether due process is violated when a district court, confronted with unrefuted evidence of constitutional violations and jurisdictional defects, refuses to permit factual development or an evidentiary hearing under 28 U.S.C. § 2255, thereby converting a summary denial into a substitute for review and nullifying the statute's function as a safeguard against wrongful conviction.
3. Whether due process and the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A, are violated when the lower courts uphold a restitution order that (1) includes losses unrelated to the offense of conviction, contrary to § 3663A(a)(2), and (2) disregards unrebutted post-conviction evidence showing that the alleged victims and losses were misrepresented through false testimony and suppression of material exculpatory evidence, thereby rendering the restitution judgment contrary to statute and fundamental fairness.

## LIST OF PARTIES & PROCEEDINGS:

### LIST OF PARTIES

- **Petitioner:** Jessica Arong O'Brien
- **Respondent:** United States of America

### LIST OF PROCEEDINGS

#### **United States Court of Appeals for the Seventh Circuit**

Case No. 24-1207 (Certificate of Appealability Appeal, petitioner proceeding *pro se*)

Certificate of Appealability denied: March 28, 2025

Petition for rehearing and rehearing *en banc* denied: June 4, 2025

Mandate issued: June 12, 2025

#### **United States District Court for the Northern District of Illinois**

Case No. 22-CV-00083 (28 U.S.C. § 2255 *Habeas* Proceeding, petitioner proceeding *pro se*)

Memorandum Opinion and Order denying petition and COA: March 20, 2023

Rule 59(e) motion to alter or amend judgment denied: December 6, 2023

#### **Supreme Court of the United States**

Case No. 20 – 767 (Prior *certiorari* proceeding; petitioner proceeding *pro se*)

Petition for *writ of certiorari* denied: 141 S. Ct. 1128 (February 22, 2021)

#### **United States Court of Appeals for the Seventh Circuit**

Case No. 19-1004 (Direct Criminal Appeal; petitioner represented by counsel; petition for rehearing and rehearing *en banc* filed *pro se*)

Opinion and judgment: March 13, 2020

Petition for rehearing denied: September 1, 2020

Mandate issued: September 9, 2020

#### **United States District Court for the Northern District of Illinois, Eastern Division**

Case No. 17-CR 239-1 (Criminal Trial; petitioner represented by counsel)

Jury verdict: February 15, 2018

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**OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Seventh Circuit denying a certificate of appealability was entered on March 28, 2025, in *O'Brien v. United States*, No. 24-1207. The court denied Petitioner's petition for rehearing and rehearing en banc on June 4, 2025, and the mandate issued on June 12, 2025.

The memorandum opinion and order of the United States District Court for the Northern District of Illinois denying Petitioner's motion under 28 U.S.C. § 2255 and a certificate of appealability were entered on March 20, 2023, in *O'Brien v. United States*, No. 1:22-cv-00083 (Hon. Thomas M. Durkin). The district court's order denying Petitioner's Rule 59(e) motion to alter or amend judgment was entered on December 6, 2023.

On direct appeal, the United States Court of Appeals for the Seventh Circuit affirmed Petitioner's conviction and sentence on March 13, 2020, in *United States v. O'Brien*, No. 19-1004, reported at 974 F.3d 710 (7th Cir. 2020), and denied rehearing and rehearing en banc on September 1, 2020.

The Supreme Court of the United States denied Petitioner's prior petition for a writ of certiorari on February 22, 2021, *O'Brien v. United States*, 141 S. Ct. 1128 (2021).

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## JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on March 28, 2025. The court denied Petitioner's petition for rehearing and rehearing en banc on June 4, 2025, and the mandate issued on June 12, 2025.

On August 19, 2025, this Court granted Petitioner's application for an extension of time to file a petition for a writ of certiorari, extending the deadline to November 1, 2025. *O'Brien v. United States*, No. 25A188. Because November 1, 2025, falls on a Saturday, this petition is timely filed on Monday, November 3, 2025.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Constitutional Provisions

U.S. Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ... nor be deprived of life, liberty, or property, without due process of law ... .

U.S. Const. amend. VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. XIV, § 1.

No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Statutory Provisions

28 U.S.C. § 2253 — Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

[\* \* \*]

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2255 — Federal Custody; Remedies on Motion Attacking Sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon,

determine the issues and make findings of fact and conclusions of law with respect thereto.

If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

[\* \* \*]

(c) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(d) An appeal may not be taken to the court of appeals from the denial of a motion under this section unless a circuit justice or judge issues a certificate of appealability.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

18 U.S.C. § 1344 (2006 ed.)<sup>1</sup> — Bank Fraud

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<sup>1</sup> The applicable versions of 18 U.S.C. §§ 1344 (bank fraud), 1341 (mail fraud), and 20 (financial institution) are those in effect prior to the enactment of the Fraud Enforcement and Recovery Act of 2009 (“FERA”), Pub. L. No. 111-21, 123 Stat. 1617 (May 20, 2009). FERA substantially amended § 1344 and related definitions in 18 U.S.C. § 20, expanding the term “financial institution” beyond FDIC-insured depositories to include mortgage lending businesses and other non-depository entities. Because the transactions alleged in the indictment dated April 11, 2017, occurred between 2004 and 2007, the pre-FERA (2006) versions of these statutes govern this case. See *United States v. Santos*, 553 U.S. 507, 514 (2008) (applying rule of lenity and holding that subsequent statutory expansions cannot apply retroactively to conduct predating the amendment).

# Effect of a Self-Management Program on the Performance of a Complex Task

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Received 12/15/97; revised 2/10/98; accepted 2/10/98

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This article reports on the effects of a self-management program on the performance of a complex task.

The program was designed to teach participants to monitor and control their own performance.

Participants were assigned to either a self-management group or a control group.

The self-management group showed significantly better performance than the control group.

The results suggest that self-management programs can be effective in improving performance on complex tasks.

Keywords: self-management, performance, complex task

Self-management programs have been shown to be effective in a variety of settings, including the workplace, the classroom, and the home.

One of the most common applications of self-management programs is in the workplace, where they are used to improve employee performance.

Self-management programs have also been used in the classroom to help students learn to manage their own learning.

Finally, self-management programs have been used in the home to help people manage their own behavior.

The present study was designed to evaluate the effectiveness of a self-management program in improving performance on a complex task.

The task was a complex, multi-step task that required a high degree of coordination and attention.

The self-management program was designed to teach participants to monitor and control their own performance.

Participants were assigned to either a self-management group or a control group.

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The task was a complex, multi-step task that required a high degree of coordination and attention.

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Participants were assigned to either a self-management group or a control group.

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

- (1) to defraud a financial institution; or
  - (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;
- shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1341 (2006 ed.) — Mail Fraud

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, ... for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter any matter or thing whatever to be sent or delivered by the Postal Service, ... shall be fined under this title or imprisoned not more than 20 years, or both.

If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 20(1) (2006 ed.) — Definition of “Financial Institution”

As used in this title, the term “financial institution” means—

- (1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

18 U.S.C. § 3293 — Offenses affecting a financial institution

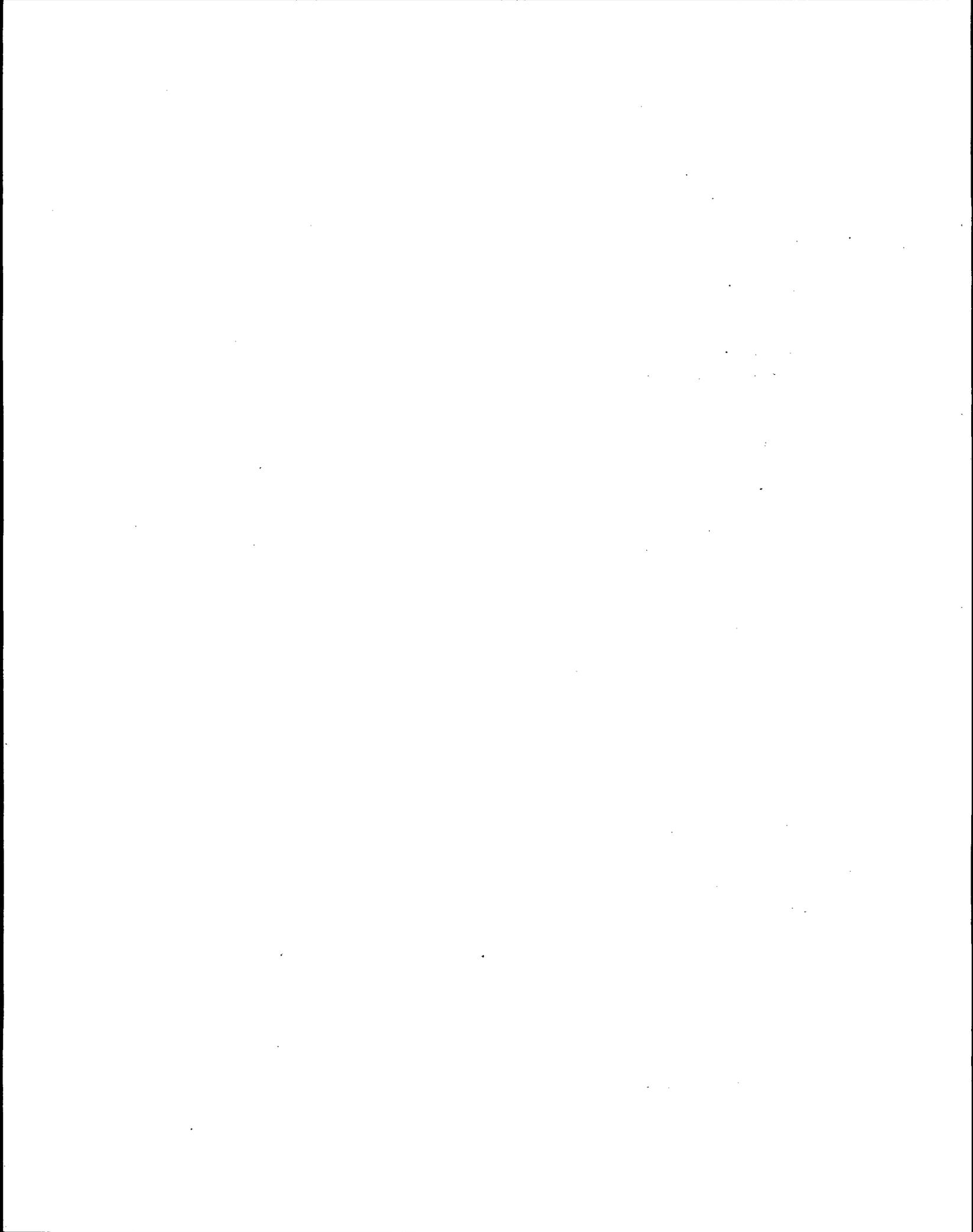
No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate—

- (1) section 1344 (relating to bank fraud);
- (2) section 1341 or 1343, if the offense affects a financial institution; or
- (3) section 1005, 1006, or 1007;

unless the indictment is returned or the information is filed within 10 years after the commission of the offense.

18 U.S.C. § 3282(a) — Offenses Not Capital

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(a) In general. — Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

18 U.S.C. § 3663A — Mandatory Victims Restitution Act (MVRA)

(a) Offense.—

(1) In general.—Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered, including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

[\* \* \*]

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

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## STATEMENT OF THE CASE

### A. Introduction

This petition confronts a crisis in federal habeas law and the rule of law itself. Petitioner challenges the denial of a 28 U.S.C. § 2255 motion, evidentiary hearing, and certificate of appealability after presenting unrebutted documentary evidence of egregious prosecutorial misconduct: subornation of perjury, tampering with a key material exhibit related to Citibank, and a pattern of deception that would constitute criminal conduct if charged against any defendant. The assigned lead prosecutor,

already sanctioned for Brady violations in *United States v. Walter*, 870 F.3d 622 (7th Cir. 2017), where he also served as the lead prosecutor, continued misconduct in this case less than six months later.

The district judge, whose record shows no grant of § 2255 relief to any defendant and only a single evidentiary hearing granted at government request, excused clear government fraud as “clerical error,” and repeatedly declined to apply the controlling standards for factual development. In a lengthy memorandum, the court disregarded documentary evidence of Citigroup’s corporate structure and claimed the Seventh Circuit “addressed” these issues on direct appeal, when in fact, prosecutors’ misconduct and material falsification were never examined, and appellate counsel provided ineffective assistance by agreeing with the government and failing to investigate these facts, demonstrating a fundamental lack of knowledge of the case.

Central to the prosecution’s narrative, and thus to federal jurisdiction over both bank and mail fraud, was the succession and role of Citibank, the only alleged and potential financial institution named in the indictment. The government’s reliance on Citibank was pivotal in extending the statute of limitations for mail fraud and establishing federal jurisdiction for conduct dating back to 2004–2007.

Critically, the government failed to disclose the transcript of its key witness Judy Taylor’s testimony from a separate, prior case prosecuted by the same office, involving the same lenders. In that case, Taylor testified to the opposite of material facts compared to her statements in Petitioner’s trial, a contradiction directly

relevant to loss allocation, corporate structure, funding and obviously known to the government before trial. Under *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959), the government was obligated to provide such material impeachment evidence; it cannot shift this burden to the defense or excuse its omission by citing public availability. This non-disclosure deprived petitioner of the opportunity to challenge credibility and expose the government's fraudulent narrative.

The district judge further rationalized the introduction of manipulated exhibits by claiming the jury would have seen both documents anyway, abdicating constitutional requirements for reliable, truthful evidence. These errors were compounded by the complexity of mortgage securitization, a subject central to the case and acknowledged by all parties was never disclosed to Petitioner, yet repeatedly ignored as cause for meaningful judicial review and factual development. The court's refusal to grant discovery further entrenched a pro-prosecution bias.

Most concerning, the subornation of perjury and false government narrative that infected the trial also carried over into direct appeal. The Seventh Circuit's affirmance was predicated on this defective and fraudulent record, as Petitioner's appellate attorney failed to grasp key facts or challenge the government's misrepresentations, thus compounding ineffective assistance with a failure to expose continuing fraud. These are just some of the critical errors highlighted among many more issues presented to the lower courts; Petitioner raises only a manageable subset in this petition for a writ of certiorari to avoid overwhelming this Court, given

the exceptional complexity and volume of the record. That said, even a single instance among the misconduct alleged would, before any impartial bench, constitute "fraud on the court" and vitiate the judgment; yet the district court normalized and ignored such fraud, contrary to fundamental principles holding that a conviction procured by fraud upon the court is void and never final. *See Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

Congress established § 2255 as a guarantee of federal judicial review, mandating evidentiary hearings when well-pleaded allegations and supporting documentation, if true, would entitle relief, especially for *Brady/Giglio* violations, perjury, or government fabrication. *See Townsend v. Sain*, 372 U.S. 293 (1963); *Machibroda v. United States*, 368 U.S. 487 (1962); *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

If unchecked, these practices nullify congressional design and constitutional safeguards, rendering § 2255 meaningless, a procedural charade incapable of correcting even demonstrable criminal acts by government attorneys. Jurisdictional facts, prosecutorial legitimacy, and the fundamental fairness Congress promised risk reduction to mere administrative formality.

This case is of urgent national importance. Circuit courts are split: some demand mandatory evidentiary hearings when unrebutted evidence of government misconduct is presented; others, like the Seventh Circuit, repeatedly deny factual review and allow judicial evasion of constitutional error. But here, the misconduct is not merely serious, it is intentional and unprecedented. Petitioner has produced

documentary evidence that the lead prosecutor committed subornation of perjury and knowingly misrepresented the corporate structure of CitiMortgage to both the grand jury and trial court. The prosecutor's prior work as lead counsel in another federal case, occurring during the same period and involving the same entities, demonstrates that he was fully aware CitiMortgage was a wholly-owned subsidiary of Citigroup Inc., not Citibank N.A. in 2007. He made this assertion explicitly in *United States v. Michele DiCosola*, 867 F.3d 793 (7th Cir. 2017) (1:12-cr-00446), yet in this case, to secure federal jurisdiction and the extended statute of limitations, he falsely alleged a false corporate structure and even orchestrated the procurement of a misleading email to bolster that fiction, and presented this knowingly false narrative to the grand jury and jury.

This level of calculated fraud, particularly by a government official with personal, documentary knowledge of the truth, is the antithesis of justice. No system worthy of the name can tolerate such conduct or ignore its consequences. Petitioner respectfully urges the Court to resolve the entrenched circuit split and restore the robust, uncompromising habeas corpus remedy that Congress intended, especially where the very integrity of criminal judgments and public confidence in the judiciary are at stake.

## B. Procedural History

### 1. Criminal proceedings

On April 11, 2017, a federal grand jury in the Northern District of Illinois returned a two-count indictment charging Petitioner with bank fraud, 18 U.S.C. § 1344, and

mail fraud affecting a financial institution, 18 U.S.C. § 1341. The indictment alleged that from 2004 through April 2007 Petitioner participated in a scheme to defraud financial institutions in connection with her two real estate properties that she owned and sold in 2007. The government's theory rested on a 2007 home-equity line of credit ("HELOC") obtained by buyer Christopher Kwan and immediately followed by a quitclaim deed to Maria Bartko, Petitioner's co-defendant. The prosecution maintained that the HELOC was funded by Citibank, N.A., an FDIC-insured bank, and that the transaction therefore "affected" a financial institution, permitting the ten-year statute of limitations under 18 U.S.C. § 3293.

On February 15, 2018, a jury found petitioner guilty on both counts. The district court (Hon. Thomas M. Durkin) denied posttrial motions on September 4, 2018.

## 2. Direct appeal

Petitioner, represented by retained counsel, appealed. Among other grounds, counsel argued that the government failed to prove Citibank, N.A., as opposed to CitiMortgage, Inc., was the relevant "financial institution" under 18 U.S.C. § 20, and that the evidence did not establish the jurisdictional element or extend the statute of limitations.

The appellate brief largely repeated post-trial arguments already rejected by the district court and failed to address newly discovered evidence of prosecutorial misconduct and central factual errors. During oral argument, a panel judge explicitly pressed the government about where the proof was that Petitioner had knowledge of Citibank, highlighting an evidentiary gap at the heart of the case. The government's

attorney conceded the lack of direct proof, arguing only that Petitioner's supposed "prior dealings" with Citibank sufficed, despite that this claim rested on suborned and demonstrably false testimony. Nevertheless, both the district court and the Seventh Circuit's opinion relied on this assertion as a substitute for actual proof.

On March 13, 2020, the United States Court of Appeals for the Seventh Circuit affirmed. *United States v. O'Brien*, 974 F.3d 710 (7th Cir. 2020). The court found the Citibank–CitiMortgage distinction immaterial and reasoned that a jury could "infer" petitioner's knowledge of Citibank. Notably, the affirmance rested on the government's presentation of evidence and arguments focused on prior, expired transactions, which were not bank fraud and did not involve Citibank. Instead, the government used those transactions, which could suggest, at most, uncharged false statements, as propensity proof that petitioner must have had the necessary knowledge for the charged bank fraud. The panel thus upheld convictions for bank and mail fraud primarily by accepting a theory of guilt-by-propensity, over acts and entities not at issue in the actual charges.

Petitioner's pro se petition for rehearing and rehearing en banc was denied on September 1, 2020. This Court denied certiorari on February 22, 2021. *O'Brien v. United States*, 141 S. Ct. 1128 (2021).

### 3. Section 2255 motion

Proceeding pro se, Petitioner filed a timely motion under 28 U.S.C. § 2255 on January 3, 2022, in *O'Brien v. United States*, No. 1:22-cv-00083 (N.D. Ill.). Petitioner presented, among other things:

- SEC filings and corporate records showing that, during the relevant period, CitiMortgage, Inc., Citibank Domestic Investment Corporation, CitiFinancial Mortgage Corporation, and Citibank, N.A. were each primary subsidiaries of Citigroup, not in the parent-subsidary relationship alleged by the government.
- Affidavits from Richard Bowen, a Citigroup executive, and Daniel Kadolph, a financial and operations executive, both affirming the true corporate structure as consistent with Citigroup, Inc., SEC 2007 filing, among other things.
- An email from lead prosecutor former AUSA Matthew F. Madden confirming he knew that Petitioner had no prior dealings with Citibank N.A., and that Citibank N.A. did not succeed Petitioner's purchase loan.
- A relevant email from government attorney Gretchen Wallace raising questions about the lead prosecutor's presentation of evidence to the grand jury.
- Court records from *United States v. Michele DiCosola*, 867 F.3d 793 (2017) establishing Madden's prior knowledge of CitiMortgage and Citibank's corporate structure during 2007 and 2008, contrary to what he elicited from Taylor at Petitioner's trial.
- The testimony of Judy Taylor and the undisclosed *Vani* transcript, demonstrating Taylor's knowingly false testimony and the government's failure to disclose exculpatory evidence regarding CitiMortgage's corporate structure, funding, and losses that it sustains for its loans.
- Documentary proof that the government knew that its alleged schemes to defraud, including "straw buyer" theory, were false based on the government's own records

of joint accounts, prior property purchases of Kwan and Bartko, Quit Claim deeds that were expressly conveying joint tenancy interest.

- Evidence of tampered exhibit, funding misrepresentation of the account Citibank, N.A. for USCBG, and arguments that trial counsel was ineffective for failing to investigate or present these public records.

Petitioner argued these unrebutted factual showings met the standard under 28 U.S.C. § 2255(b): when a petitioner presents specific facts showing disputed, material issues which could entitle her to relief, an evidentiary hearing is required. Despite this, the district court denied a hearing and dismissed the claims without factual development.

This evidence established that the government's representations at trial regarding the identity of the financial institution were false and that the prosecution knew or should have known the distinction. Petitioner also alleged ineffective assistance of counsel for failing to investigate these records and argued that restitution under the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663A, improperly included transactions unrelated to her offense of conviction.

#### 4. District court rulings

On March 20, 2023, the district court denied Petitioner's § 2255 motion and declined to issue a certificate of appealability. The court held that the claims were either raised or could have been raised on direct appeal and that the record conclusively resolved the motion without the need for an evidentiary hearing. The court did not address the unrebutted documentary evidence undermining the

financial-institution element, subornation of perjury, the undisclosed *Vani* transcript that proved Taylor knew that the testimony she gave was false regarding corporate structure, funding, and loss allocations. Petitioner moved to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), the court denied that motion on December 6, 2023.

#### 5. Certificate of appealability proceedings before the Seventh Circuit

Petitioner appealed pro se. In *O'Brien v. United States*, No. 24-1207 (7th Cir.), she sought a certificate of appealability and presented her massive evidence that she presented to the lower court. On March 28, 2025, the Seventh Circuit denied a certificate of appealability. It denied rehearing and rehearing en banc on June 4, 2025, and issued its mandate on June 12, 2025.

#### 6. Current Petition

On August 19, 2025, this Court granted petitioner's application for an extension of time to file a petition for a writ of certiorari through November 1, 2025 (No. 25A188). As November 1 fell on a Saturday, this petition is timely filed on Monday, November 3, 2025.

#### C. Statement of Facts

The prosecution's case relied on an April 2007 "Citibank"-funded HELOC to Christopher Kwan, asserting jurisdiction under federal bank fraud statutes. In fact, the actual loan records, SEC filings (Appx. E-1), and title documents show that CitiMortgage, Inc., not Citibank, N.A., originated, processed, and funded the loan, and Citibank was a mere paying agent and nominal holder for a securitization trust

pursuant to a longstanding power of attorney. (Appx. E-2). This critical distinction was never disclosed at trial and is confirmed by unrebutted documentary evidence in Petitioner's § 2255 motion. And this explains why, when lead prosecutor Matthew Madden first inquired about these loans, Tanya Cwach, (Citigroup representative) stated that CitiMortgage, not Citibank, sustained the losses on both Kwan's first and second loans. Under the law in effect in 2007, mortgage corporations were not "financial institutions" for federal criminal purposes. Congress did not amend § 20 to include them until FERA in 2009.

Further, the government's "straw buyer" theory rested on quitclaim deeds, but these deeds show that Kwan and Bartko were simply joint tenants and partners. It's concealment of Bartko to the lender was also debunked by written acknowledgements (Appx. E-3) presented to the closer, who represented the lender as the closing according to the title company's written policy. (Appx. E-4). Furthermore, Freddie Mac, cited as a victim, only acquired the property after foreclosure, contrary to the testimonial evidence elicited at trial.

These core facts are supported by unrebutted record exhibits in the Appendix, were never tested at hearing. They independently satisfy the standard for a hearing under *Miller-El v. Cockrell* and *Buck v. Davis*. The government's key trial claims at trial were demonstrably false. The resulting conviction and restitution rest solely on misstatements of corporate structure, suborned and nonexistent Petitioner's "prior dealings" with Citibank, and fabricated Petitioner's knowledge of Christopher Kwan's HELOC.

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## REASONS FOR GRANTING THE WRIT

**I. The lower courts' denial of a certificate of appealability and evidentiary hearing conflicts with this Court's precedents and erodes the core purpose of §2255 review.**

Petitioner's motion presented un rebutted documentary and testimonial evidence, government e-mails, sworn affidavits, and forensic title findings, establishing that the prosecution fabricated jurisdictional facts, tampered with a key exhibit, and elicited false testimony to sustain the "financial institution" element of bank and mail fraud. This evidence, if credited, would vacate the conviction. Yet the district court summarily denied relief without an evidentiary hearing, and the Seventh Circuit affirmed without addressing the constitutional violations.

This result directly conflicts with *Miller-El v. Cockrell*, 537 U.S. 322 (2003), and *Buck v. Davis*, 137 S. Ct. 759 (2017), which hold that a certificate of appealability must issue when "reasonable jurists could debate" the outcome and that an evidentiary hearing is required when factual allegations, if true, would entitle a movant to relief. The district court's refusal to permit any factual development, consistent with its long-standing pattern of denying hearings for every §2255 movant except when the government requests one, renders post-conviction review illusory and violates the statute's remedial purpose.

Had the court permitted even a limited evidentiary hearing, the record would have confirmed the full scope of the government's misconduct and the ineffectiveness of prior counsel, both trial and appellate. Instead, the case was disposed of through

procedural default and waiver arguments, even though the government never refuted the documents themselves. No Article III court has ever meaningfully examined the facts underlying this conviction.

**II. The government's proven misconduct and the judiciary's failure to confront it raise urgent questions of due process and systemic accountability.**

The lead prosecutor, sanctioned by the Seventh Circuit only months before this trial for similar misconduct, again engaged in deceit by eliciting perjured testimony, introducing a doctored closing statement, and concealing material exculpatory evidence showing that the alleged financial institution was uninvolved in the charged transactions. Knowing the weakness of its case, the prosecution manufactured the missing element rather than concede it. A different government attorney later repeated those falsehoods before the court of appeals, perpetuating the fraud and misleading the panel into affirming on grounds not charged in the indictment.

The courts below ignored this record, dismissing specific documentary proof as "undeveloped" and thereby insulating prosecutorial deceit from review. That approach conflicts with *Brady v. Maryland*, 373 U.S. 83 (1963); *Napue v. Illinois*, 360 U.S. 264 (1959); *Giglio v. United States*, 405 U.S. 150 (1972); and *Townsend v. Sain*, 372 U.S. 293 (1963), which require hearings where allegations of perjury or suppression could affect the verdict. The result is a widening circuit split: some courts treat documentary proof of misconduct as automatically sufficient to trigger a hearing under *Miller-El* and *Buck* holdings; others, including the Seventh Circuit here, summarily deny review.

Such inconsistency destroys uniformity and signals prosecutors nationwide that falsification carries no consequence. When both the executive and judicial branches default on their duty to safeguard truth, due process becomes dependent on prosecutorial restraint rather than constitutional command.

**III. The restitution judgment violates the Mandatory Victims Restitution Act and the Eighth Amendment, perpetuating a nationwide pattern of unchecked financial punishment.**

The restitution order imposed exceeds statutory authority and constitutional limits. The indictment identified a single transaction: the \$73,000 loan allegedly involving a financial institution, as the basis for federal jurisdiction. Nevertheless, the district court imposed more than \$660,000 in restitution, incorporating unrelated loans involving non-financial entities such as CitiMortgage, Inc. and Freddie Mac. Under the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663A(a)(2), restitution must be limited to losses "directly and proximately caused by the offense of conviction." By including unrelated transactions and unverified losses, the judgment violates both statute and due process.

Petitioner's §2255 filings, supported by sworn affidavits and forensic title records, established that the government misrepresented both the victims' identities and the existence of any losses. Evidence concealed at trial, including securitization documents showing the loans had already been sold or repurchased, proved that the alleged victims suffered no actual loss. Yet no evidentiary hearing was held; the district court simply adopted the prosecution's spreadsheet verbatim, contrary to

Federal Rule of Criminal Procedure 32(i)(3)(B) and *Hughey v. United States*, 495 U.S. 411 (1990).

The resulting order functions as a financial life sentence. It imposes an obligation grossly disproportionate to any possible harm, violating the Eighth Amendment's prohibition on excessive fines as reaffirmed in *United States v. Bajakajian*, 524 U.S. 321 (1998), and *Timbs v. Indiana*, 139 S. Ct. 682 (2019). Across the federal system, such unchecked restitution practices have become routine, especially for indigent and pro se defendants, perpetuating economic punishment long after incarceration and obstructing re-entry, a pattern this Court must address.

**IV. The documentary record presented in the appendices demonstrates the magnitude of the constitutional violations and the urgency of review.**

Petitioner is mindful that this Court cannot examine every filing submitted below. For that reason, multiple appendices accompany this petition, each tabulating the core documentary evidence, affidavits, government correspondence, forensic title investigations, and certified records, that collectively establish the government's deceit and the courts' refusal to test it. These appendices represent only a portion of the massive record submitted in the district court and the court of appeals, all un rebutted by the government. They go directly to the heart of the issues presented, demonstrating (1) fabrication of jurisdictional facts, (2) falsified or merged exhibits that misled the jury, (3) suppression of material exculpatory evidence, and (4) restitution orders built on false losses and non-existent victims.

Each of these issues alone would have required an evidentiary hearing under §2255 and *Townsend*. Taken together, they expose a systemic breakdown in federal habeas review, where courts deny hearings even when defendants present specific, documented proof of constitutional violations. The presiding district judge's record of denying every §2255 evidentiary hearing except those requested by the government exemplifies this structural failure.

**V. This case presents recurring questions of exceptional national importance.**

The questions presented strike at the foundation of due process, prosecutorial ethics, and the uniform administration of justice. The record here shows how a sanctioned prosecutor repeated prior misconduct in a high-profile case, confident that falsification would again go unexamined. The district court's blanket refusal to grant hearings, combined with the appellate court's unreasoned affirmance, has created a precedent that allows documented fraud to stand untested.

If such conduct can occur in a publicly scrutinized case, it surely pervades countless others that receive no attention at all. The consequences extend beyond one petitioner: across the nation, defendants, especially women and pro se litigants, are left with unexamined convictions and lifelong restitution orders resting on falsified evidence. This petition therefore provides an ideal vehicle for the Court to restore uniformity and reaffirm that truth, not convenience, governs the outcome of criminal proceedings.

## VII. Systemic Judicial Abdication and Unequal Access to Post-Conviction Review Require This Court's Intervention

This case also illustrates a broader institutional failure: the collapse of meaningful fact-finding in federal post-conviction proceedings. The presiding district judge has never granted an evidentiary hearing under § 2255 to any defendant other than the government itself, despite repeated motions supported by documentary proof of constitutional violations. Such a blanket refusal to test facts violates not only § 2255(b), which expressly authorizes a hearing “unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief”, but also the fundamental due-process guarantee that factual innocence and government misconduct be heard before liberty or property is taken.

When a judge adopts a fixed practice of denying hearings, the statutory safeguard Congress created to correct wrongful convictions becomes an empty formality. The record here confirms that pattern: even where Petitioner presented authenticated exhibits and sworn affidavits establishing perjury, evidence tampering, and suppression of exculpatory material, the district court dismissed the motion without review. That conduct transforms judicial discretion into abdication and effectively nullifies *Townsend v. Sain*, 372 U.S. 293 (1963), which holds that federal courts must grant a hearing when factual allegations, if true, would entitle the prisoner to relief.

The systemic consequences are grave. Nationwide data show that fewer than two percent of § 2255 motions receive evidentiary hearings; among pro se litigants, the rate is nearly zero. This practice disproportionately harms those least able to

marshal representation, women, indigent defendants, and justice-involved individuals, who are then left bound by judgments resting on untested factual falsehoods. The uniform refusal of some judges to ever conduct hearings, even in the face of un rebutted proof, creates an unconstitutional disparity between districts and circuits. Such disparity squarely implicates this Court's supervisory responsibility to ensure that federal habeas review remains a "meaningful safeguard against miscarriage of justice." *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

This petition therefore presents not only a case-specific injustice but also a structural question of national importance: whether the federal judiciary may, through blanket denials of hearings, effectively extinguish the statutory right Congress provided to test constitutional error. The answer must be no. Review is warranted to reaffirm that § 2255 is a remedial mechanism, not a procedural mirage, and that due process requires judges to hear the truth when it is presented.

#### **VIII. Intentional Evidence Tampering Is a Structural Defect That the Lower Courts Ignored**

The government's introduction of a tampered exhibit at trial, later explained as a mere "clerical error," is not a technical oversight but a constitutional crisis. The manipulated document, a key exhibit connecting Petitioner to a financial transaction, was altered by merging two unrelated closing statements, creating the illusion of involvement in a loan she neither executed nor knew existed. The government's own response conceded that the alteration occurred but dismissed it as harmless. The district court accepted that excuse and, without a hearing, speculated that the jury

likely would have reached the same verdict. That speculation violates every principle of due process.

When the government intentionally falsifies or manipulates evidence, the harm is structural. This Court has held that deliberate prosecutorial deceit “strikes at the fundamental fairness of the trial itself.” *Mooney v. Holohan*, 294 U.S. 103 (1935); *Napue v. Illinois*, 360 U.S. 264 (1959); *Giglio v. United States*, 405 U.S. 150 (1972). Structural errors defy harmless-error analysis because they “affect the entire framework within which the trial proceeds.” *Arizona v. Fulminante*, 499 U.S. 279 (1991). Intentional manipulation of a trial exhibit is precisely such an error: it corrupts the evidentiary record, deceives the jury, and disables appellate review.

Yet the courts below ignored that distinction. By assuming the tampering was benign and by crediting the government’s “clerical error” defense without factual testing, the judiciary effectively rewrote the harmless-error standard to favor the prosecution. The rule of law cannot survive such asymmetry. If intentional falsification of evidence can be dismissed as inconsequential, the constitutional guarantee of a fair trial becomes a fiction.

Review is therefore warranted to reaffirm that deliberate government falsification is a structural defect requiring at minimum an evidentiary hearing, and, if proven, vacatur of the conviction. This Court’s intervention is essential to restore the baseline principle that no conviction may stand when the government itself corrupted the evidence used to obtain it.

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## SUMMARY

This case exemplifies a convergence of errors that reach the core of constitutional justice: a sanctioned prosecutor repeating prior misconduct, a district judge with a record of denying every evidentiary hearing to defendants, and appellate courts that refused to review unrebutted proof of falsified evidence and structural defects. Petitioner's extensive § 2255 filings, supported by affidavits, government emails, and forensic documentation, demonstrated that the prosecution misrepresented the "financial institution" element, tampered with a critical exhibit, and suppressed material exculpatory evidence. (*See also* Appx. Grp. F)

The appendices attached to this petition consolidate that record into organized, tabulated form for the Court's convenience. They represent only a portion of the documentary evidence previously submitted to the lower courts and now presented here to show how deeply the conviction, the restitution judgment, and the post-conviction proceedings were infected by fraud, misrepresentation, and judicial neglect. Together they reveal a systemic failure: when prosecutorial misconduct is met with judicial indifference, § 2255 review ceases to serve its constitutional function.

At stake is more than one petitioner's liberty. Across the federal system, defendants, especially women, indigent, and pro se litigants, face denials of hearings and unchecked financial penalties even when the record contains clear documentary proof of constitutional error. The Court's review is needed to reaffirm that due

process is not discretionary, that § 2255 remains a meaningful safeguard, and that structural violations of fairness cannot be excused as harmless or waived.

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## CONCLUSION

This petition asks only for what the Constitution already guarantees: a fair process, a hearing on facts that would change the result, and accountability for those who abuse public power. The appendices and record presented here demonstrate that no Article III court has ever meaningfully reviewed the truth of the evidence that secured Petitioner's conviction and restitution judgment.

Because the courts below disregarded un rebutted proof of prosecutorial deceit, judicial abdication, and structural error, this case satisfies every criterion for certiorari. It presents recurring, nationally significant questions concerning the scope of habeas review, the duty to correct falsehoods, and the limits of judicial discretion under §§ 2253 and 2255. As reaffirmed in *Glossip v. Oklahoma*, 604 U.S. \_\_\_ (Feb. 25, 2025), the government bears an affirmative constitutional obligation to correct the record once material inaccuracies become known, a duty it has yet to fulfill despite the documentary evidence presented throughout these proceedings.

For these reasons, Petitioner respectfully requests that this Court grant the writ of certiorari, restore uniform application of due-process protections, and reaffirm that the rule of law binds every actor in the justice system: prosecutor, judge, and petitioner alike.