25A440

~~No. 25-5535~~

IN THE SUPREME COURT OF THE UNITED STATES

MEELAD DEZFOOLI,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

On Application for Release Pending Appeal from the United States Court of Appeals for the Ninth Circuit (2:22-cr-00142-CDS-DJA)

EX PARTE EMERGENCY APPLICATION FOR RELEASE PENDING APPEAL PER RULE 22

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit

Meelad Dezfooli

Applicant pro se

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TABLE OF CONTENTS

EXHIBITS

Table 1 Exhibits

Exhibits	Description
A	Wells Fargo Bank Declaration
B	Wells Fargo Bank Transaction Statement
C	District Court of Nevada Judgment of Conviction
D	Ninth Circuit Court Clerk Order to take no action on pro se Emergency Motion
E	Ninth Circuit Court of Appeals Docket 25-5535 as of October 3, 2025
F	Superseding Criminal Indictment
G	Unredacted Checks and Government Redacted Checks of properties: 180 Ruby Ridge Avenue 6116 Chinook Way 8218 Nelson Ridge Lane 176 Glen Falls Avenue

Table 1 Exhibits

Exhibits	Description
H	Jury Trial Transcripts Day 6 & 7 of Government witness Agent Chapman
I	Meelad Dezfooli Affidavits #1 and #2
J	District Court of Nevada Docket of Case No. 2:22-cr-00142-CDS-DJA
K	Legal Wing Receipt (#0216175135, July 25, 2025) Legal Wing Receipt (#0216175145, July 29, 2025) Stamped by Court Clerk
L	Emergency Motion for Release Pending Appeal under FRAP9(b) (pro se)
M	Public Law 116 -136 Mar. 27. 2020 Excerpts of Relevant Regulations from CARES ACT: Section 1102. Paycheck Protection Program
N	Federal Register, Vol. 85, No. 73 (Apr. 15, 2020) Business Loan Program Reg. 20811 - 20812
O	ECF352 Order Striking Motions, Briefings, and Notice Filed by Defendant and Denying as Moot the Government's Motion to Strike
P	Ninth Circuit Court of Appeals Docket 25-5535 as of October 2, 2025
Q	Email to Ninth Circuit Court Clerk Regarding the 25-5535 Docket Entries for the Pro Se Emergency FRAP9 Motion and related exhibits
R	ECF 365 page 9, lines 3-10 Order Granting Forfeiture Money Judgment in the Amount of $11,231,186.52
S	Jury Trial Day 5 Transcripts: Government requests to show unredacting bank account numbers
T	Jury Trial Day 6 Transcripts
U	Jury Trial Day 4 Transcripts
V	ECF 184

TABLE OF AUTHORITIES

Table 2 Table of Authorities

Cases	Pages(s)
Bounds v. Smith 430 U.S. 817 (1977)	32, 38

Table 2 Table of Authorities

Cases	Pages(s)
Brady v. Maryland, 373 U.S. 83 (1963)	11, 14, 20, 23
Ex Parte Hull 312 U.S. 546 (1941)	32
Giglio v. United States, *405 U.S. 150, 154 (1972)*	18, 19, 20, 23
Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944)	24
Hilton v. Braunskill, 481 U.S. 770, 777-78 (1987)	38
Lewis v. Casey, 518 U.S. 343, 353 (1996)	38
Luis v. United States, 578 U.S. 5 (2016)	32
Napue v. Illinois, 360 U.S. 264 (1959)	19
New Hampshire v. Maine, *532 U.S. 742, 749 (2001)*	23
Procunier v. Martinez, 416 U.S. 396, 419 (1974)	38
Schlup v. Delo, 513 U.S. 298 (1995)	35
Shaw v. United States, 137 S. Ct. 462, 467 (2016)	31
Skilling v. United States, 561 U.S. 358, 402-03 (2010)	30
Stirone v. United States, 361 U.S. 212 (1960)	36
Strickland v. Washington, 466 U.S. 668, 686 (1984)	38
United States v. Baribe August 20 2025	29

Table 2 Table of Authorities

Table 3 Statutes

Table 3 Statutes

Statues	Page(s)
18 USC § 3143(b)	8, 11, 17, 35, 37
18 USC § 3145(c)	8, 37
18 U.S.C § 3143(b)(1)(A)	9
18 § 3143(b)(1)(B)	9
18 U.S.C § 1344	12, 30
28 U.S.C § 1651(a)	8, 11
28 U.S.C. § 1254(1).	8, 11
18 U.S.C. § 1001	12, 30
18 U.S.C. § 1956	12, 26
18 U.S.C. § 1957	12, 26
18 U.S.C. § 3147	12

Table 4 Other Authorities

Other Authorities	Page(s)
Local Rule IC 6-1(a)(4)	14, 21
Federal Regulation 12 CFR § 229.2(j)	13, 18
Uniform Commercial Code (UCC) § 3-409(d)	13, 18

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicant, Meelad Dezfooli is pro se by necessity not by chance. Respondent is the United States of America.

The proceedings below were *United States of America v. Meelad Dezfooli*, No. 2:22-cr-00142-CDS-DJA (District Court of Nevada) and *United States of America v. Meelad Dezfooli*, No 25-5535 (Ninth Cir.).

The District Court entered judgment on August 21, 2025, sentencing Mr. Dezfooli to 181 months imprisonment. Mr. Dezfooli timely filed a Notice of Appeal on August 31, 2025. On September 24, 2025, Mr. Dezfooli filed an Emergency Motion for Release Pending Appeal (Ex. L), pro se, with the Ninth Circuit. On October 3, 2025, the Ninth Circuit Clerk Ordered that the Court will take no action on the motion, noting that counsel had been appointed Nunc Pro Tunc effective September 11, 2025 (Ex. D, E). Mr. Dezfooli has been in custody since November 20, 2023, when he honored the Court's Order and reported for detention while vigorously pursuing his bail revocation appeal on the merits. Now, after 22 months of maintaining his innocence through proper legal channels, he faces imminent transfer that will irreparably harm his appellate prospects.

To the Honorable Elena Kagan, Associate Justice of the United States and Circuit Justice for the Ninth Circuit:

Applicant Meelad Dezfooli seeks release pending appeal under Fed. R. App. P. 9(b), 18 U.S.C. § § 3143(b) and 3145(c). Given the substantial questions presented and his imminent transfer, he respectfully requests expedited consideration of this application or, if necessary, an administrative stay to permit review to allow sufficient time to consider this matter. This Court further has jurisdiction pursuant to 28 U.S.C. § 1651(a) and 28 U.S.C. § 1254(1).

INTRODUCTION

Applicant Mr. Dezfooli seeks the relief of release pending completion of his appeals because his conviction rests on fabricated evidence and fundamental legal errors warranting this Court's review. Absent relief, Mr. Dezfooli, who has served 22 months following voluntary self-surrender, faces imminent transfer that will permanently destroy thousands of non-transportable legal documents, correspondence, and evidence proving his innocence, while critical motions remain suppressed and unaddressed by both the District and Appeals Courts. Evidence the District Court refused to consider. Thus, his transfer will cause irreparable harm to his appellate prospects.

There is no dispute that Mr. Dezfooli "is not likely to flee or pose a danger to the safety of any other person or the community if released" –he has been a lifelong Nevada resident who voluntarily surrendered for detention and his Criminal History Category I status with 9% recidivism risk confirms he poses no threat. 18 U.S.C § 3143(b)(1)(A) (United States Sentencing Commission, Measuring Recidivism, Exh. 11, at 30). Nor is there any claim that his continued pursuit of appeal is "for the purpose of delay" § 3143(b)(1)(B).

Accordingly, Mr. Dezfooli "shall" be released if his case "raises a substantial question of law or fact" that, if accepted, would result in reversal, a shorter sentence, or a new trial. 18 U.S.C § 3143(b)(1)(A). That requires "only a non-frivolous issue that, if decided in [his] favor, would likely result in reversal or could satisfy one of the other conditions." *United States v. Garcia*, 340 F.3d 1013, 1020 n.5 (9th Cir. 2003).

This case raises at least six substantial questions that satisfy this standard. First, his convictions rests on the government's submission of demonstrably false evidence; specifically, the Wells Fargo Bank declarations (Ex. A) that the government knew or should have known were false as the actual bank records and transaction history statement (Ex. B) show no such transactions occurred. Second, the complete absence of digital forensic evidence the government failed to present, including proof who submitted the online Paycheck Protection Program (PPP) applications. Third, use of redacted checks and fully redacted bank routing and account numbers and solicited false testimony presented to the jury to secure an improvident verdict (Ex. G). Fourth, the question whether the Lowest Intermediate Balance Rule (LIBR) tracing was properly applied to trace the PPP funds presents a substantial question given (1) the aforementioned bank declaration authenticity (Ex. A, B); (2) the systematic redaction of account numbers concealing the true source of funds (Ex. G); and (3) the government's own witness testimony confirming no transfers occurred from the PPP accounts and no records existed for the accounts actually used (Ex. T, pp 223). Fifth, is that the indictment (Ex. F) is void ab initio for failing to identify which banking regulation Mr. Dezfooli allegedly violated, rendering it legally insufficient under fundamental principles of federal criminal law. The sixth question involves the systematic denial of Mr. Dezfooli's Sixth Amendment rights through forced loss of counsel of choice and complete abandonment by prior court-appointed counsel during critical proceedings and post-trial proceedings. Regarding all of the above, this case presents six substantial questions warranting immediate relief.

OPINIONS BELOW

The District Court's judgment of conviction dated August 21, 2025, is attached as Exhibit C. The District Court's orders striking defendant's pro se filings are attached as Exhibit O (Ex. J, see ECF 341-346, 348, 351, 384). The Ninth Circuit proceedings are pending, with pro se Emergency Motion for Release (Ex. L) filed September 24, 2025 (Ex. E). However, an Order by the Ninth Circuit Court Clerk, not signed by any judge, (Ex. D) ordered the Court will not act on the pro se Emergency Motion (Ex. L) for release (Ex. E, see DE 37).

JURISDICTION

The Court has jurisdiction pursuant to 18 U.S.C. § 3143(b), 28 U.S.C § 1651(a) (All Writs Act), and 28 U.S.C. § 1254(1). A "judicial officer" "shall order the release" of an individual who "has filed an appeal or a petition for a writ of certiorari" if the requirements of § 3143(b) are satisfied.

STATEMENT

1 FACTUAL BACKGROUND

On April 7, 2020, during the COVID-19 pandemic, online applications for Paycheck Protection Program (PPP) loans under the CARES Act were submitted to the Small Business Administration (SBA) using forms, SBA 2483 and 2484, bearing the names of companies associated with Mr. Dezfooli. All applications were completed entirely online through web portals at unknown locations by unidentifiable parties. The government claimed they did not trace IP addresses, did not examine electronic devices, did not establish who submitted these applications and did not turn over any exculpatory *Brady* materials for innocence. Given the documented instances of withheld and undisclosed exculpatory information during the case, questions remain about whether all relevant information has been fully disclosed.

The Small Business Administration (SBA) guaranteed 100% of these loans, with banks serving as processors and receiving fees for their services, bearing no financial risk (Ex. M, N). The SBA Form 2483 warned applicants only of potential prosecution under 18 U.S.C. § 1001 for false statements to the SBA, not under § 1344 for bank fraud (Ex. M, N). In the SBA's lender application forms and in the bank's internal documents there are clear third parties and agents who were hired to prepare the applications and subsequently paid by the banks (Ex. M, N).

However, On June 22, 2022, a grand jury returned a superseding indictment (Ex. F) charging Mr. Dezfooli with bank fraud in violation of 18 U.S.C. § 1344, concealment money laundering in violation of § 1956, and monetary transactions in criminally derived property while on pretrial release in violation of 18 U.S.C. §§ 1957 and 3147. Critically, the indictment failed to identify which specific banking regulation Mr. Dezfooli allegedly violated – a requirement when charging regulatory crimes. *United States v. Pirro*, 212 F.3d 86, 92 (2d Cir. 2000).

The government's case theory was that Mr. Dezfooli used PPP loan proceeds from specific accounts: Wells Fargo bank account ending in WF x3281; First Savings Bank account, FSB x 4648; and United States Bank account, USB x4334 to purchase real properties. The government produced fully redacted checks (blacked out account and routing numbers) (Ex. G) and misrepresented the origins of these checks to support their case theory throughout trial. However, unredacted bank records obtained post-trial demonstrate that all property purchases were made with funds from an unrelated bank account, Holdings Trust accounts WF x5469 and WF x1988, not from any PPP-related accounts (Ex. G).

2 THE FALSE EVIDENCE

Central to the government's case was a Wells Fargo declaration stating that "certified checks" were "purchased on account 6871073281" (Ex. A). This declaration contains fundamental legal impossibilities:

First, as a matter of establishing banking law, certified checks cannot be "purchased". Under the Uniform Commercial Code § 3-409(d), Federal Regulation 12 CFR § 229.2(j), and Black's Law Dictionary, a certified check is a depositor's personal check drawn on their own account that is subsequently certified by the bank. Certified checks cannot be "purchased" – only cashier's checks, where the bank is both drawer and drawee, can be purchased.

Second, the actual Wells Fargo x3281 Bank Statement Transaction History record (Ex. B) shows no certified checks on May 12, or May 15, 2020 and no transactions matching the government's declaration on the same dates. When compared to the actual bank statement for the same bank account WF x3281, none of the identified 8 transactions on the Wells Fargo Bank Declaration (Ex. A) are reflected in the May bank statement (Ex. B), in fact, none of the transactions are accounted for in any of the months. Also note, a check was drawn on that account for the month of May as seen in the bank statement (Ex. B), however, it is not reflected in the false bank declaration (Ex. A).

Critically, the government's own witness, Internal Revenue Service (IRS) Agent Chapman, after misleading the jury, admitted during trial that the checks at issue were not drawn from PPP loan accounts but instead from unrelated accounts (Ex. H). This testimony confirms the government's tracing theory was false and that no PPP proceeds funded the property purchases. The jury's verdict was therefore based on a misrepresentation contradicted by the government's own witness.

2.1 The Unconstitutional Redaction of Exculpatory Evidence

The government's selective redaction of financial evidence raises significant constitutional concerns that warrant careful review and potential remedy by this Court, requiring reversal. Throughout trial, the prosecution presented cashier's checks with completely redacted account and routing numbers --not the partial redaction permitted by Local Rule IC 6-1(a)(4), which requires only that "the last four digits of those numbers should be used." When beneficial, the prosecution selectively "un-redacted" information (Ex. S). This concealment of exculpatory evidence violates *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).

3 PROCEEDINGS BELOW

Mr. Dezfooli initially retained counsel of his choice, but the government's freezing of untainted corporate or untainted personal assets forced him to proceed with a series of court-appointed counsel. His first appointed counsel withdrew citing financial constraints (Ex. J see ECF 19-23). His second counsel team was unprepared at critical hearings (Ex. J see ECF 23-126). His third counsel withdrew citing irreconcilable differences (Ex. J see ECF 127-260). His fourth and final counsel, Lucas Gaffney, abandoned him during post-trial proceedings and failed to file replies or inform him of hearings (Ex. J, see ECF 260-402).

Following the jury's verdict on September 5, 2024, Mr. Gaffney filed a Rule 29 motion on March 10, 2025. After the government filed its response on April 14, 2025, Mr. Gaffney obtained two extensions but never filed a reply brief, leaving critical issues unpreserved for appeal. The U.S. Marshals reported that Mr. Dezfooli was unaware of his own hearing because his attorney "didn't mention" it (Ex. J, see ECF 336).

Between April 22 to 25, 2025, Mr. Dezfooli attempted to preserve appellate issues by filing eight substantive documents raising challenges to jury instructions, venue, sufficiency of evidence, and authentication failures (Ex. J, see ECF 341-346, 348, 351). The District Court struck all these filings under Local Rule IA-11-6(a) because he "had counsel" – but Mr. Dezfooli did not have counsel since counsel was not representing and had effectively abandoned him (Ex. J, see ECF 352). The court made an assumption that Mr. Dezfooli had counsel and proceeded to struck without any investigation or recourse. Irreparably harming Mr. Dezfooli's preservation of record for denial of effective assistance of counsel. This removed his right to self-represent and conduct his own defence and forfeited his claims, responses, and evidentiary supplements to the record proving his innocence.

On May 6, 2025, during an ex parte hearing, Judge Silva acknowledged Mr. Dezfooli's predicament and his oral motions filed and stated she would "be looking out for" his filings. In response, on July 25, 2025, Mr. Dezfooli filed nine critical documents under seal including:

- Rule 60(b) Motion documenting fraud upon the court

- Rule 33(a) Motion for New Trial with proof of fabricated evidence
- Petition for Writ of Mandamus seeking to compel judicial action
- Detailed motions demonstrating that no PPP funds were used for the charged conduct

Despite clerk-stamped receipts (Ex. K) confirming filing, no docket entries exist for these submissions (Ex. J), and the District Court proceeded to sentencing without addressing any of the open submissions despite Mr. Dezfooli's objections in open court.

On August 21, 2025, the District Court sentenced Mr. Dezfooli to 181 months imprisonment and ordered restitution of $11,793,064.15, while thirteen substantive motions remained pending and unaddressed (Ex. J).

ARGUMENT

1 THE RELEVANT STANDARD: MR. DEZFOOLI NEED ONLY DEMONSTRATE A "SUBSTANTIAL QUESTION"

Section 3143 states that a "judicial officer" "shall" order release where the movant satisfies the requirements of § 3143(b): (1) "the person is not likely to flee or pose a danger to the safety of another person or the community if released"; (2) "the appeal is not for the purpose of delay"; and (3) the movant "raises a substantial question of law or fact likely to result in (i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process." § 3143(b)(1).

The third factor, the "substantial question" standard requires a "two-part inquiry." *United States v. Perholtz*, 836 F.2d 554, 555 (D.C. Cir. 1987). The Court first decides whether "the appeal raise[s] a substantial question." Id. The Court then separately looks at whether a new trial or lessened sentence would "likely result "if that question is resolved in appellants' favor." Id.

As multiple circuits have recognized, this standard does not require the movant to show he is likely to succeed or that the lower court committed reversible error. *United States v. Miller* 753 F.2d 19, 23 (3d Cir. 1985). Mr. Dezfooli easily demonstrates multiple substantial questions, each of which independently warrants relief.

2 THERE ARE MULTIPLE SUBSTANTIAL QUESTIONS REGARDING THE USE OF FALSE EVIDENCE

This Court has long held that a conviction obtained through the knowing use of false evidence violates due process, *Giglio v. United States*, 405 U.S. 150, 153 (1972). Here, the government's case rested on demonstrably false evidence.

2.1 The Fabricated Wells Fargo Declaration

As mentioned in section 2 of this application, the government submitted a Wells Fargo Declaration claiming, "certified checks purchased on account 6871073281." (Ex. A). This statement is legally impossible for two reasons. First, certified checks cannot be “purchased” – they are personal checks written by an account holder that are then certified by the bank. Only cashier’s checks can be purchased. Second, the actual historical bank account transaction record show no such transactions occurred (Ex. B).

The distinction between certified and cashier’s checks is fundamental in banking law. Under established banking law, certified checks cannot be "purchased." A certified check is a personal check written by an account holder on their own account, which the bank then certifies. 12 CFR § 229.2(j); UCC § 3-409(d). Only cashier's checks, instruments where the bank is both drawer and drawee, can be purchased. This is not a technical distinction but a fundamental difference in banking instruments.

Moreover, the actual bank records demonstrate no such transactions occurred. The Wells Fargo x3281 account records contain no certified check purchases and no transactions matching the government's declaration (Ex. B). The record establishes that the Wells Fargo declaration contains material misrepresentations.

The government's witness, IRS Agent Chapman, admitted at trial that the checks were not from PPP accounts but instead from unrelated accounts, directly contradicting both the indictment (Ex. F) and the prosecution's case theory (Ex. T pp 149-150). The use of false evidence to obtain a conviction is structural error requiring reversal and the use of false evidence or testimony violates the defendant's due process rights under *Giglio v. United States*, 405 U.S. 150, 154 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959). When the government's case rests on fabricated financial documents, the conviction cannot stand.

The government's case depended almost exclusively on two elements: (1) evidence of withdrawals from Wells Fargo account x3281 belonging to Nevada Design LLC, a company that did not apply for the PPP loans and not a borrower, and (2) the false testimony about the Wells Fargo declaration that purported to document these transactions (Ex. A). Without this declaration, the government lacked sufficient evidence to secure an indictment or present a viable case to the jury.

Additionally, any understanding or agreement between the prosecution and Wells Fargo or anyone else regarding the preparation of this declaration, particularly if it involved the withholding of exculpatory information, would be material to the witness's credibility and the government's case. Under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio*, the jury was entitled to know of any such arrangements that could affect witness credibility or reveal suppression of favorable evidence. The failure to disclose such information constitutes reversible error when the undisclosed evidence is material to guilt or punishment. In addition, the total redaction of the cashier's checks, many months prior to trial, was used to secure the interlocutory sales.

2.2 Temporal Impossibility

The Nelson Ridge property central to Counts 6 and 10 of the Superseding Indictment (Ex. F) was purchased in June 2021 as shown in the unredacted checks (Ex. G). However, all PPP funds in the charged accounts were fully depleted by February 2021, four months earlier as shown in the Wells Fargo bank Transaction Statements (Ex. B, H, T pp 149-150). It was therefore impossible for the PPP funds to have been used for this purchase.

This is confirmed by the government's own witness, IRS Agent Chapman who admitted at trial that the checks used for property purchases were not drawn from PPP loan accounts but from unrelated bank accounts (Ex H, T pp 149-150). This testimony directly contradicts the indictment's allegation that funds came from accounts WF x3281, FSB x4648, and USB x4334.

3 THERE ARE MULTIPLE SUBSTANTIAL QUESTIONS REGARDING THE USE OF REDACTED EXCULPATORY EVIDENCE

The government's selective redaction of financial evidence raises significant constitutional concerns that warrant careful review and potential remedy by this Court, requiring reversal. Throughout trial, the prosecution presented cashier's checks with completely redacted account and routing numbers --not the partial redaction permitted by Local Rule IC 6-1(a)(4), which requires only that "the last four digits of those numbers should be used." This total redaction prevented the jury from discovering that the checks were drawn on accounts WFB x5469, WFB x1988, and WFB x8277, accounts entirely unrelated to the PPP loan accounts charged in the indictment (WFB x3281, FSB x4648, and USB x4334) (Ex. F).

On Day 5 of trial, the government, when finding the complete redaction no longer served its purposes, requested permission to "un-redact the last four digits" of a Robinhood account number (Ex. S). The Court granted this request over no objection, with the prosecutor stating, "The Government requests the Court's permission to sort of un-redact the last four digits of that account number and put this into evidence." (Ex. S).

This selective un-redaction reveals the prosecution's deliberate strategy: maintain total redaction when it conceals exculpatory evidence but seek partial disclosure when it advances the government's theory. As the trial testimony confirmed, these cashier's checks "were not withdrawn from one of the original bank accounts to where the PPP loans were deposited into." (Ex. T, pp 149 lines 24 -25).

The government's witness could not maintain the prosecution's theory under cross-examination. When pressed about whether the cashier's checks came from accounts associated with the businesses, the witness initially claimed they were "initially drawn on the businesses," but when pushed for specificity, could only acknowledge that the actual process involved Wells Fargo, not the PPP accounts. (Ex T, pp 193 lines 1-25). Mr. Pocker's cross-examination exposed the truth:

"They're really not drawn directly against any of the accounts that belong to the businesses at issue in this case, are they?" (Ex T, pp 193 lines 1-25).

Critically, the testimony confirmed that the cashier's checks bore account number x5469 --a Wells Fargo account with no connection to the PPP funds. As the witness admitted:

> "The last four numbers on that are 5469? A. Yes. Q. And that would be a Wells Fargo account based on the indicator in the lower left corner, correct? A. Yes. Q. And this wouldn't be on any personal bank account of any purchaser or any business account of any purchaser, correct? A. Correct." (Ex. U).

This handling of evidence raises concerns under multiple constitutional protections:

First, it constitutes a *Brady* violation by withholding material exculpatory evidence because the actual account numbers proving funds came from unrelated sources. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972).

Second, it violates due process by presenting misleading evidence to both the grand jury and trial jury. The prosecution knew the redacted checks concealed their true origin yet allowed the jury to infer they were connected to PPP accounts.

Third, the selective un-redaction constitutes prosecutorial misconduct warranting reversal. Where the government "assumes a certain position in a legal proceeding, and succeeds in maintaining that position," it cannot thereafter "assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001).

The prosecution's conduct here --completely redacting account numbers and misrepresenting the true account numbers they were written on to hide exculpatory information, then selectively un-redacting when beneficial, raises concerns about the handling of evidence that "involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). The government's concealment of this fact through improper redaction and misrepresentation of the true account numbers undermines the adversarial process and merits this Court's immediate review and intervention.

4 THERE IS A SUBSTANTIAL QUESTION REGARDING THE GOVERNMENT'S IMPROPER USE OF LIBR ANALYSIS

The government's reliance on the Lowest Intermediate Balance Rule (LIBR) to trace alleged PPP proceeds through commingled accounts to property purchases fails because LIBR requires accurate transaction records for all accounts involved. While the government devotes pages to explaining LIBR methodology (Ex. V, pp. 7-9), citing cases like *United States v. Rutgard*, 116 F.3d 1270 (9th Cir.

1997), this accounting method cannot validate fabricated evidence or create transactions that did not occur (Ex. A, B).

4.1 Fatal Defects in the Government's LIBR Application

The government's LIBR analysis collapses under three fundamental failures:

First, LIBR depends on documented deposits and withdrawals. Per described in Section 2, the Wells Fargo Declaration claiming "certified checks" were "purchased on account 6871073281" is legally impossible -- certified checks cannot be purchased -- and factually false, as the actual bank statements show no such transactions (Ex. A, B). The bank's own records prove the government's declaration is false. When the prosecution's cornerstone evidence is fabricated, that's not just a substantial question, it is fundamental error requiring immediate relief.

Second, the government's own witness questions their tracing theory. IRS Agent Chapman admitted the cashier's checks "were not withdrawn from one of the original bank accounts to where the PPP loans were deposited into" but were actually drawn on an unrelated non-PPP account. (Ex. T, pp. 149-150). When pressed, Agent Chapman confirmed the checks came from Wells Fargo account x5469, not the PPP accounts charged in the indictment (Ex. T, p. 193).

Third, Agent Chapman had no records for the accounts that actually funded the properties. When asked about Wells Fargo accounts ending in 5469, 1947, 1962, 1970, and 1988, Agent Chapman repeatedly answered "No" to having any records

(Ex. T, p. 217). Furthermore, Agent Chapman testified she did not see any bank transfers between the PPP loan account and the accounts the checks were drawn off of (Ex. T, p. 223). Without records of these accounts, LIBR analysis is impossible or at least incomplete.

4.2 The Government's Reliance on Circumstantial Inference Cannot Substitute for Required Proof

Most concerning, the government attempted to use Counts 4-10 of the indictment (the money laundering and property transaction counts, Ex. F) as circumstantial evidence to infer that Mr. Dezfooli was the individual who received PPP funds, submitted the applications, and perpetrated the alleged fraud. In addition, if proper LIBR tracing was employed, it would have shown that the purchase of the Nelson Ridge Property (Counts 6 and 10) in June 2021 could not have been used by PPP money as PPP funds were depleted by February 2021, as noted in Section 3 of this Application. This circular reasoning substitutes inference for proof. The government presented no direct evidence establishing Mr. Dezfooli's involvement: no IP address tracing, no digital forensic analysis of devices, no electronic evidence linking him to the online PPP applications submitted through web portals, and no documentation showing who actually submitted these applications. Instead, the government improperly used the very transactions it needed to prove as evidence of predicate acts, bootstrapping its case through assumed connections rather than established facts.

4.3 Impact on Money Laundering Charges

The money laundering charges under 18 U.S.C. §§ 1956 and 1957 require proof that Mr. Dezfooli conducted transactions with proceeds of specified unlawful activity. Without valid LIBR tracing establishing that PPP funds were used, the government cannot prove the essential element that the property purchases involved criminal proceeds. The government's own witness testimony that funds came from different, untraced accounts defeats the government's case theory of both the predicate bank fraud charges and derivative money laundering counts.

In conclusion, LIBR has failed to demonstrate a sufficient nexus. When applied to non-existent transactions based on fabricated declarations and contradicted by the government's own witness, LIBR becomes a tool for obscuring rather than revealing truth. The government's attempt to use assumed money laundering transactions as proof of identity in the predicate fraud, while lacking any digital forensic evidence, exposes the fundamental absence of proof in this prosecution.

More importantly, it shall be noted the transactions in question that the government used were revealed to be withdrawn from Mr. Dezfooli's own personal account. At trial, Agent Chapman testified the cashier's checks Mr. Dezfooli used to purchase the properties were drawn upon bank accounts that consisted primarily of PPP funds (Ex. T pp 121). According to Agent Chapman, the cashier's checks used to purchase Chinook Way (Check number ending in x1811) and Ruby Ridge (Check number ending in x1812) were purportedly drawn upon bank account ending in x3281 (Ex. T pp 125-126, 146). However, on cross examination, Agent Chapman acknowledged the credit copy of the cashier's check for Chinook Way showed the withdraw of funds came from a bank account ending in x8277 (Ex. G, 6116 Chinook Way credit copy of the cashier's check). In an attempt to explain the discrepancy, agent Chapman testified that account x8277 likely belonged to the bank that issued the cashier's check (Ex. T p 194). When pressed further, Agent Chapman testified she did not know the technicalities of what happened between the withdraw of funds from a bank account and the issuance of the cashier's check by the bank. As such, the government allowed the jury to believe the bank account ending in x8277 belonged to the bank issuing the cashier's heck, when in reality the account belonged to Mr. Dezfooli.

This circular reasoning, combined with the failed LIBR analysis, constitutes substantial questions warranting immediate release pending appeal.

4.4 Actual Checks Used to Purchase Property

Continuing the mischaracterizations and misrepresentations upon what money was used to purchase which assets, the actual checks were used to purchase the Ruby Ridge and many other assets in the case were misrepresented and hidden from the Court and jury and withheld from Mr. Dezfooli in violation of his rights. For example, property, Ruby Ridge was actually purchased with check number 3519 drawn off of WF x8852 purchased for the amount $310.401.00, as evidenced by the check shown in exhibit G and not by the cashier's check the government claimed in trial (Ex. G comprehensive table and 180 Ruby Ridge).

5 THERE IS A SUBSTANTIAL QUESTION REGARDING THE GOVERNMENT'S LACK OF DIGITAL ATTRIBUTION EVIDENCE

In the digital age, when crimes are allegedly committed through online submission, the government must prove the identity. Here, all the PPP applications were submitted entirely online through web portals. Yet the government presented no electronic evidence establishing who submitted these applications:

- No IP address tracing to determine the origin of submissions
- No examination of any computers, phones, or electronic devices
- No digital forensic analysis of any kind
- No evidence establishing who completed the online forms
- No evidence establishing the location from where they were submitted

Notably, every other PPP case whether in this circuit or another has a substantial amount of electronic evidence and investigation. Remarkably, Mr. Dezfooli's case has none in trial and none in the discovery. The absence of electronic evidence from the record raises substantial questions: if such evidence existed, its non-disclosure during discovery and exclusion from trial would constitute a material omission, particularly given its exculpatory nature and direct relevance to actual innocence.

The following are developing cases which utilize digital forensics i.e. IP addresses, phones, etc.: *United States v. Freitekh, United States v. Fox, United States v. Baribe, United States v. Shaquandra Woods, United States v. Lawson, United States v. Sheppard, and United States v. Llori.*

Per Mr. Dezfooli's affidavit, he mentions (Ex. I, Affidavit #2), "all the applications were completed, signed, and submitted online at an unknown location by unidentifiable parties, no electronic evidence or tracing was done to prove location or identity." (Ex. I, Affidavit #2). In fact, if electronic forensics were employed by the government, it was not disclosed through trial or in the discovery.

6 THERE IS A SUBSTANTIAL QUESTION REGARDING THE JURISDICTIONAL SUFFICIENCY OF THE INDICTMENT

The indictment is void ab initio for failing to specify which banking regulation Mr. Dezfooli allegedly violated (Ex. F). When a federal statute criminalizes regulatory violations, the indictment must identify the specific regulation breached. *United States v. Pirro*, 212 F.3d at 92. This failure is particularly fatal given *United States v. Hotch's* requirement that defendants receive fair notice of charges against them, and *United States v. Mersky's* holding that material variance between charged and proven conduct constitutes reversible error. The relationship between § 1344 and its implementing regulations is not optional, they are interdependent. This statute criminalizes violation of banking regulations, meaning without specifying the regulation, no crime is alleged, *Skilling v. United States*, 561 U.S. 358, 402-03 (2010).

Here, 18 U.S.C. § 1344 criminalizes schemes to defraud financial institutions in violation of banking regulations. Yet the indictment did not identify which of the hundreds of potentially applicable regulations was allegedly violated. This omission is particularly significant given that the SBA Form 2483 warns applicants of potential prosecution under 18 U.S.C. § 1001 for false statements to the SBA --not under § 1344 for bank fraud.

Moreover, banks cannot be victims under § 1344 where, as here, they bore no financial risk (Ex. M, N). The PPP loans were 100% guaranteed by the SBA, and banks received processing fees for their services (Ex. M, N). As this Court held in *Shaw v. United States*, 137 S. Ct. 462, 467 (2016), the bank must be the actual victim of the fraud. Here, banks were compensated intermediaries, not victims (Ex. M, N).

The failure to allege an essential element of the offense, which regulation was violated, presents a substantial jurisdictional question requiring reversal.

7 THERE ARE SUBSTANTIAL QUESTIONS REGARDING THE DENIAL OF SIXTH AMENDMENT RIGHTS

Mr. Dezfooli's Sixth Amendment rights were violated in multiple ways, each constituting structural error requiring reversal.

7.1 Denial of Counsel of Choice

The government's freezing of Mr. Dezfooli's untainted corporate or untainted personal assets forced him to lose counsel of his choice. This Court held in *Luis v. United States*, 578 U.S. 5 (2016), that the pretrial restraint of legitimate, untainted assets violates the Sixth Amendment. Here, properties frozen by the government, including 176 Glen Falls, were purchased with funds from accounts unrelated to any PPP loans, a fact now confirmed by unredacted bank records (Ex. G).

7.2 Complete Abandonment by Appointed Counsel Creating Chronic Error

Mr. Gaffney's abandonment of Mr. Dezfooli during critical post-trial proceedings constitutes the type of complete failure that triggers presumed prejudice under *United States v. Cronic*, 466 U.S. 648 (1984). After filing a Rule 29 motion, Mr. Gaffney did not file a reply to the government's response, failed to inform Mr. Dezfooli of hearings, and refused to file critical objections documenting the false evidence. Mr. Gaffney represented to the both the Court and Mr. Dezfooli that he would file necessary proceedings, forfeiture objections, and judgment motions (Ex. R). Instead, counsel filed to withdraw without prior notice, effectively abandoning Mr. Dezfooli's claims and exposing him to irreparable harm in violation of his fundamental constitutional rights. This left Mr. Dezfooli effectively unrepresented at a critical stage constituting denial of effective assistance of counsel.

This complete failure to subject the prosecution's case to meaningful adversarial testing at a critical stage requires reversal without any showing of prejudice. *Cronic,* 466 U.S. at 659.

7.3 Denial of Access to District Court

The District Court's suppression of thirteen properly filed motions violates the constitutional right of access to courts established in *Ex parte Hull,* 312 U.S. 546 (1941), and *Bounds v. Smith*, 430 U.S. 817 (1977). Despite clerk-stamped receipts proving filing on July 25 and 29, 2025, (Ex. K). no docket entries exist and no rulings were issued (Ex. J). These motions contained proof of the fabricated Wells Fargo declarations (Ex. A) and evidence of temporal impossibility (Ex. G) critical evidence that would not be considered.

7.4 Denial of Access to Ninth Circuit Appeals Court

The circumstances surrounding the Ninth Circuit Clerk's Order dated October 3, 2025 (Ex. D) raise procedural and constitutional concerns that independently seeks this Court's intervention.

On September 24, 2025, Mr. Dezfooli filed a pro se Emergency Motion for Release Pending Appeal with supporting exhibits (Ex. L). The Ninth Circuit docket showed these filings as "Miscellaneous Pro Se Filings" and had several missing exhibits (Ex. P, docket entries 8-34).

On October 1, 2025, the docket showed no order or ruling on the emergency motion, only that counsel had been appointed Nunc Pro Tunc effective September 11, 2025 (Ex. P, see DE 35, 36).

On October 3, 2025, concerned about the missing and misidentified docket entries, an email to the Ninth Circuit Clerk inquiring about the status of the September 24th emergency motion and noting that "some exhibits are out of order and several missing from the docket" (Ex. Q).

Only after this inquiry did an Order by the Clerk appear, purportedly dated October 3, 2025, stating the Court would "take no action" on the emergency motion (Ex. D).

The Order was issued by the Clerk, not a judge and contained no judicial signature and it appeared on the docket after the inquiry about the remaining exhibits; these remaining exhibits, in question, were then filed after the Order, docket entries 38 and 39 (Ex. E).

This raises a substantial constitutional question: Does a Clerk have authority to dispose of emergency motions for release, or must such determinations be made by Article III Judges?

The pro se emergency motion for release pending appeal (Ex. L) was dismissed by the Court through the Clerk and was not given judicial determination, the Ninth Circuit has effectively denied Mr. Dezfooli's constitutional right to seek release pending appeal. When Mr. Dezfooli attempts to exercise his rights to pro se, or access the Court, his filings are either struck, supressed, or in the above mentioned, dismissed through irregular administrative procedures rather than judicial determination.

8 THE TEMPORAL IMPOSSIBILITY DEMONSTRATES ACTUAL INNOCENCE

The timeline alone proves trial misconduct. As mentioned in section 2 (section 2.2), the Nelson Ridge property central to Counts 6 and 10 was purchased in June 2021 (Ex. G). However, all PPP funds in account WF x3281 were fully depleted by February 2021, four months earlier.

Money that no longer exists cannot be used to purchase property four months later. The unredacted checks confirm funds came from an unrelated bank account, not from any PPP account (Ex. G).

Actual innocence has long been recognized as requiring relief. *Schlup v. Delo*, 513 U.S. 298 (1995). Here, the impossibility of the charged conduct presents the strongest possible case for such relief.

9 OTHER SUBSTANTIAL QUESTIONS AND GOOD REASONS TO BELIEVE THIS COURT WOULD GRANT REVIEW AND SUPPORT RELEASE

These questions have nationwide importance and warrant this Court's review.

Although § 3143 does not require Mr. Dezfooli to show this Court would grant certiorari, there are compelling reasons to believe it would. Additional substantial questions include:

Court Clerk Judicial Authority and Procedures: Can a Court Clerk dispose of an emergency motion for release pending appeal through Court Orders absent from any judge signatures?

Digital Evidence Requirements: In an era where crimes are increasingly committed online, what form of evidence and jurisdiction must the government present to establish identity?

Fabricated Evidence: Can a conviction stand when based on demonstrably false declarations?

Due Process Notice: Must an indictment specify which regulation a defendant allegedly violated? Specifically, does a bank fraud indictment specify which banking regulation a defendant allegedly violated to put the defendant on proper notice?

Sixth Amendment Rights: What remedy exists when counsel completely abandons a client post-trial? When can a defendant invoke the right to self-representation and preserve the record by filing into it?

Other Good Reasons to Believe:

Material Variance: The variance between the indictment (alleging use of specific PPP accounts) and the proof at trial (showing use of different accounts) constitutes a constructive amendment requiring reversal under S*tirone v. United States*, 361 U.S. 212 (1960).

Sentencing Error: The District Court's loss calculation of $11.2 million rests entirely on the false premise that PPP funds were used. With proper calculation based on actual evidence, the guidelines range would be 0-6 months, less than the 22 months Mr. Dezfooli has already served

10 MR. DEZFOOLI SATISFIES ALL OTHER REQUIREMENTS FOR RELEASE

Mr. Dezfooli poses neither flight risk nor danger. He is a lifelong Nevada resident who has lived at the same address since 2003. He voluntarily surrendered his passport at the case's outset and voluntarily self-surrendered for detention. With Criminal History Category I and only 9% recidivism risk --among the lowest of any category --he presents no danger (United States Sentencing Commission, Measuring Recidivism, Exh. 11, at 30). His family is prepared to offer their homes as security, and he will accept any conditions the Court deems appropriate.

11 EXCEPTIONAL CIRCUMSTANCES WARRANT RELIEF UNDER § 3145(C)

Even if the standard requirements were not met, exceptional circumstances under 18 U.S.C. § 3145(c) warrant release. Mr. Dezfooli's imminent transfer will cause irreparable harm: permanent loss of thousands of legal documents, inability to access protective-order discovery without counsel, and the suppression of thirteen critical motions by the District Court. As the Ninth Circuit recognized in *Garcia,* 340 F.3d at 1018, such circumstances justify release even absent satisfaction of § 3143(b).

12 IRREPARABLE HARM WARRANTING EMERGENCY RELIEF

Mr. Dezfooli's imminent transfer will cause irreparable harm that effectively forecloses his ability to pursue his meritorious appeal. Most critically, transfer will result in the permanent destruction of thousands of pages of non-transportable legal documents under Bureau of Prisons regulations, including original trial transcripts with annotations proving prosecutorial misconduct, unredacted bank records establishing actual innocence, and work product essential to his appeal, harm this Court has recognized "seriously and unjustifiably frustrates [the] efforts to pursue a nonfrivolous legal claim." *Lewis v. Casey*, 518 U.S. 343, 353 (1996); see also *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (meaningful access to courts requires adequate legal materials). Post-transfer restrictions limiting him to 300 minutes monthly of phone access (approximately 10 minutes daily) while detained thousands of miles from the Ninth Circuit, potential counsel, and witnesses will render him unable to meet appellate deadlines, respond to government briefs, or coordinate with counsel, effectively abandoning his appeal. *Procunier v. Martinez*, 416 U.S. 396, 419 (1974) (geographic barriers can deny court access); *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (Sixth Amendment requires effective assistance).

As this Court recognized in *Hilton v. Braunskill,* 481 U.S. 770, 777-78 (1987), irreparable harm exists where "denial of bail pending appeal might have irreparable consequences for the appellant's appeal"-- here, transfer will terminate Mr. Dezfooli's ability to prove his innocence through evidence of fabricated declarations and temporal impossibility, damage that cannot be remedied even if his appeal ultimately succeeds.

CONCLUSION

For the foregoing reasons, Mr. Dezfooli respectfully requests that his application be granted and that he be released pending conclusion of his appeals, including a petition for a writ of certiorari, if timely sought. If necessary, Mr. Dezfooli respectfully requests that the Court issue an administrative stay to allow sufficient time to consider this matter.

Mr. Dezfooli should not be forced to continue serving a sentence obtained through the government's use of fabricated evidence while substantial constitutional violations remain unaddressed and critical motions remain suppressed. The multiple substantial questions presented, each independently requiring reversal, mandate his immediate release or such further relief as justice requires.

October 10, 2025

Respectfully submitted,

/s/ Meelad Dezfooli

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Additional material from this filing is available in the Clerk's Office.