IN THE SUPREME COURT OF THE UNITED STATES
October Term 2025

CASE NO: ________________

PHILLIP TIMOTHY HOWARD,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT
Consolidated Case Nos. 23-13871 and 24-10042

SHERYL J. LOWENTHAL
CJA Appellate Counsel for
PHILLIP TIMOTHY HOWARD
221 East Government Street
Pensacola, Florida 32502-6018
Tel: 850-912-6710
Email: sjlowenthal@appeals.net
The Florida Bar No. 163475

South Florida Office
9130 S Dadeland Blvd. Suite 1511 Miami Florida 33156-7851 Tel: 305-670-3360

QUESTIONS PRESENTED

Whether the judgment of the United States Court of Appeals, Eleventh Circuit, so far departs from the accepted and usual course of judicial proceedings, or sanctions such a departure by the district court as to call for the exercise of this Court's power of supervision in that it affirmed the conviction and sentence imposed on Dr. Howard where:

(1) the record is clear that the guilty plea was entered to avoid a seven-week trial with possibly 75 witnesses, and

(2) there was no evidence of *mens rea*, because Dr. Howard did not proximately cause harm to any alleged victim and was not guilty of a RICO of one?

PARTIES TO THE PROCEEDINGS

The parties in the Northern District of Florida were the prosecution, the United States of America, and Dr. Phillip Timothy Howard, the Defendant.

In the United States Eleventh Circuit Court of Appeals, Dr. Phillip Timothy Howard was the Appellant, and the United States of America was the Appellee.

In the present proceedings on Petition for Writ of Certiorari before this Court, Dr. Phillip Timothy Howard is the Petitioner and the United States of America is the Respondent.

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REPORT OF THE ELEVENTH CIRCUIT OPINION AND THE FINAL JUDGMENT IN THE DISTRICT COURT

The non-published opinion of the Eleventh Circuit Court of Appeals in *United States v. Howard,* was issued on January 7, 2026. A copy is in the Appendix at the end of this Petition, pages 1 to 18. A petition for rehearing was filed and was denied by order of March 3, 2026. That order is in the Appendix, pages 19 to 20.

The final judgment of conviction and sentence of the United States District Court, Northern District of Florida, was entered on November 14, 2023, and is in the Appendix at pages 23 to 30.

The order of the district court appointing the Federal Public Defender to represent Dr. Howard was entered on December 1, 2022. The order appointing undersigned as CJA appellate counsel was entered on November 30, 2024. Both orders are in the Appendix at pages 31 and 32.

Statement of Jurisdiction

The opinion/judgment of the Eleventh Circuit was entered on January 7, 2026. The order denying the petition for rehearing was entered on March 3, 2026. This petition was timely filed within 90 days under Rule 13.1 of the Supreme Court Rules.

The Appellate Jurisdiction of this Court is invoked under Article III, Section 2, of the U.S. Constitution, under 28 United States Code, Section 1254, and Supreme Court Rules 10.1(a) and (c), and 13.

This Petition is filed within 90 days of the order denying a timely-filed petition for rehearing in the Court of Appeals. The jurisdiction of the Eleventh Circuit Court of Appeals was invoked under Title 28, United States Code, Section 1291, granting United States Courts of Appeals jurisdiction over appeals from final decisions of the U.S. District Courts.

CONSTITUTIONAL PROVISIONS

Fifth Amendment

Capital Crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in the cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Sixth Amendment

Jury trial for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and 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.

Supreme Court Rule 29
Corporate Disclosure Statement

There are no publicly held companies involved in this case. Certificates of Interested Persons were included in documents filed below. Web-based CIP's were entered online: "Nothing To Declare."

Proceedings in the District Court and in the Eleventh Circuit Court of Appeals

Statement of the Case and Facts

On October 5, 2022, a Northern District of Florida (Tallahassee), grand jury returned a single-count, single-defendant indictment against Phillip Timothy Howard, charging RICO with 15 allegations. Dr. Howard was an ordained minister, a university professor, and a 30-year Florida lawyer. The Public Defender was appointed. He was released pretrial.

From October 2022 until August 2023, in anticipation of trial, the parties filed motions and pleadings including motions *in limine*, proposed voir dire, proposed jury instructions, witness lists, and exhibit lists. On July 28, 2023, the Government filed a trial brief.

On August 3, 2023, the parties entered a written plea agreement and factual proffer and a change of plea hearing was conducted. The plea was accepted. Dr. Howard was found guilty.

In October 2023 the government filed a motion for a forfeiture money judgment. The memoranda and exhibits were sealed, as were hundreds of other case documents. In late October Dr. Howard filed second and third responses to the Presentence Investigatoin Report. A final report was prepared with redacted victim statements attached.

On November 6, 2023, following a lengthy hearing, the court sentenced Dr. Howard to prison for 168 months, three years supervised release, a $100 special assessment, and $12,641,941.00 restitution. He was remanded to custody. The Judgment and Statement of Reasons were docketed on November 14, 2023. A notice of appeal was filed November 27th. In a November 28, 2023, telephone hearing, forfeiture was ordered. The Government filed 14 redacted exhibits. On November 29th the Public Defender moved to withdraw. Undersigned was appointted for appeal. An amended notice of appeal was filed addressed to the amended final judgment that included forfeiture.

Dr. Howard is incarcerated in the Atlanta Federal Correctional Institution. A copy of the judgment of November 14, 2023 (docket 104), is in the attached Appendix. The Eleventh Circuit consolidated appeals 23-13871 and 24-10042. Following briefing and without oral argument, the Eleventh Circuit entered an 18-page unpublished *per curiam* opinion.

Relevant Facts

The one-defendant, one-count RICO indictment alleging fifteen acts in violation of 18 U.S.C. Section 1962(c) charged fraud in worthless NFL claim collateral in the NFL class-action concussion litigation, and lenders' failure to collect NFL claim collateral. Dr. Howard entered a written plea agreement and factual proffer. Following a plea colloquy, he was found guilty and sentenced to 168 months' incarceration and was ordered to pay restitution and forfeiture. The issues that Dr. Howard presented on appeal were: there was no fraud, no RICO, and no valid plea or basis to plead to actual criminal activity because the indictment alleged fraudulent, worthless claim collateral as the core basis for RICO, when in fact it all was fully monetized and collectable by lenders and investors; there was no basis to sentence for "relevant conduct" impacting lenders; there was no actual loss proximately caused by Dr. Howard; nor basis for a sentence to prison or restitution or forfeiture; and no valid plea or basis to plead to actual criminal activity.

In the appeal documents some individuals were referenced by their initials for “privacy considerations” that the Government insisted could not be breached. They will be referenced by initials here also. Dr. Howard was facing a 7-week trial with possibly 75 witnesses, and the risk of an astronomical trial-tax sentence upon a possible finding of guilt by a jury. Innocent people plead guilty. For over four decades, the criminal justice system has been based largely on guilty pleas. This Court may take notice that for a seven-week trial with hundreds of exhibits, thousands of pages of complex financial documents privately-retained attorney’s fees would be extraordinarily expensive.

Reasons for Granting the Writ

> The judgment of the United States Court of Appeals, Eleventh Circuit, so far departs from the accepted and usual course of judicial proceedings, or sanctions such a departure by the district court as to call for the exercise of this Court's power of supervision in that it affirmed Dr. Howard's conviction and sentence where:

First Reason

> The record is clear that the guilty plea was entered to avoid a seven-week trial with possibly 75 witnesses

Although the Eleventh Circuit found no error by the district court, **The Laws of Logic Verify No *Mens Rea*.** The record is devoid of a showing of *mens rea*. No loss or harm to alleged victims was proximately caused by Dr. Howard. His sworn testimony demonstrated absence of guilt. He may have failed to inform investors about SEC actions against DWR, manager of the investment fund, but Dr. Howard was unaware of that information until years after the offense charged. He also was alleged to have known that the medical doctor who proctored examinations for potential NFL concussion claimants, exercised discretion to modify test results. Those discretionary acts were totally accurate. Neurologists confirmed the diagnoses on formal review. Howard was unaware that the doctor exercised such discretion and had reasonable basis to rely on his opinions. Finally, any improper exercise of discretion would risk investment funds to loss upon formal and final medical review. Howard had no financial motive to support such a fraud.

In affirming Dr. Howard's conviction and sentence, the appellate court overlooked and failed to consider matters of fact and law clearly presented in district court transcripts and documents, and in the brief, reply brief, and rehearing petition that were filed.

Phillip Howard testified under oath six times, for two days before the SEC, two days before the FBI, and twice at length in the district court. No statement nor any document was found to be inaccurate or false. Following a three-year investigation, the U.S. Securities and Exchange Commission found no criminal conduct.

These undisputed facts are cited in detail in record documents including Appellant's Initial Brief, Reply Brief, Motion for Release Pending Appeal, and Reply to the Response at Dockets 54, 68, 71, all demonstrating that Dr. Howard: (1) neither drafted nor provided the "Private Placement Memorandum" (PPM) to any party (docket 22, 55, 68:11); (2) provided all information he knew about DWR for disclosure, and it was disclosed Document 54: 11, 20; 71:L9); (30 1:, pp. 11, 20), (Doc. 71:9); (3) ***did not learn until years later***, that DWR failed to provide full disclosure; (4) neither marketed nor managed the inchoate 12-month university-related investment fund, and was out of office in tobacco trials, or teaching graduate and doctoral students overseas and in the United States; (3) he was the largest investor at nearly $1 million and his son and (now former) mother-in-law invested; (4) he was well-off, did not need money, and was not money-motivated; (5) had no scheme to take money from anyone, money was not an object; (6) did not take money, and worked only to monetize accrued investment collateral; (7) did not know the distinction between accrued assets and profits in the quarterly statements prepared by DWR, or that they that failed to state "potential" before "profits;" (8) was the only one trying to do what was right; (9) the PPM (required reading and signing by all investors), disclosed investments designated into litigation finance and the risk of losing the entire investment (all supported by docket references); (10) the "Conflict of Interest Waiver" provided another layer of disclosure and risk of loss to the PPM to ensure no misrepresentation; it had to be read and signed by any client-investor; it disclosed conflict of interest and if any of his 7,000 clients chose to invest they were required to first have review by independent counsel; it clearly stated the risk of losing the entire investment (DE-80: 22) (Sealed Appx A) (Doc. 54: 9-11); (11) alleged fraud was impossible from the re-screening of 29 of 295 NFL brain-injury claims that were slightly lowered by the proctor (which was not known by Howard); and in any event, those preliminary screenings were 100 percent accurate at $5.2 million net for Cambridge entities, with 19.374% return on investment and interest of 39.9% (DE-94:10-11) (DE-113:1, Ex.1); (12) The indictment mistakenly implies that NFL claim loans were invalid as part of an alleged (non-existent) scheme stating: "Howard failed to disclose to former NFL player-investors that the NFL Concussion Settlement Agreement originally prohibited assignment of claims and later only permitted assignment of claims at 10% capped interests." (DE-1: 11, paragraph 30(d)). First, Howard did not have communications on investments with potential NFL concussion clients. Significantly in response to this inaccurate inference, all NFL claim loans were valid with industry standards of up to 40% return on accrued assets, and collectable upon payment, as verified in *In re: NFL Concussion Lit.*, 923 F.3d 96, 113 (3d Cir.2019) ("district court exceeded its authority…when it purported to void [December 7, 2017] contractual provisions [entered into in 2016 following 13 company industry standards] that went only to lender's right to receive funds after the player acquired them."); (13) the indictment incorrectly states that as part of this nonexistent scheme, real estate mortgage "investments in 'real estate' were non-revenue generating properties purchased in Howard's name and for Howard's personal use." *Id.*, paragraph 30(f). Dr. Howard explained that the real estate investment was not his idea, and was proposed for good returns on investments at the maximum interest rate of 18%APR. The "real estate" mortgages were paid in full at 18% APR and were "significant revenue-generating property" investments, verified in Bill Bogan's Independent Forensic Audit of Cambridge Entities;

(14) The indictment mistakenly implied that as part of this non-existent scheme Cambridge Entities planned and continued "…to invest almost exclusively in non-recourse, high-interest loans to former NFL

players who were awaiting potential NFL concussion class-action settlement payouts. Many former NFL player-investors of Cambridge Entities received advanced loans themselves, meaning they were loaned money (at high interest rates) from the same pot of money in which they already were invested. Howard failed to advise the former players of these facts." *Id.* paragraph 30(c). There was never a plan to invest in NFL concussion claims. It was not even a concept when the University's Applied Skills Project was begun in 2015. That idea arose in 2016 when DWR was Manager of the new private fund, a profitable investment into an established industry. The generic potential of investing in litigation finance also was listed in the Private Placement Memorandum. The few retired NFL claimant investors who also received loans did so because they wanted to receive some of the same returns the industry was receiving to reduce their risks. Finally, all loans were in fact "recourse" loans with recovery available if payment was not made. See testimony presented on behalf of Preferred Capital at Sentencing (DE-118).

(15) In paragraph 23(h) the Indictment incorrectly alleged that this non-existent scheme resulted in "enriching the Defendant." Dr. Howard

was the largest investor in the university project, at nearly $1 million. He received nothing, as verified by the three-year SEC investigation and issuance of an Order of Non-Disgorgement in *SEC v. Cambridge Entities, et al,* Case No. 4-19-cv-420 (ND Fla 2020), despite initial allegations of enrichment. See, Bogan's Forensic Audit. The University applied-skills project was not intended to, and never resulted in "enriching the Defendant" (DE-138: 47, 48). Dr. Howard was well-off, did not need money, was not money-motivated (DE-1: 28)(DE-54: 19-20)(DE-71). He did not take money from anyone (DE-68:8)(DE-73:18-26) (DE-118:14-21, 230, 244). He worked only to turn the cases into value for lenders and borrowers (DE:68:18)(Doc.7:5);

(16) the indictment mistakenly alleged that as part of the non-existent scheme Howard "offered advance loans on potential settlements to entice former NFL players to agree to his legal representation" and failed to disclose manipulation of the NFL medical claim process and resulting consequences." *Id.*, paragraphs 27 & 31(a)-(d). Offering advance loans on potential settlements as enticement for legal representation was logically impossible for "preliminary screening" of hundreds of partici-

pants with 132 staff and layers of review by scores of professionals from California and Orlando, Tampa, Tallahassee and beyond. There were some 300 retired NFL players. Each one first had to be a client before spending $8,000, months-to-a-year of work, travel, review by experts of thousands of pages of medical records, NFL history, travel for a live battery of 33 proctored neuropsychological exams over two days, three independent affidavits of brain decompensation, Clinical Dementia Rating testing and reports, exhaustive reports by neuropsychologists, brain MRI scans, and travel for clinical evaluation of all evidence, and in-person assessment by board certified neurologists. That all was required to complete a "preliminary review" for each potential client, to determine the likelihood of a "Potential NFL concussion claim;'"

(17) and that was for ***evaluation***, not for submission for payment; there was no benefit to wasting $8,000 for an invalid medical claim process. Independent brokers with 13 industry lenders, paid commissions on the loans, had to obtain the client's authority and present all of this evidence to the lender for their due diligence in determining whether to make a loan, and the amount. Dr. Howard never sought, communi-

cated, nor brokered any NFL claim concussion loan, and specifically recommended in writing against making such loans to his retired NFL claim clients; and Dr. Howard was out of office for months at a time in tobacco trials and University teaching overseas. He could not possibly manipulate any NFL medical claims process, especially when no claim was ever submitted for payment based only on preliminary screening; and when independent medical-claims reviews were completed and submitted for payment, 29 claims were identified when the Government interviewed EW who proctored the battery of 33 tests, that all were valid and paid NFL claims. verified by Federal Trustee Robert Carey who was court-appointed to oversee recovery of funds for Cambridge Entities (Doc.118: 101)(DE-94:10-11)(DE-113:1, Ex.1);

(18) the indictment incorrectly states that as part of this non-existent scheme Dr. Howard "…failed to disclose and misrepresented the former NFL player investors the structure of the Enterprise, and the conflicts of interest, and the criminal background of persons associated with or employed by the Enterprise." *Id.*, paragraph 29. Howard provided a comprehensive and independently documented history of DWR,

including an affidavit from DWR's attorney, DWR's successful FINRA recovery for all prior clients, his sentence to federal prison, his misrepresentations in his bankruptcy filing, and his SEC sanctions (DE-80:55) (Doc. 54:9-11). Years later, after all investors were in the fund, despite full disclosures of the conflict and waivers, Dr. Howard learned that under Florida Bar Rules the conflict could not be waived. He withdrew his participation in the fund and his listing as an officer. It was suggested by new management that his mother-in-law remain involved because she was the most senior investor. The new fund management added her as an officer;

(19) the indictment mistakenly states that as part of the nonexistent scheme, Dr. Howard provided former NFL players with prospectuses that incorrectly represented the primary focus of the Cambridge Capital Group Equity Option Opportunities, L.P., investment fund to be "opportunities from broad market indexes such as the S&P 500, Dow Jones Industrial Average, NASDAQ 100, and the Russell 1000" and "investment and trading in mortgage backed securities (MBS) and derivatives, asset backed securities (ABS) and derivatives, as well as US

and international distressed private and public debt securities and derivatives;" and that Dr. Howard "failed to disclose the status and earnings of former NFL player investment portfolios…calculated on highly speculative projections, not on actual performance." *Id.*, paragraphs 30a and 32. There was no misrepresentation. Dr. Howard did not draft the PPM or the list of investments, nor did he have skills, experience, or participation in those activities. The stated goal and mission of the PPM was accurate. DWR, manager for the fund that was active less than 12 months, did option trading on the S&P, Dow Jones Industrial Average, NASDAQ 100, and the Russell 1000. There was limited capital during most of the 12 months. In spring 2016 the immediate opportunity of NFL claim advance lost at nearly 40% return was found by TW and DWR. DWR started minimal investments of approximately $50,000 total into this opportunity. Unfortunately in fall 2016, to justify taking $500,000 from the fund, DWR accelerated these investments, claiming commissions on the loans, and profits on those accrued assets in quarterly reports prepared and issued by DWR. In reality there were actual accrued assets, but the profits were only potential and accrued later. *See*, Bill Bogan's

Forensic Audit. Dr. Howard, trusted TW and DWR to manage this new small fund, and was unaware of this as he was busy teaching overseas, engaged in tobacco trials, and out of office for months at a time (DE-80:101,102,105)(Doc.43:5-6). In March 2017 Dr. Howard was shocked to learn what DWR had done after ***DWR was sentenced to state prison for child abuse***.

Under the Laws of Identity, Contradiction, Excluded Middle, and Bivalence (Laws of Logic that objectively determine reality and sanity), this evidence is either true or false. It cannot be both. Absent any allegations that this evidence is false, then it all is true.

These statements, documents, and facts are either true or false. No one, not the Government, not the district court, and not the Eleventh Circuit found or showed that they were false. No one claimed that the disclosures of full-risk and conflict were false or were not read and signed.

Under the Law of Excluded Middle and the Law of Bivalence (Laws of Logic in mathematics and computer science), they either are true or false, but cannot be both. Absent any allegations that they were false, they are true.

Second Reason

> There was no evidence of *mens rea*, because Dr. Howard did not proximately cause harm to any alleged victim and was not guilty of a RICO of one.

Proof of Factual and Actual Innocence is Replete in the Record

Supreme Court Rule 10 states that review on writ of certiorari is not a matter of right, but rather of judicial discretion, and a petition for writ of certiorari will be granted only for compelling reasons. This petition arises from complex paper-intensive litigation involving financial matters concerning NFL class-action concussion litigation, and thousands of pages of SEALED documents, presenting compelling reasons.

Violating Laws of Logic and Reality, to find the innocent guilty by plea regardless of the truth, is now a core and acceptable (but inconsistent) outcome of the criminal justice system. Moreover, there are instances of prosecutors and agents, immune from liability, engaging in coercion or intimidation of defendants and witnesses, coaching witnesses, using informants and even threatening defendants' family members with indictment. The system is illogical and arbitrary. When did truth become irrelevant to justice, and winning the narrative to support prosecutorial-incarceral cultural incentives become truth?

Factual, actual innocence is the opposite of guilt. Twisting Laws of Logic for the innocent to be declared guilty by plea is a core, acceptable but inconsistent outcome in the criminal justice system. Moreover, there are instances of prosecutors and agents being immune from coercion or intimidation of defendants and witnesses, coaching witnesses, using informants, threatening family members, and even hiding evidence. Such practices guarantee incarceration of innocent people as seen in the dramatic increase in United States prison populations since plea bargaining became the norm decades ago. The analysis is simple, hundreds of thousands of U.S. citizens and others cannot be factually actually innocent, and at the same time legally guilty unless the system is illogical and arbitrary.

Over 90 percent of all state and federal prosecutions result in guilty pleas. Coercive pleas proliferated in the 1970's and are regularly regarded as a "necessary evil," to prevent grave risks from prosecutorial overcharging that compels innocent defendants attempting to avoid draconian sentences, to plead guilty to lesser offenses. *See*, the dissent by Justice Scalia, joined by Justice Thomas, in *Lafler v. Cooper*, 566 U.S. 156 (2012), citing *Missouri v. Frye*, 566 U.S. 135 (2012), stating that plea bargaining, no longer a "necessary evil" has been elevated to "a constitutional entitlement …no longer [just] a somewhat embarrassing adjunct to our criminal justice system [but it] **is** the criminal justice system." (*Ibid.*) (emphasis added). Justice Scalia further wrote:

> …. [he was] less saddened by the outcome of this case than I am by what it says about the Court's attitude toward criminal justice. The Court today embraces the sporting-chance theory of criminal law, in which the State functions like a conscientious casino-operator giving each player a fair chance to beat the house, that is to serve less time than the law says he deserves. And when a player is excluded from the tables, his constitutional rights have been violated *** Today's decision upends decades of our cases … and opens a whole new boutique of constitutional jurisprudence ("plea bargaining law") without even specifying the remedies the boutique offers.

The appellate opinion, the subject of this Petition, appears to have disregarded unrefuted evidence of actual factual innocence presented by Dr. Howard and his attorney demonstrating more likely than not, that no reasonable juror would or could have found him guilty beyond a reasonable doubt. *Schlup v. Delo*, 513 U.S. 298, 327 (1995). The opinion is premised on facts that explicitly were denied in the plea allocution, and confusing, inconsistent statements by counsel (perhaps interpreted as guilt); and testimonial evidence under oath from Dr. Howard before the SEC, the FBI, and in the unrefuted record of proceedings in the district court. Transcripts of his testimony before the FBI and the SEC are in the record under seal by the district court.

The opinion of the Eleventh Circuit was founded upon a coercive plea agreement in this coercive plea-based criminal justice system. The district court realized that Dr. Howard did not agree to the facts when it said: "So you are not admitting to every fact in the indictment just like you wouldn't in any case…" and continued: "That sounds a little bit like you came into knowledge of this later and didn't do anything wrong on the front end. Is that what you are saying? Dr. Howard responded at DE-73:14-21; Doc. 54:28-29:

> That's my understanding Your Honor, yes, … I didn't try to take any money…

The public defender attempted to salvage the plea, at DE-73: 21-22:

> I think what Mr. Howard's saying is – when he became aware of it, … And did not -- he knew them to be false at some point [two years later, when not managing the fund and when managers were awaiting results of the forensic audit to provide a fulsome report to the handful of investors] …he knew them to be false and did not inform the victims [because Dr. Howard had no authority to do so…]

> …it was not, ***he acknowledges and he can tell that 'he intentionally did not' – he intentionally misrepresented. That was the misrepresentation***…(emphasis added).

Dr. Howard then said: "I didn't try to take any money … I delegated and I should not have" (DE-73: 21-22). The public defender's statement that "… he intentionally did not – he intentionally misrepresented…and that was his misrepresentation" was confusing and muddled. *See, U.S. v. Jeffries*, 98 F.2d 1510 (11th Cir. 1990) (muddled plea).

Howard specified of record that his plea was limited only to Indictment allegations 29(a) and 31(a) which charged unknown slight adjustments by the proctor in preliminary screenings for NFL brain injuries (Doc.71: 7, 8) (DE-73: 38). The adjustments ultimately were all found to be accurate based on findings and reports of neurologists and other experts.

Robert Carey, Federal Receiver for Cambridge Entities was appointted in 2021 by former Northern District of Florida Chief U.S. District Judge Hinkle. Receiver Carey's primary duty was to recover monetized NFL claim-collateral for Cambridge Entities, and verify that the *corpus in quo* of 29 NFL claims was fully monetized for a net of $5,200,000 for Cambridge Entities (DE-118:98-102) (Init.Br. pp 4-7) (Ans. Br. p.5)(Doc. 54, p.21):

> Q: Do you know or do you have an estimated amount that Cambridge Entities could recover in cases from the NFL that already have been resolved?
>
> A: I do not have the number in front of me, but I believe the number was similar to the number the parties agreed…somewhere in the neighborhood of … $5,200,000 … and I didn't include anybody that was not a player [for] the loans or investments.

Objective reality, the "Law of Identity," is that in 29 NFL claims at issue, where EW exercised discretion not only as proctor but also as an experienced physician, adjusting 2 of 3 test results, was held in the opinion of the Eleventh Circuit, to be fraud by Howard, although he denies knowing about slight adjustment of preliminary screening tests. Even so, the source of the alleged fraud was nonexistent because preliminary testing cases were monetized for $23.7 million resulting in net $5,200,000 for Cambridge Entities to collect(Doc. 54, p.22).

Under the Law of Non-Contradiction, "already been resolved" means "resolved and paid." It cannot mean "not resolved" and "not paid."

If lenders and investors had difficulty collecting resolved and monetized loan collateral, that is not fraud. It is a normal part of business risk in litigation finance. *See, Old West Annuity v. Apollo Group*, 605 F.3d 856 (11th Cir. 2010) (lender and investor claims to be repaid from monetized or liquidated collateral); *In Re: Lehman Brothers Holding, Inc., v. Bank of America N.A.,* 515 B.R. 476 (S.D. NY, June 28, 2018) (monetized or liquidated collateral is actual and should be distributed to lenders and creditors pursuant to waterfall agreement).

The opinion states on page 5 that Dr. Howard "actively conceal[ed] DWR's past." This was explicitly and repeatedly rebutted and denied in Howard's testimony. Never refuted or disproven, his testimony was ignored by the district and appellate courts. Defense counsel said it did not happen. The court recognized that the facts to which Howard plea-ded guilty were not criminal conduct. The court inquired and Howard responded, DE-73:14-26; Rply Br 27-31:11:

> A: …I wasn't aware of it at the time when I found out [two years later] when GM and AW were managing the fund and awaiting the forensic audit by BB to see what DR did, I did not…inform the clients.
>
> Q: Okay … but you would also have to have knowingly committed two acts of racketeering activity, which in this case…I do not believe would include finding out that someone else did, and not fixing it….

A: DWR gave me evidence that he…pled guilty to fraud. And I got a sworn statement from his attorney… He also gave me evidence that he did a FINRA action with former Assistant Attorney General Bill Owens and recovered everything for his clients. *** I did not go beyond what he told me and [I] relied on that … I did not take the next step and verify …. And ultimately that leads to misrepresentation to the clients.

Q: ***Well you are not charged with misrepresentation to a client… There can be misrepresentations that aren't criminal*** * * * That sounds a little bit like you came into knowledge of this later and didn't do anything wrong on the front end. Is that what you are saying?

A: That's my understanding, Your Honor yes… I didn't try to take any money. [See, DE-73: 14-26; and Reply Brief pp. 27-31]

Defense counsel expressed Howard's innocence at the plea colloquy, repeatedly stating as to the critical *mens rea* that Howard did "not" know of false information and did not misrepresent anything. Everyone understands the meaning of the word "not." The Merriam-Webster Dictionary (2016 Ed.), defines "not" as "to make a negative of a group of words."

Aware of his factual actual innocence, Howard's effort to plead guilty was ***to avoid a seven-week trial with possibly 75 witnesses***. He intended to plead only to failure to update "new information" about DWR that he learned years later. Defense counsel said Dr. Howard "…

did ‘not’ [know] – [but] he knew them to be false at some point” (DE-73: 21-22). His statements were incomplete, not false. The incompleteness was only learned years later.

Repeating for a second and third time Howard’s actual factual innocence, the public defender said “…it was ‘not’…he acknowledges, and he can tell, he did not intentionally misrepresent [and] That was the misrepresentation.” *Ibid.* Counsel’s comment that Howard did “…not misrepresent, and that was his misrepresentation…” violates the Laws of Contradiction, of Excluded Middle, of Identity, and the Law of Bivalence. *See*, Justice Alito’s dissent in *Haaland v. Brackeen,* 599 U.S. 255 (2023), that statements such as “absolute is not absolute,” and that “plenary is not plenary,” violate the Laws of Logic. Any other interpretation of the statement “Dr. Howard did not misrepresent…” would be nonsensical and meaningless.

The illogic and violation of the Law of Bivalence necessarily goes to the truth that defense counsel and Dr. Howard both knew that he did not know and did not misrepresent, as stated on the record by both. Any other interpretation violates logic and the Sixth Amendment “beyond a reasonable doubt" standard. Howard and his attorney know that he is factually actually innocent, and that is why he said "I did not" at each critical juncture of the *mens rea* portion of the transcript. For the opinion to interpret "did not" as "did" is a logical fallacy that transmogrifies innocence into guilt.

Opinion to the contrary, the uncontroverted sworn testimony showed that Dr. Howard did not conceal DWR's past. Everything he knew was timely disclosed, including the PPM and the separate Memo with all known documents attached. They were given to all potential investors. The Eleventh Circuit ignored or overlooked in its opinion, that this is a *non-sequitur*. Sworn testimony of record was overlooked. Systemic problems of plea coercion likely contributed to the findings in the opinion before this Court for review. The only thing Howard admitted was delegating tasks to others to manage the fund, which is not a crime (DE-73:22; Doc.68, pp. 17-21):

> Yes, I delegated and I should not have…I had a duty to [provide updated information about DWR learned years later when I was not managing the fund]; but GM and AW were managing it. That was not a crime…I did not do that.

This is the opposite of the opinion and its adoption of the government's version of events, overlooking sworn testimony in the plea colloquy, specifically "deny[ing] fraud" and "deny[ing] *mens rea*". The opinion relies on *non-sequitur* illogic and misstatements of reason and truth, violating reason, and misplacing Howard's statements. Howard said he learned years later that DWR provided incomplete disclosures, and did not "fix it" because GM and AW were managing the fund and awaiting results from a forensic audit. Howard did not try to take any money (DE-73: 24).

As the largest investor, if this was fraud, "…I am ripping myself off as well." (DE-73: 26). The Eleventh Circuit interpreted that as a concession. Howard may have had a moral duty. He did nothing criminal, was not involved with the fund, and had no intent (DE-76-1, p.7). The opinion states that Howard "convinc[ed] former NFL players to invest over $4 million with The Cambridge Entities. But sworn testimony was clear that did not happen. Howard was neither marketing nor managing the fund. The SEC found that no benefit was sought or received by Howard (DE-68: 11-12). He testified at DE-118: 244, see, Doc 71-7, that:

> It was not some scheme designed to take from, or illegally benefit anyone. I'm the largest investor…I put in the most money. I lost the most.

The opinion found that Howard "misrepresent[ed] the nature of clients' investments and returns" (*Id.*), but sworn testimony confirmed that he did not and could not because the PPM disclosed risk of loss in investments into litigation finance. Howard testified about that for two days before the SEC, and two days before the FBI, and under oath in the district court. The SEC found no criminal conduct.

Considering the coercive plea-bargaining atmosphere and steep incentives for the innocent to plead guilty, it is not naïve to assume that all, or maybe most defendants in the over 90% of convictions obtained through guilty pleas, are factually innocent. *See*, Sarah Vendzules, "Hidden Fact Finding in Immigration Decision-Making, Guilty After Proven Innocent," Vol. 30, N. 13 July 1, 2025, Bender's Immigration Bulletin

For a well-cited summary of literature on the prevalence of false pleas and factors that contribute to them, see Josh Bowers "Punishing the Innocent," 156 U.Pa. L.Rev. 1117 (2018), (arguing that guilty pleas by innocent defendants are a rational and expected part of the criminal justice system).

In *United States v. Zapata*, 792 F.Supp.3d (S.D. NY July 21, 2025), Judge J.S. Rakoff, who published "Why the Innocent Plead Guilty and the Guilty Go Free" (2021), reviews the corrosive impact of coercive plea bargaining on the legitimacy of the criminal justice system, stating:

> Under the now-endemic system of "plea bargaining" about 98% of all federal criminal indictments are resolved through guilty pleas to lesser offenses. *See, United States v. Lajeunesse*, 85 F.4th 679, 693 n.8 (2d Cir. 2023). The driving force that leads most defendants to forego trial and enter into such pleas is a desire to reduce the lengthy terms of imprisonment mandated or recommended by law following conviction at trial…But so great is the disparity in bargaining power between the Government and the typical defendant that the defendant as a practical matter, has no choice but to accept the Government's plea agreement exactly as worded. And while most courts continue to indulge the fiction that plea agreements are negotiated contracts, as such, the truth is that the broad waivers …, in these contracts of adhesion is almost always presented by the Government as non-negotiable." Susan R. Klein, et al., "Waiving the Criminal Justice System: An Empirical and Constitutional Analysis, 52 Am.Crim.L.Rev. 73,75 (2015). "Indeed, as District Judge Charles R. Breyer has stated, "Plea agreements are contracts of adhesion. The Government offers the defendant a deal, and the defendant can take it or leave it. If he leaves it, he does so at his peril. That Faustian choice is not really a choice at all for a man of defendant's means. *United States v. Osorto*, 445 F.Supp.3d 103, 104-10 (N.D.Cal. 2020).

The United States plea system is based on two proven and objecttively false premises placing innocent people in prison, when the judiciary knows the plea system is false: (1) "only the guilty plead guilty."

Brady v. United States. 397 U.S. 742 (1970); and (2) having counsel protects the innocent from governmental coercion. *Menna v. New York*, 423 U.S. 61 (1975). See, "The ABA Criminal Justice Task Force on Plea Bargaining, 2023 Report on Coercive Plea Bargaining;" and H. Mitchel Caldwell, Coercive plea Bargaining, the unrecognized Scourge of the Justice System, 61 Cath. U.S. L.Rev. 63, 64 (2011), cited in *Fuqua v. Pridgen*, 2013 U.S. Dist. LEXIS 204691 (M.D.Ga. Albany Div. Feb. 20 2014).

The objective reality, based on objective ABA research is that 78% of defense counsel advise "innocent" clients to plead guilty to avoid the government's coercive capacity to triple a sentence if they take the risk of trial. Some 90% of defense counsel had clients choose to plead guilty who were innocent. See, "Victims of Coercive Plea Bargaining: Defendants Who Give False Testimony for False Pleas" 72 Am.U. L.Rev., 1919 (Aug 2023).

Reliance on plea agreements is riddled with clear, gaping falsehoods known to courts to be false, sentencing thousands of innocent people to prison for tragically long sentences (Dr. Howard 14 years, until he is 76 years old), when he committed no crime, has no criminal history, is a professor, and served the public as Assistant Florida Attorney General, Private Attorney General, Chaplain, Coach, Sunday School Teacher, Deacon, Husband, Father, Son, Constitutional Law Instructor, Presidential Leadership Instructor, and Entrepreneur.

In *Rehaif v. United States*, 139 S.Ct. 2191 2195-97 (2019), this Court clarified that "Congress intends to require a defendant to possess a culpable mental state regarding each statutory element that criminalizes otherwise innocent conduct. *Rehaif* was decided in the context of whether the defendant knew he met the criteria for the offense of possession of a firearm by a person who was unlawfully in the United States, having overstayed a student visa. The government failed to prove he knew of his illegal immigration status (because he was no longer in school). This reasoning applies to Dr. Howard.

The record contains repeated sworn statements by Howard that he had "no culpable mental state" for any of the statutory elements; and that he engaged only in innocent conduct. Thus, his conviction violates *Rehaif* because there was no "fair notice" that (1) relying on DR's accurate but incomplete disclosures provided to all potential investors, and (2) disclosure of the potential for loss of investment, with (3) disclosure of conflict of interest in the university project and law firm to all 17 (of 7,000) clients who chose to invest (requiring independent attorney review before investing), and (4) disclosure of investment litigation finance, (5) monetization at a profit of 19.371% of all collateral at issue consistent with EW's preliminary screening of 29 of 290 NFL claims, (6) providing collateral of $150 million in monetized tobacco cases before knowing of any criminal investigation and (7) at least 33 unforeseen intervening third-party actions from state and federal courts, attorneys, borrowers, and lenders, hampering collections on monetized collateral.

These seven facts represent otherwise innocent conduct that has been criminalized. *See also, United States v. Metcalf*, 2025 U.S. App. LEXIS 24569 (9th Cir. Sept. 23, 2025) (for ambiguity, rule of lenity, constitutional avoidance, and presumption favoring scienter as articulated in *Rehaif*, defendant lacked fair notice that his conduct was criminal; reversed. Remanded with directions to dismiss indictment). Just as in the unanimous opinion in *United States v. Kelly*, 140 S.Ct. 1565 (2020), Justice Thomas in *Ciminelli v. United States,* 598 US 306 (2023) opined that federal fraud statutes protect individual property rights, and "…the government must prove not only that wire fraud defendants "engaged in deception," but also that money or property was "an object of their fraud." *Ciminelli* struck down the "right to control" theory of wire fraud, on the ground that the doctrine is inconsistent with Supreme Court precedent and statutory history, invalidating decades of prominent criminal prosecutions and imposes meaningful constraints on the breadth and conduct proscribed by federal fraud statutes.

A 2025 nonpublished opinion, *United States v. Auguste*, No. 24-10741 (11th Cir. April 30, 2025), affirmed Auguste's conviction for health care wire fraud. The opinion stated that to prove wire fraud the government must prove *inter alia*, that "… money or property was an "object of [the] fraud," citing *Kelly, supra*. *Auguste* slip opinion pages 11-12. *Auguste* also cited *United States v. Ward*, 486 F.3d 1212, 1222 (11th Cir. 2007) for the proposition that wire fraud requires that the defendant knowingly, willfully joined a criminal scheme.

Here, there was no joining, no scheme, no *mens rea*, and no object of property or money, all of which was stated by Dr. Howard at his change of plea and sentencing hearings. There was no fraud the government could prove beyond reasonable doubt.

Dr. Howard's sworn testimony verifies no fraudulent scheme: Doc.68:5,20: Doc.71:5,6: "I didn't try to take any money…it was not some scheme to benefit anybody. I'm the largest investor…I put the most money in. I lost the most."

In *United States v. Takhalov*, 827 F.3d 1307, 1312-13 (11th Cir. 2016), Judge Thapar (sitting by designation) wrote that it was clear in the Eleventh Circuit that a defendant "schemes to defraud" only if he schemes to "deprive [someone] of something of value by trick, deceit…or overreaching…But if a defendant does not intend to harm the victim 'to obtain, by deceptive means, something to which [defendant] is not entitiled, then he has not intended to defraud the victim." (citation omitted).

Admitting only to Indictment paragraphs 29(a) (DWR's updated information learned years later), and 31(a) (not knowing EW's adjusting 2 of 33 tests for 29 of 290 accurate "preliminary screenings" of monetized claims), those were not predicate acts for RICO (Doc.68:14-16) (Doc.71:4,5,7-9). Defense counsel's statements:"[Appellant] did not intentionally misrepresent and that was his misrepresentation" are confusing and not admissions (Doc.71:9-10). The District Court said, "That sounds a little bit like you came into knowledge of this later and didn't do anything wrong on the front end. Is that what you are saying?" "That's my understanding, Your Honor, yes,…I didn't try to take any money." *Ibid.* The District Court verified admission to paragraphs 29(a) and 31(a), but no other indictment facts: "So you are not admitting to every fact in the indictment just like… in any case…" *Ibid.* Counsel's comments were not admissions by Howard.

The opinion also violates United States Sentencing Guidelines Section 2B1.1 because there was no actual loss that was the proximate and direct cause of pecuniary harm to any alleged victim(s) by Dr. Howard, contrary to the Eleventh Circuit precedent in *United States v. Thomas*, 62 F.3d 1332 (11th Cir. 1995).

Finally, it violated fundamental due process to accept a coercive plea when the defendant specifically denied *mens rea* in the plea colloquy, and counsel tried to keep the plea alive by making confusing statements that "he did not intentionally misrepresent…and that was his misrepresentation." *United States v. Jeffries*, 98 F.2d 1510 (11th Cir. 1990); *United States v. Ngua Le*, Case No. 23-2088 (5th Cir. 2025); and see, Victims of Coerced Plea Bargaining: Defendants who give False Testimony for False Pleas," 72 Am.U.L.Rev 1919 (Aug. 2023); ABA Criminal Justice Task Force of Plea Bargaining, 2023 Report on Coercive Plea Bargaining.

CONCLUSION

Wherefore based on the foregoing arguments and authorities, Petitioner asks this Court to grant its writ to the Eleventh Circuit Court of Appeals to correct its opinion of January 7, 2026, and thereupon to remand for proceedings to reverse the acceptance of the plea, the judgment, and the sentence.

Respectfully submitted,

/s/***SHERYL J. LOWENTHAL***
Sheryl J Lowenthal,
Attorney at Law, Counsel on Appeal
for Dr. Phillip Timothy Howard
221 East Government Street
Pensacola, Florida 32502-6018
Phone: 850-912-6710

Appendix to the Petition

South Florida Office: South 9130 Dadeland Blvd. Suite 1511
Miami FL 33156-7851 305-670-3360