No. 19-~~6299~~ 6229

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA
(PLAINTIFF- APPELLE)

V.

OLUFOLAJIMI ABEGUNDE
(DEFENDANT - APPELLANT)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE,
No. 2:17-cr-20238-SHL

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR EN BANC REHEARING PURSUANT TO RULE 26(b) FEDERAL RULES OF APPELLATE PROCEDURE AND INTERNAL OPERATING PROCEDURE FOR THE SIXTH CIRCUIT COURT

OLUFOLAJIMI ABEGUNDE (MBA)
#71343-019 (IN PRO SE)
REEVES COUNTY DETENTION CENTER III
P.O. Box 2038
Pecos, TX 79772

"In our republic, a speculative possibility that a man's conduct violated the law should never be enough to justify taking his liberty."
United States v. Davis, 588 U.S.___ (2019) (opinion by Justice N. Gorsuch)

Comes now Appellant, pro se, with the above styled motion, and hereby respectfully petitions the full United States Court of Appeals for the Sixth Circuit for an extension of 30 days for Appellant to file a petition for En Banc Rehearing of United States of America v. Olufolajimi Abegunde.

In support of this motion, Appellant states the following:

1) Appellant became aware of the Judgment of the court on Thursday February 11, 2021. For reasons Appellant is still struggling to fathom, Appellants Attorney on record through the appeal process, did not inform Appellant that a Judgment had been reached in the instant case. It was not until when Appellants brother reached out to Counsel for a status update on the same Thursday February 11, 2021 that Counsel informed Appellants brother that: "The appeal was denied. The Court of Appeals mandate issued A FEW DAYS AGO. I am going to send a copy to your brother today. I will send the same to you... Send me your email address."

Appellant's brother promptly sent Counsel the email

address, as well as the mailing address where Appellant is currently incarcerated — after Counsel subsequently requested Appellant's mailing address.

It was not until the end of the day on Thursday February 11, 2021 that Appellant's brother was able to convey the news to Appellant when Appellant called Appellants brother via the prison phone.

2) Appellant and Appellant's brother were completely shocked, not only because of the news, but particularly because Counsel did not have the courtesy to reach out to Appellant directly or through Appellants brother upon Counsel hearing the news about the Courts Judgment.

Further exacerbating the shock and devastation is the fact that the Judgment was reached about one month before Appellant became aware of the Judgment, on January 14, 2021. Appellant must point out the fact that the actual date when the Judgment was published is contrary to Counsels statement: "The Court of Appeals mandate [being] issued a few days ago..."

Even if Counsel may have been indisposed; being the principal at Counsels law firm, Counsel should have been able to delegate the transmission of such critically time-bound information through para-legals, secretaries, attorneys, or partners at the firm. But Counsel did not delegate this vital responsibility.

Lastly regarding this point, Appellant must also point out the fact that till date, neither Appellant

nor Appellants brother have received a copy of the said mandate — from the Court — from Counsel.

In Appellants view, this particular lackadaisical and contemptuous action by Counsel is the crowning act among similar acts by Counsel.

3) Prior to the Court reaching its Judgment, Appellant had sent the circuit panel a document titled: "CRUCIALLY CONSEQUENTIAL INFORMATION FOR THE HONORABLE CIRCUIT COURT'S CONSIDERATION IN APPELLANT'S CASE" (See Appendix A attached). This document is dated December 23, 2020; and probably because of holiday mail shipping delays, the document was not received by the Clerk of the Court until January 8, 2021.

Sending the Circuit Panel the said document was a last resort effort by Appellant to notify the Court that the supposed inferences contained in the government's Appellee brief were in fact false misrepresentations of material fact that are not only contrary to the evidence; the inferences in the government's brief are not supported by the evidence.

However, Appellant received a letter from the Clerk of the Court on January 28, 2021 that is dated January 12, 2021; two days before the Court reached its Judgment. The letter states that: "The document... is being returned to you unfiled because as an individual represented by Counsel, you have no right to make pro se filings..." See Appendix B attached.

4) As the attached Appendix C refers, Appellant had already notified Counsel regarding the governments ubiquitous false misrepresentations — that amount to around two dozen distortions of actual fact — that are contrary to, and unsupported by the evidence.

Instead of pointing out these misrepresentations in Appellants reply brief, Counsel appeared to be asking the Court to do Counsels job for Counsel when Counsel stated that: "Mr. Abegunde prays that this Court read the entirety of the Sentencing hearings." (See Document 46 page 7, paragraph 4).

Appellant must point out the fact that even though Appellant sent Counsel multiple correspondence regarding the law, and the facts of the instant case; these correspondence went in only one direction — from Appellant to Counsel. As a matter of fact Appellant had no direct contact with Counsel throughout the Appellate process.

5) When Appellant eventually got the ear of an Attorney at Counsels law firm; an attorney that demonstrated a keen understanding of the facts of the case, an attorney that was willing to point out these facts, and an attorney that was willing to show that the law was incongruously applied in the instant case (See Appendix D); Counsel initially complained to Appellants brother that Appellant should not be communicating with this attorney.

Just when this attorney was at the point of completing a tailored response that would have wholly exposed

the governments chicanery, to Appellants utmost bewilderment, Counsel unexpectedly fired the attorney.

Lastly regarding this point, Appellant must point out the key fact that Appellant was not carried along, and Appellant was not in the loop regarding key decisions in the instant case. To buttress this fact, Appellant did not receive a single page of discovery from Counsel even though Appellant requested this information on multiple occasions. Additionally, Counsel has not received the trial and sentencing transcripts from Counsel.

6) Based on the above stated facts inter alia, as the attached Appendix E refers, Appellant has requested that Counsel withdraw as Appellants attorney on record.

7) In Appellants view, the Court reached its decision based on the governments nefarious actions — the inculcation of misinformation and false narratives; the conjuring of false analogies; citing wild speculation; presenting conjecture camo-flagued as evidence; false sweeping statements; misleading innuendos; reckless misrepresentations of material facts; the piling of inferences upon inferences without the required supporting factual evidence — and a perfunctory handling of the instant case by Counsel.

The Courts decision in the instant case jetissons long standing Sixth Circuit precedents. Additionally, the decision is not only in conflict with Sixth Circuit precedents, the decision is in conflict with Sister Circuit Courts. Of the highest signifi-

cance, the Court reached its decision based on the most eggregious form of government malfeasance and prosecutorial misconduct.

8) In the petition for En Banc rehearing, Appellant inter alia will show that nearly, if not all the supposed inferences contained in the governments Appellee brief are not supported by the evidence, and is actually contrary to the evidence. Most especially the fatally damaging supposition that Wells Fargo bank reversed the $9,000 transaction that was inadvertently deposited into Ayodeji Ojo's bank account unilaterally without any intervention from Appellant. If this where the case, the bank should have reversed the funds that were deposited into Ayodeji Ojo's wife's account. The truth is banks rarely, and almost never reverse cash deposits. This is a fact that the government apparently successfully obscured.

Appellant will also show that a critically vital omission — the fact that Appellant ran a totally legitimate, albeit unconventional business that was licensed with the Financial Crimes Enforcement Network (FINCEN), United States Department of the Treasury; Appellant was registered and licensed by the Georgia Department of Banking and Finance as a Financial Institution, a Money Service Business (MSB) just like Western Union and Money Gram; Appellant was also licensed and registered with the Central Bank of Nigeria; with all these regulatory bodies requiring a rigorous vetting process — that was not taken into account by the Court, fatally prejudiced Appellant.

Appellant will also show that a government stimulated cognitive dissonance — in the form of an unappreciativeness of the demand for the United States Dollar (USD); the major world reserve currency; and the lack of recognition of the fact that at the time, due to the economic devastation in Nigeria, Appellants business model provided one of the essential means through which people and businesses in Nigeria could access the most exigent element of International trade, and all forms of International commerce, the stable United States Currency — likely led the court to conclude, and probably petition a key precedent that "Relevant Conduct under [U.S.S.G] § 1B1.3 must be Criminal Conduct." United States V. Catchings, 708 F.3d 710, 720 (6th Cir. 2013). Appellant must state vehemently that the consensual use of third party bank accounts is not illegal or criminal. Appellant must also state that for the government to state that Appellant was a downstream money launderer, the government must provide evidence of criminal activity on the said third party bank accounts. Appellant must also state that owners of the third party accounts are known to Appellant. This was the only obligation Appellant had according to the testimony of the government witness from the FINCEN, Appellant was not required to know the sources of the funds Appellant was exchanging or remitting.

Finally, just because an action is alien, unconventional, or personally objectionable, that does not mean such action rises to Criminality. The Court was clear regarding this point in Catchings, 708 F.3d at 720.

9) To conclude, Appellant reiterates the key fact that Appellant is yet to receive the opinion rendered in the Courts Judgment. Additionally, Appellant just became aware of the Courts decision on Thursday February 11, 2020. Furthermore, as a result of Appellants carceral state, Appellant does not have ready access to the necessary tools and resources required to complete the petition over a shorter time frame than what Appellant is requesting (especially because of the COVID-19 pandemic and its impact on the prison where Appellant is held).

WHEREFORE, for all the above stated reasons, Appellant respectfully requests that the Court grant Appellants a 30-day extension for Appellant to prepare and file a robust petition for En Banc rehearing of the instant case.

Respectfully Submitted,

Olufolajimi Abegunde (MBA)
#71343-019 (In Pro Se)

Reeves County Detention Center III
P.O. Box 2038
Pecos, TX 79772

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he deposited a copy of the Motion for Extension of Time to File Petition for En Banc Rehearing—Pursuant to Rule 26(b) Federal Rules of Appellate Procedure, and Internal Operating Procedures for the Sixth Circuit— In the prison mail box system at the Reeves County Detention Center III on the 17th day of February 2021; for onward transmission to the:

Office of the Clerk
United States Court of Appeals
For The Sixth Circuit
100 East Fifth Street
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

[signature]

APPENDIX: A

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No. 19-6299

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CRUCIALLY CONSEQUENTIAL INFORMATION FOR THE HONORABLE CIRCUIT COURT'S ATTENTION AND CONSIDERATION IN APPELLANT'S CASE

PREPARED FOR (WITH THE HIGHEST AMOUNT OF HUMILITY):

THE CIRCUIT PANEL IN

UNITED STATES OF AMERICA
(PLAINTIFF - APELLEE)

RECEIVED
FEB 22 2021
DEBORAH S. HUNT, Clerk

V.

OLUFOLAJIMI ABEGUNDE
(DEFENDANT - APPELLANT)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, No. 2:17-Cr-20238-SHL

IN C/O THE OFFICE OF THE CLERK
540 POTTER STEWART U.S COURT HOUSE
100 E 5TH STREET
CINCINATTI, OH 45202-3988

BY OLUFOLAJIMI ABEGUNDE (MBA) #71343-019
REEVES COUNTY DETENTION CENTER III
P.O. BOX 2038
PECOS, TX 79772

DECEMBER 23, 2020

STARK AND GLARING PARALLELS BETWEEN THE TACTICS APPLIED BY THE GOVERNMENT IN APPELLANTS CASE — THE ELEVATION AND INCULCATION OF MIS-INFORMATION AND FABRICATED NARRATIVES WHILE RECKLESSLY DISREGARDING EVIDENTIARY FACTS — AND THE TACTICS UTILIZED BY THE LITIGANTS SEEKING TO OVERTURN THE OUTCOME OF THE 2020 U.S. PRESIDENTIAL ELECTION

Firstly, Appellant acknowledges the potential presumptiousness as well as the awkwardness of Appellant writing the Honorable Court directly. However, the effects of the present circumstances, with respect to efforts to overturn the outcome of the 2020 U.S. Presidential election presents a direct relationship that is strikingly similar to Appellants case.

These effects are so prejudicial, so extra-ordinary, so compelling, and so illuminatingly similar to Appellants case that in order to forestall the potential perpetuation of a perilous trend; Appellant believes it absolutely necessary to bring the following facts regarding the dangerously prejudicial nature of these parallels before the Sixth Circuit Court of Appeals:

(1) The unforseen and totally unexpected outbreak of the COVID-19 pandemic altered the conventional methods through which elections were previously administered. The pandemic precipitated a shift from the conventional and traditional election day voting method to the unconventional mail-in voting method across the States in the U.S.

Human beings typically react to alterations in familiar patterns with feelings of distress and discomfort. Hence, the change in voting patterns thus led to feelings of

unease among a significant portion of the American electorate that were constantly fed with misinformation about voter fraud associated with mail-in voting.

(2) As a result of the variance in state election laws among U.S states and territories, as well as the uniquely distinct logistics involved in mail-in, and actual election day voting; there was a time lag in the tallying as well as a lag in the announcement of election results across U.S states.

Unfortunately however, the ability to discern and fully understand the nuances, as well as the impacts of these distinctions proved to be near esoteric among a significant portion of the U.S electorate, especially the section that were well primed with the constant barrage of misinformation in the form of false narratives about the massive fraud associated with mail-in voting.

Consequently, the time lag and the unease among a section of the U.S electorate were thus exacerbated and exploited by the litigating party seeking to overturn the outcome of the election.

Through media and other channels, the litigating party constantly inculcated the false message narrative that the time lag was harnessed for the nefarious goal of perpetrating massive voter fraud. In addition, through constant inculcation by supposed subject matter experts, distinguished attorneys, and apparent authority figures; these false narratives began to gain traction, support, and new converts among a growing section of the electorate.

(3) Fortunately however, when the litigants brought these baseless, and evidence deficient allegations before dozens of Federal and State courts; the scrupulous finders of fact, the Honorable District, Appeals, and Supreme Court Judges and Justices in both Federal and State Courts summarily dismissed these lawsuits as mostly meritless.

(4) The clear distinction, as well as the wide variance between the outcomes in the courts, on the one hand; and the perceptions of a significant section of the U.S electorate on the other is very troubling, should raise grave concerns, and requires immediate remedies.

A recent Washington Post poll found that 70% of registered Republican party voters believed the election was rigged and that the President-elect is illegitimate. The same poll found that a whopping 34% of registered voters as a whole strongly believe that the election was rigged.

The results of these polls should ordinarily set-off thunderous alarm bells because while the litigants failed to substantiate their false narratives in court, the litigants have been immensely successful at convincing a huge number of voters that U.S institutions are illegitimate in general, and that the U.S electoral system is rigged.

To conclude regarding this point, it is abundantly clear that the deployment of subterfuge in the form of sensational misinformation, highly dramatic hyperbole, outrageous and prodigiously fantastical — but monumentally emotionally persuasive — narratives can be enormously effective. Such

skulduggery serves as a potent tool in altering the perceptions of otherwise rational and reasonable every day people.

(5) ENTER THE INSTANT CASE

While Appellant was a Master of Business Administration (MBA) candidate at Texas A$M University in College Station, Texas in 2014-2016; the collapse in global oil prices led to economic devastation in Nigeria. The crisis inter alia triggered a foreign exchange predicament — the worst that Nigeria had experienced up till that point in time.

Appellant thus sought to apply Appellant's recently acquired Business School knowledge to provide solutions to the crisis in Foreign Exchange by founding an International Money Remittance and International Currency Exchange business that met all the extant regulatory requirements.

While it is plausible that Appellant's business may be perceived to have been run unconventionally in a non-traditional manner, Appellant never engaged in unethical, inappropriate, unlawful, illegal, or criminal conduct.

As stated, since a deviation from conventional tradition and familiar expectations generally causes unease amid a wide section of society; in the instant case, the government sought to exploit this discomfiture by presenting harmless and totally legitimate actions of Appellant as criminal to the finders of fact. Some instances of the governments subterfuge through mis-information include but are not limited to:

(a) The Goverment's Weaponizing of The Closure of Appellant's Bank Accounts By Appellant's Banks:

While it is not uncommon for individuals in the Money Service Business (MSB) to have their personal and business accounts closed without the banks providing any justification whatsoever; the government continuously inculcated the fact that Appellant's bank accounts were "shut-down" by Appellants bank. As a matter of fact the initial indictment stated that Appellant's bank accounts were shut-down because of fraud. This is false, and was arbitrarily injected into the indictment. Appellant states this because at trial while the government's case agents were under cross-examination, the agents repeatedly stated that they did not know the reasons why Appellants bank accounts were closed. In other words, there was absolutely no iota of evidence presented by the government that Appellant's bank accounts were "shut down" as a result of fraud. Any inference to this effect is not supported by the record, and is purely based on speculation.

Yet, by the government constantly inculcating this point, the finders of fact were given the impression that Appellant had engaged in some form of wrongdoing.

(b) The Government Weaponizing Appellant's Use of WhatsApp, An Instant Messaging Tool With Two Billion Users Worldwide:

The government continuously mentioned — with special emphasis on the encryption feature of WhatsApp — that

Appellant utilized this messaging tool to engage in business, thus giving the finders of fact the false impression that Appellant intended to conceal the contents of Appellants business messages. Who exactly Appellant intended to conceal Appellant's messages from was not revealed. Maybe the government does not accept that the Fourth Amendment to the U.S Constitution does cover the right to be secure in private conversations. For arguendo, assuming the Fourth Amendment does not cover the right to be secure in private conversations, the government still ignored and failed to mention the key fact that none of Appellant's business messages were deleted by Appellant.

The government also did not mention the key fact that it was the same conversations that Appellant supposedly intended to conceal — a total of around 50,000 pages of conversations — that were infact presented to the jury at trial. Additionally, Appellant must point out the key fact that these 50,000 pages of Appellant's conversations did not uncover any evidence of any agreement — implicit or explicit — between Appellant and anyone else to defraud any individual or entity of their possessions.

Finally regarding this point, the government failed to mention the key facts that WhatsApp is a brand owned by Facebook; and that one out of three human beings uses WhatsApp.

(c) The Government Constantly Repeating and Weaponizing The Harmless Fact That Appellant Utilized Third Party Bank Accounts

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While Conducting Business:

Appellant must reiterate the facts that Appellate stated under direct and cross-examination: Firstly, most of the third party accounts presented by the government belonged to Appellant's customers who were either remitting funds or were exchanging currencies. As stated Appellate was licensed and registered by extant regulatory bodies to carryout these business functions.

At trial, the government propounded the theory that the reason why Appellant utilized third-party bank accounts was to conceal the sources of the funds that Appellant transacted in. For the reason that Appellant's bank accounts had been "Shut-down" by Appellants banks, Appellant concedes that on a number of occasions, Appellant incentivized, lobbied, and pleaded with Appellants associates to use their bank accounts.

While there is absolutely nothing wrong with consensually utilizing third-party bank accounts, the government constantly repeated this harmless fact, thereby creating the false impression that using third-party bank accounts is unlawful.

Appellant concludes on this point by pointing out the critically vital fact that while the government constantly raised the third-party accounts as a distraction, the government failed to present evidence of any form of fraudulent activity on the third-party accounts.

(d) The Government Taking Appellant's Verbal and Written Conversations Out of Context and Weaponizing Individual

Statements:

The government took snapshots and audio clips of Appellant's conversations without presenting the actual context of the conversations to the finders of fact; thereby leaving the finders of fact to speculate regarding the actual context of Appellant's conversations.

Appellant must point out the key fact that the government had the opportunity to clarify the context of Appellants conversations while Appellant was under cross-examination. The government mostly did not take this opportunity.

(e) The Goverment Constantly Inculcating The Falsehood That Appellant Was Required To Know The Sources Of Funds of Appellant's Customers:

The government constantly raised this falsehood even though — as the trial transcripts clearly reveal — the government's witness, an authority on the subject from the Financial Crimes Enforcement Network (FINCEN), U.S. Department Of Treasury stated clearly that MSB's are not required to know the sources of its customers funds. Rather, the government witness stated, MSB's are only required "to take reasonable steps to know their customers" (KYC - Know Your Customer).

Despite this key testimony, the government continuously raised the fallacious argument that Appellant was required by law to take active steps to know the sources of Appellant's customers funds. Thus, by Appellant not taking active measures to know the sources of Appellant's customers funds, the

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government created the false impression that Appellant was in violation of the law.

(f) The Government Falsifying and Misrepresenting A Crucially Vital Fact:

The trial record unambiguosly reveals the absolute fact that Appellant facilitated the reversal of the $9,000 that was deposited into an account that was never controlled by Appellant (this singular noble act by Appellant is what ties Appellant to the alleged conspiracy). This fact was never in dispute as a government witness, Brian Ancona — the Wells Fargo investigator that contacted Appellant regarding the refund — testified to this fact.

However, during trial summation, the government flipped this uncontested fact by telling the finders of fact that the funds were reversed by Wells-Fargo bank without any intervention by Appellant. Nothing could be further from the truth.

The devastatingly injurious nature of this falsehood cannot be overstated because a major element of the charged underlying offense involves Appellant wilfully and knowingly depriving individuals or entities of their possessions. Appellant taking active steps to ensure that no one was deprived of their property does not quite square with this key element of the charged underlying offense.

Hence — in Appellants view — the crowning keynote legerdemain act of the government that likely led to Appellant's Conviction.

Appellant pleads with the court to review the trial record to ascertain Appellants assertions.

To conclude regarding points (5) – Enter The Instant Case – Appellant must reinforce the key fact that while the points discussed under (5) do not amount to unlawful conduct of any type, shape, or form; Appellant categorically states that these harmless actions have no bearing on, nexus to, or relationship whatsoever with the Western District of Tennessee where Appellant was charged. Therefore, venue in the Western District of Tennessee was improper.

(6) Conclusion

Appellant must emphasize the key facts that regarding the instant case, there was no national visibility or media scrutiny. This means that the only people aware of the goverment's shenanigans are the people that were present at Appellant's trial and the reviewing panel of Judges of the U.S Courts of Appeals for the Sixth Circuit.

Additionally, the finders of fact in the instant case were not scrupulous Judges/Justices of reputable character and a wealth of experience in U.S Jurisprudence. It is highly conceivable that in the instant case, the finders of fact could have easily fallen in the category of the susceptible 34% of Americans who are unwilling or unable to discern evidence and facts from seemingly well constructed, compelling (potentially), highly persuasive and convincing, sensational, and potentially captivating fabrications that take the form of misinformation inundated narratives.

Just as the litigants seeking to overturn the outcome of the 2020 U.S Presidential election, in the instant case, the government — as the trial transcripts reflect — employed acts of chicanery, artful sophistry, perfidious guile, and relentless subterfuge.

The government actions manifested in the form of the continuous inculcation of misinformation, false analogies, wild speculation, conjecture camoflagued as evidence, false sweeping statements, misleading innuendo's, reckless misrepresentation of material facts, the piling of inferences upon inferences without the required supporting factual evidence, and the worst conceivable conflict of interest where the testimony of case agents that brought the case forward, and had a stake in Appellant's conviction was elevated to the status of Agents with specialized knowledge. There was thus no demarcation — in the instructions to the jury — between factual and opinion testimony. Hence, the door was open for the finders of fact to perceive the Agents' testimony as fact even though it was just what it was — opinions.

Appellant must point out the fact that in the instant case, there was absolutely no need for case agent specialized knowledge, as none of the defendants at trial engaged in any complex criminal activity of esoteric value. For example, none of the defendant's was alleged to have engaged in any cyber-security related breach, or any type of accounting or finance related fraud.

Appellant must vehemently state that Appellant does not in any way find fault with the finders of fact in the

Instant case. Neither does Appellant find fault with the section of the electorate that believe the election was rigged in favor of the President-elect. In Appellant's view, the fault lays squarely at the respective feet of the peddlers of misinformation and fabricated narratives — the government in the instant case, and the litigants that sought to overturn the outcome of the 2020 U.S Presidential election.

Other Matters of Fact and Law That Are Of The Highest Importance In Appellants Case

(a) Venue:

Through Sixth Circuit, and other Circuit Court precedents, Appellant will show that the government lacked venue in the Western District of Tennessee for the counts of Wire Fraud Conspiracy, Money Laundering Conspiracy, and the Marriage Fraud Conspiracy Count.

(i) The Wire Fraud Conspiracy Count

The Sixth Circuit has ruled that Under 18 U.S.C § 3237(a), Wire fraud is a continuing offense crime:
"Any offense involving ... transportation in interstate or foreign commerce ... is a continuing offense and, except as otherwise expressly provided by an enactment of congress, may be inquired of and prosecuted in any district from, through, or into which such commerce ... moves." Id § 3237(a); United States v. Grenoble, 413 F.3d 569, 573 (6th Cir 2005)

The court has explained that "a plain reading of the text" shows "that venue in a wire fraud case is limited to districts where the transportation in interstate commerce is deposited, received, or moves through." United States v. Petlechkov, 922 F.3d 762, 769 (6th Cir 2019) Citing 18 U.S.C § 3237(a).

In the instant case, the government failed to present any evidence whatsoever that ties Appellant to any wire transmission that originated, terminated, or moved through

the Western District of Tennesse.

The $9,000 transaction that supposedly links Appellant to the case was the product of a fraud that took place in Washington State, the money was wired to an individual (an alleged mule) in California, who allegedly deposited $9,000 to a bank account domiciled in Georgia.

To reinforce this key point of the highest significance, the sentencing court did not find proof by a preponderance of the evidence that Appellant was responsible — in terms of Relevant Conduct — for the proceeds of the fraud that occured in the Western District of Tennessee; that is, the fraud on Cryellyke (the Memphis business that was defrauded around July 2016).

If Appellant was not responsible for the Memphis fraud, but was responsible only for the fraud that occured in Washington State in October 2016, as the sentencing court found, then it is clear beyond any doubt that the government lacked venue for the wire fraud count in the Western District of Tennesse.

(ii) The Money Laundering Conspiracy Count:

The substantive underlying offense for the money laundering conspiracy count was the Wire Fraud Conspiracy Count discussed above. At trial, the government failed to present any evidence that Appellant was involved in the concealment of any monetary transaction that moved through the Western District of Tennessee. Also, since the government lacked venue for the substantive underlying count in the

Western District of Tennessee; and since no evidence was presented that any of the proceeds of the alleged fraud moved through the Western District of Tennessee, then basic logic dictates that the government also lacked venue for the Money Laundering Conspiracy Count.

(iii) The Marriage Fraud Conspiracy Count:

The plain language of 8 U.S.C. § 1325 (c) — the statute that criminalizes Marriage fraud — is unambiguous. The elements of the statute require only that the defendant:

(A) knowingly enter into a marriage:

(B) For the purpose of evading any provision of the Immigration laws.

It is pellucidly glaring and transparent that Congress did not intend for the offense of Marriage fraud to be considered a continuing offense. "Enters Into" refers to a single event that can only occur at a given time.

"Actions occuring after the marriage do not constitute elements of the offense under § 1325 (c). Instead all the elements of Marriage fraud are satisfied when defendant enters into the marriage. In sum, the plain language of the statute does not compel the conclusion that Marriage fraud is a continuing offense." United States v. Ongaga, 820 F.3d 152, 160 (5th Cir 2016).

Since Appellant "Entered Into" the marriage in May 2016 in Fayettville, North Carolina; and since Congress did not intend for marriage fraud to be considered a continuing offense; then the government clearly lacked venue

— an element of the Marriage Fraud Conspiracy count — in the Western District of Tennessee.

(b) Rule 29 — Fed. R. Crim. Proc — Motion Challenging The Sufficiency Of The Governments Evidence on All Counts:

(i) In its response to Appellant's Initial Appellate brief; in its usual guileful manner, the government sought to infer that Appellant only challenged the sufficiency of the governments evidence on the counts of Wire Fraud Conspiracy, and Money Laundering Conspiracy. Appellant must vehemantly emphasize the fact that the governments inference has no basis in reality, as Appellant challenged the sufficiency of the evidence on all four counts.

Appellant acknowledges that an Appellant challenging the sufficiency of the evidence, and seeks to overturn a jury's verdict faces a very high hurdle. However, the court has ruled that the height of the hurdle faced by Appellant is directly proportional to the evidence provided by the government. In other words, the more the evidence, the higher the hurdle, and vice-versa.

Appellants avers that the governments evidence was not sufficient to prove Appellant's guilt beyond a reasonable doubt on all four counts.

Appellant has already addressed the issue of why the government lacked venue for the Wire fraud Conspiracy, Money Laundering Conspiracy, and Marriage fraud Conspiracy counts.

Besides the issue of improper venue, the government

failed to present the required evidence to convict Appellant on all Counts.

At trial, most of the government witnesses provided exculpatory testimony regarding Appellant. The government's star witnesses — Appellants wife, and Mr Ahmed Alimi — were the only witnesses that provided inculpatory testimony, and the inculpatory testimony was strictly regarding the Marriage fraud Conspiracy count. These witnesses did not provide any testimony that Appellant engaged in the other three counts of Wire fraud Conspiracy, Money Laundering Conspiracy, and Witness Tampering.

However, as already stated, the government lacked venue for the Marriage fraud Conspiracy count, thereby making their testimony moot.

The only witnesses that testified to Appellants guilt regarding the other three counts were the FBI case agents that investigated and brought the case forward in the first place. Even these agents did not offer any fact based testimony regarding Appellants guilt. Their testimony was entirely based on their opinions as witnesses with specialized knowledge. Such testimony standing on its own, without other forms of corroboration cannot and should not rise to the level of proof beyond a reasonable doubt.

(ii) <u>The Witness Tampering Count:</u>

Appellant states that inundating and constantly inculcating the finders of fact with a deluge of false narratives does not make the falsehoods transmogrify into facts.

Regarding the Witness Tampering count, it was the governments theory that Appellant intended to create the perception to Appellants wife that the charges against Appellant would be dismissed. The government theorized that by Appellant sending Appellants wife a series of documents, with one titled "Motion To Dismiss" that was prepared by Appellant; but bearing Appellants Attorney on record at the times name; Appellant intended to convince Appellants' wife not to testify against Appellant.

This government theory is a typical example of the government's wild conjecture camaflagued as evidence, and the government piling inferences upon inferences without the required supporting evidence.

Appellants prior Attorney — a government witness — testified that he was aware of, and had received the same draft motion from defendant. Of the utmost importance, Appellant's wife testified that the documents that Appellant prepared, contained explanations of Appellants predicament from Appellants point of view. Additionally, the government had the opportunity to extract evidence from Appellant's wife to support their theory — that Appellant sought to dissuade her from testifying — but the government never took this opportunity.

Additionally, while Appellant was under cross-examination, Appellant clarified the government's false narrative regarding this point. Appellant made it clear that it was Appellant's position that Appellant's wife not engage with the government without effective assistance of a qualified attorney.

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While the government sought to fabricate the false equivalence between Appellants wife having discussions with the government; and she testifying at a formal court proceeding such as a grand jury or trial; Appellant must categorically point out the fact that the two situations are mutually exclusive and different. Appellant offering Appellant's spouse advise not to engage with the government without counsel is akin to offering Appellant's wife advise regarding her Miranda rights to remain silent, and to an attorney.

Finally regarding the insufficiency of the governments evidence regarding the Witness tampering count, the Indictment clearly states that Appellant sought to dissuade Appellants wife from testifying at a formal court proceeding. During jury delibrations, as the trial transcripts reflect, the jury sought to clarify this point by asking whether immigration interviews conducted for green card applicants qualifies as a formal court proceeding. In response, the Judge read out the contents of the Indictment emphasizing the portions that referred to the intent of Appellant to dissuade Appellant's spouse from providing accurate testimony or testifying at a formal court proceeding.

While the government failed to provide the required evidence in support of the Witness Tampering count, it is unclear what evidence the jury relied on to reach its verdict of Appellant's guilt beyond a reasonable doubt. Since the government did not present the required evidence, it is likely that the finders of fact speculated their way into the verdict. Fortunately however, speculation — reasonable

or unreasonable — is insufficient to sustain a verdict of guilt beyond a reasonable doubt.

(c) Improper Joinder of Offenses Under Rule 8(a) — Fed. R. Crim. Proc:

Most U.S Circuit Courts consider the application of Rule 8(a) Fed. R. Crim. Proc. — Joinder of Offenses — to be improper in multiple defendant cases as a result of the danger of cummulation of prejudice to the defendant that such joinders likely result in.

However, the Sixth Circuit has not taken a definite position on the application of Rule 8(a) in multple defendant cases.

It is conceivable that the offenses of Wire fraud conspiracy and Money Laundering Conspiracy are of the same and similar character. Also, there are several precedents across the Circuit courts that support the joinder of these offenses.

However, there is very scanty evidence of precedents across the U.S Circuit Courts for the joinder the government attempted in the instant case.

It is not just inconceivable to join the offenses of Wire fraud Conspiracy and Money Laundering Conspiracy — on the one hand — with the offense of Marriage fraud Conspiracy on the other; such a joinder is generally incongruous and absurd at best, at worst such a joinder creates a travesty out of the U.S judicial system.

In the instant case, the dichotomy of the counts of Wire fraud Conspiracy and Money Laundering Conspiracy in one

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group, and the count of Marriage Fraud Conspiracy in the other inter alia are unrelated in nature and purpose; the groups are unrelated in temporal scope; the offenses in the two groups were not committed in the same physical location; the offenses do not share the same modes of operation; the groups did not have an overlap of defendants; the nature of the evidence between the two groups of offenses is starkly different; there was no evidentiary overlap between the two groups of offenses; the two groups of offenses did not have similar victims; the charges in the two groups were not brought under the same statute; and the "same and similar character" requirement for joinder under Rule 8(a) could not be gleaned from the face of the indictment.

While the alleged Wire fraud and Money laundering Conspiracies occured in Washington State in October 2016; Appellant got married five months before in Fayettville, North Carolina. This key point reinforces the fact that the government lacked venue for these three counts in the Western District of Tennessee.

In support of the government's argument for joinder, the government claimed that the purpose of Appellants marriage was to open bank accounts for the accomplishment of fraud on the said bank accounts. This argument is incongruous, meritless, baseless, fallacious and thus untenable for the reasons that:

(i) As already stated, the plain language of the Marriage fraud statute is unambiguous. It is thus abundantly clear that the statute is limited in scope and cannot be construed to be a continuing offense.

(ii) Since Appellant had already opened several personal and business accounts prior to Appellants Marriage, Appellants Marital Status had no effect or impact on Appellants ability to open bank accounts. As such, the purpose of Appellants marriage could not have been to open bank accounts for fraud related reasons.

(iii) The government failed to present any evidence to corroborate its allegation that Appellants personal, business, or joint bank accounts received fraudulently obtained funds, or was utilized to conduct fraudulent transactions.

(iv) In terms of venue, none of the funds domiciled in Appellants personal, business, or joint bank accounts originated, terminated, or moved through the Western District of Tennessee.

(v) Appellant is compelled to reveal to the court the absolute fact that the government coerced Appellant's wife to plead guilty — and to testify against Appellant — by presenting Appellant's wife fabricated prejudicial information. As Appellant's wife's plea-deal and U.S. Sentencing Guidelines (U.S.S.G) §5K1.1 Statements refer, in addition to pleading guilty to the count of Marriage Fraud Conspiracy, Appellant's wife also pleaded guilty to a phantom and absolutely fabricated count of receiving and withdrawing unlawfully obtained funds from Appellant and Appellant's wife's bank joint account. Appellant must state that Appellant was never charged with this phantom charge.

The conditions of the said plea-deal stated that if

Appellant's wife pleaded guilty to the two counts, the phantom count discussed above would be dropped at her sentencing.

Throughout Appellant's trial, the government failed to present any evidence that fraudulently obtained funds were either deposited into, or withdrawn from the said joint bank account. Yet, the government succeeded in convincing — through the threat of jail time — Appellant's wife to plead guilty to a count she did not participate in or commit, thereby setting the stage for her testimony against Appellant.

(d) Sentencing

The government's misinformation campaign did not cease at the conclusion of Appellant's trial. Rather, it seems as though Appellant's trial actually served as a platform for the government to hone their skills in skullduggery tactics. The government's actions took on an even more bizarre twist at Appellant's sentencing, as the government presented a pastiche of ludicrous, incongruous, and illogical arguments.

These well honed government tactics would prove to be highly effective especially because the evidentiary standard in a sentencing proceeding is much lower than the standard at criminal trials. The government thus convinced the sentencing court — through a hodge podge of incoherent arguments — to sentence Appellant to a highly unreasonable and a monumentally unfair term of imprisonment of 78 months.

Appellant will comprehensively demonstrate — through sixth

Circuit precedents — why the government's arguments are groundless and thus invalid.

(i) The Improper Application of United States Sentencing Guidelines (U.S.S.G) § 2S1.1(a)(2) Instead of the recommended U.S.S.G § 2S1.1(a)(1)

In cases involving or related to Money Laundering, the Court has ruled that if the defendant is responsible for the underlying offense, and if the base level for the underlying offense is determinable, then U.S.S.G § 2S1.1(a)(1) is the applicable guideline. Otherwise, § 2S1.1(a)(2) is applicable.

In United States v. Anderson 526 F.3d 319 (6th Cir 2008) the Court ruled that the application of U.S.S.G 2S1.1(a)(1) "requires two conditions be met:
(A) That the defendant is responsible for the underlying offense...
(B) That the base level for the underlying offense is determinable." Id at 324.

In Anderson, the court thus ruled that the application of § 2S1.1(a)(1) was proper because the defendant was responsible for the underlying offense.

In another case, United States v. Long 457 Fed. Appx. 534 (6th Cir 2012), the Court ruled that the district court should have applied § 2S1.1(a)(2) rather than § 2S1.1(a)(1) because defendant Long could not have committed the underlying offense. Id at 547

In United States v. Harmon 409 F.3d 701 (6th Cir. 2005) a case particularly similar to the instant case where the

Underlying offense was Wire fraud, the court ruled that since the conditions in U.S.S.G 2S1.1(a)(1) were met, defendant Harmon should have been sentenced under that guideline.

The court further ruled that under § 2S1.1(a)(1), the base level for defendant Harmon's "Monetary transaction" offense was identical to the underlying offense of wire fraud. The Wire fraud offense level is prescribed under § 2B1.1

The court thus found that the method set forth in § 2S1.1(a)(2) had no application, and the probation officer that prepared defendant Harmons Pre Sentencing Report (PSR) erred in applying § 2S1.1(a)(2). Harmon 409 F.3d at 706-07.

The same reasoning in Harmon is pertinent in the instant case where the government convinced the finders of fact to convict and find Appellant guilty of the underlying offense of Wire fraud conspiracy. Hence § 2S1.1(a)(1) applies.

To conclude on this point, the error in applying the wrong sentencing guideline is not in any way harmless, and has thus exponentially increased Appellants sentencing term by a significant margin.

(ii) The Use of Perfectly Legitimate Transactions—That Had Absolutely No Direct Nexus To Criminal Activity or Any Victims As Relevant Conduct In Loss Calculation— Presented Through Summary Charts:

The government presented summary charts of transactions that Appellant engaged in during the course of Appellants day-to-day business operations, and argued that these transactions should be treated as loss.

In support of the governments ridiculous argument for the introduction of the fraud-free summary chart, inter alia, the governmented reiterated the fabricated, baseless, and thus null and void claim that Appellant, as a Money Service Business (MSB), was required to take active steps to know the sources of Appellant's customers funds.

To comprehensively demonstrate that this, and other government arguments for, as well as the decision to admit the summary chart was a catastrophic error with extremely damaging consequences, Appellant states the following:

(A) Regarding the argument that Appellant was required to know the sources of Appellant's customers funds, Appellant states that while Appellant actually took steps to ascertain the sources of Appellant's customers funds; this step was not required by any extant law or regulation.

Appellant already addressed this point in detail when Appellant referenced the testimony of the governments witness from the Financial Crimes Enforcement Network (FINCEN) U.S Department of The Treasury, an authority on the subject of financial crimes enforcement. This government witness — as the trial transcripts reflect — stated that MSB's are not required to know the sources of its customers funds. MSB's, the government witness stated, are only required to take active steps to know it's customers (Know Your Customer, KYC).

(B) While under cross-examination at sentencing, the case

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agent testified that he could not identify any particular transaction — in the summary chart — that involved a fraudulent transaction that Appellant was directly linked to.

(C) Even the Probation Officer that prepared the Pre Sentencing Report (PSR) stated on the same PSR he prepared that evidence supporting the allegation of Money laundering associated with the contents of the Summary chart is limited.

(D) As already stated, the case agent while testifying stated that he could not point out any particular transaction that involved a fraudulent transaction that Appellant was directly linked with.

The agent further stated that besides the $9,000 transaction, no other transaction on the Summary Chart could be linked with fraud directly related to Appellant.

This particular testimony raises significant concerns because:

(1) Rule 1006 of the Federal Rules of Evidence provides that "The proponent of the summary [chart] must also have made the document available" to the other side so the opposing party can "attack" the authenticity or accuracy of a chart, summary, or calculation,

with an opportunity to prepare for cross examination, or to offer exhibits of its own as rebuttal evidence." United States v. Bray, 139 F.3d 1109 (6th Cir. 1998).

(2) At trial, and at sentencing, the government provided supporting documents of several transactions involving Appellants business. Among all the supporting documents — Instant message communications, pictures of deposit slips, voice messages etc — provided by the government; the government did not present a single supporting document whatsoever regarding the alleged $9,000 fraudulent transaction that links Appellant to the instant case.

Hence, there was no justification for including the $9,000 transaction on the summary chart.

(3) If this logic holds, then the $9,000 transaction ought to be excluded from the summary chart. Excluding the $9,000 transaction is of monumental significance because such action fully absolves Appellant from the instant crime. This is simply because the government failed to provide any nexus — via evidence of conversations, or deposit receipt photographs, or voice recordings — between Appellant and the $9,000 transaction.

Additionally, excluding the $9,000 transaction from the summary chart fully sanitizes the summary chart. This is because, according to the case agents testimony, the only transaction on the summary chart which the government could link to fraud was the $9,000 transaction. However, as already discussed, the $9,000 could not be linked to Appellant.

(4) The exclusion of the $9,000 transaction reinforces the

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Key fact that Appellant ran a perfectly legitimate business. Furthermore, based on all the facts of the case on the record, it is abundantly clear that the $9,000 transaction was not the norm, but the exception on the Summary Chart.

Based on all the facts stated above, the summary chart should not have been admitted as evidence at trial and at sentencing, as the summary chart greatly prejudiced Appellant.

(E) In United States v. Catchings 708 F.3d 710 (6th Cir. 2013) the court ruled that "Relevant conduct under [U.S.S.G] § 1B1.3 must be criminal conduct." Id at 720.

Since the government failed to present any evidence of any connection between Appellant and any fraudulent activity either at trial or at sentencing, the summary charts should not have been admissible, Appellant should not have been convicted, and Appellant should not have been sentenced to 78 months in prison.

(iii) Restitution:

While Appellant ensured the full reversal of the $9,000 that was inadvertently deposited into an account that Appellant did not control; without any evidence of Appellant benefitting from any fraudulent transaction, Appellant was ordered to pay around $58,000 in restitution.

This is not only unfair and unjust. A restitution payment greater than $10,000 will potentially affect Appellant's immigration standing and likely cause Appellant to be deported.

Hence, Appellant pleads that the court review and reverse the restitution order.

Conclusion

In Yick Wo v. Hopking 118 U.S. 356, 373-74 The Supreme recognized that though the law be fair on its face and impartial in apperances, yet it is applied and administered by public authority with an evil eye and unequal hand...

The continuous inculcation of a false narrative does not make the false narrative transmogrify into fact. While the government's shenanigans in the instant case can be calibrated for maximum sensational effect in the 21st century news media and tabloids; to put is simply, the justice system in the United States "does not tolerate the conviction and imprisonment of people based on suspicion, speculation, [and conjecture]. The government must present direct or circumstantial evidence of each element of each charged offense." United States v. Jones, 713 F.3d 336, 352 (7th Cir. 2013).

At most, the case the government presented established "reasonable speculation" that Appellant may have run Appellant's business unconventionally. However, reasonable speculation is insufficient to sustain a verdict. Tanner v. Yukins, 867 F.3d 661, 672 (6th Cir. 2017). Mere suspicion cannot sustain a verdict of guilt beyond a reasonable doubt. See Copeland v. Brewer, 99 F. Supp. 3d 754, 2015 U.S. Dist. LEXIS 49202 (E.D. Mich. 2015); United States v. Jenkins, 345 F.3d 928, 942 (6th Cir. 2003); Hayter Oil Co., of Greenville, Tennessee 51 F.3d 1265,

1271, N.5 (6th Cir. 1995) (quoting United States v. Van Hee, 531 F.2d 352, 357 (6th Cir. 1976)) ("[e]vidence that at most establishes no more than a choice of reasonable probabilities cannot be said to be sufficiently substantial to sustain a criminal conviction upon appeal.").

Additionally, "the meager circumstantial evidence" — presented by the government is simply to innocuous to convict Defendant of the charged offense, particularly since much of it is "conjecture camouflagued as evidence." Mathews v. Jackson, 328 F. Supp. 3d 743; 2018 U.S Dist. LEXIS 73915 (E.D. Mich., 2018); Copeland v. Brewer, 99 F. Supp. 3d 754; 2015 U.S. Dis. LEXIS 49202 (E.D. Mich. 2015); Piaskowski v. Bett, 256 F.3d 687, 693 (7th Cir. 2001).

Since the jury had to rely on impermissible speculation at trial; the jury could not have reasonably inferred Appellant's guilt beyond a reasonable doubt.

In Concluding, regarding the instant case, if all the evidence is considered in the light most favorable to the prosecution, there remains reasonable doubt because the triers of fact would have been limited by what inferences reason would have let them draw.

Finally, proof beyond a reasonable doubt — the heavy standard [that should be] applied in criminal cases manifests the concern that the risk of error to the individual must be minimized even at the risk that some who are guilty may go free. Addington v. Texas, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed 2d 323 (1970).

Yours Sincerely,

Olufolajimi Abegunde

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Sixth Circuit Cases/ Arguments That Show That The Government Lacked Venue In The Instant Case

Proper venue in a criminal case is an "essential part[] of a free and good government." **United States v. Petlechkov** 922 F.3d 762, 766 (6th Cir. 2009) (quoting The Federal Farmer, in 2 **The Complete Anti-Federalist** 230 (Herbert J. Storing ed. 1981)).

The constitution requires that criminal defendants be tried in the place where they committed their alleged crimes. **U.S. Const. art.3, § 2, cl. 3; id. amend. VI.**

Determining proper venue is a two-step process. If the criminal statute has a specific venue provision, then courts must accept that congressional choice (assuming it is otherwise constitutionally permissible). If not, then courts determine the proper venue based on "the nature of the crime alleged and the location of the act or acts constituting it." **Travis v. United States,** 364 U.S. 631, 635, 81 S. Ct. 358, 5L.Ed.2d 340 (1961); **See also United States v. Rodriguez-Moreno,** 526 U.S. 275, 279, 119 S. Ct. 1239, 143L.Ed. 2d 388 (1999).

The Sixth Circuit has consistently applied 18 U.S.C. § 3237(a) as the applicable criminal statute that provides the specific statutory venue provision in Wire and Mail Fraud cases.

In **United States v. Petlechkov,** 922 F.3d 762,769 (6th Cir. 2019)--a Mail Fraud Case-- the Sixth Circuit applied 18 U.S.C. § 3237(a) as the criminal statute that provides the specific statutory venue provision. The Sixth Circuit has also applied 18 U.S.C. § 3237(a) in Wire Fraud cases too.

18 U.S.C. 3237(a) provides in pertinent part that "Any

offense involving ... transportation in interstate or foreign commerce ... is a continuing offense and except as otherwise expressly provided by an enactment of congress, may be inquired of and prosecuted in any district from, through, or into which such commerce ... moves." **United States v. Grenoble**, 413 F.3d 569, 573 (6th Cir. 2005) (quoting 18 U.S.C. 3237(a)).

The Sixth Circuit has explained that "[a] plain reading of the text" shows "that venue in a [Wire Fraud] case **is limited to** districts where the [Transportation in interstate or foreign commerce] is deposited [/terminated], received, or moves through." **Petlechkov** 922 F.3d at 769; **United States v. Wood** 364 F.3d 704, 713 (6th Cir. 2004) (citing 18 U.S.C. 3237(a)) (emphasis added).

"[W]ire fraud statutes do not punish fraudulent schemes--only the illegal use of the mails or wire facilities in furtherance of such schemes. As a result, federal courts should focus only on the specific geographical characteristics of the charged mailing or wire transmission--meaning where did it originate, terminate, or pass through" Jack E. Robinson, The Fed. Mail & Wire Fraud Statutes: Correct Standards for Determining Jurisdiction & Venue, 44 Williamette L. Rev. 479, 532 (2008).

The government must prove proper venue for each count by a preponderance of the evidence. **United States v. Beddow,** 957 F.2d 1330, 1335 (6th Cir. 1992).

Defendant acknowledges that the government does not need to present direct evidence of venue. Instead, the government can prove venue based on a reasonable inference from circumstantial evidence. **United States v. Charlton,** 372 F.2d 663, 664-65 (6th

Cir. 1967); 2 Charles A. Wright & Arthur, **Federal Practice and Procedure: Criminal§ 307.**

In the present case, the Wire Fraud Count includes two separate Business Email Compromises (BEC's); one occuring on July 25, 2016 in the Western District of Tennessee, and the other occuring three months after in Washington state in October 2016.

Regarding the latter fraud that took place in Washington state, a real estate company was defrauded via a BEC. The proceeds of this fraud was transferred to a "mule" in California. This mule then inadvertently deposited part of the proceeds--$9,000--of the fraud into a bank account domiciled in Atlanta, Georgia. Defendant must point out the absolute fact that the said account domiciled in Atlanta Georgia neither belonged to Defendant, nor was the account controlled by Defendant. Defendant must also point out the absolute fact that the only thing that remotely connects Defendant to the said account is that the bank account was opened using Defendant's residential address by an individual other than Defendant.

Of the highest significance, Defendant must point out the absolute fact that the government failed to present any scintilla of evidence showing that the Washington BEC and all the transactions associated with the BEC originated, terminated, or moved through the Western District of Tennessee.

Regarding the July BEC that took place in the Western District of Tennessee, the government failed to provide any form of evidence whatsoever that proximately or remotely connected Defendant to the said Memphis BEC.

To buttress this key point; at sentencing, the government failed to prove--by a preponderance of the evidence--that Defendant was in any way, shape, or form linked to the BEC that took place in the Western District of Tennessee. The $155,000 or so loss amount tied to the Memphis BEC was not included in calculating the loss amount ascribed to Defendant in form of Relevant Conduct.

As stated, in order to prove venue, the government needed to show that the transportation in interstate or foreign commerce--connected to Defendant--originated, moved through, or terminated in the Western District of Tennessee. To do that, the government must present enough evidence to allow a rational juror to find venue by a preponderance of the evidence. **Petlechkov,** 922 F.3d at 770; **United States v. Wood** 364 F.3d 704, 713-14; **United States v. Greene,** 995 F.2d 793, 801-02 (8th Cir. 1993).

In the present case, there is simply no evidence, direct or circumstantial, that the BEC (wire fraud) involving the transportation in interstate or foreign commerce--that was immaterially, remotely, inconsequentially, indirectly, and one for which there was an insufficient legal basis for establishing a nexus to Defendant--originated, terminated, or moved through the Western District of Tennessee. **Cf. Johnson v. Coyle,** 200 F.3d 987, 994-95 (6th Cir. 2000) (holding that no rational juror could have found the defendant guilty of kidnapping when the government did not present any evidence of kidnapping as defined by state law).

Accordingly, no rational juror could have found that the government proved venue for the underlying offenses in the present

case. Hence, the Court must reverse Defendant's convictions.

Concrete Legal Arguments Regarding Why Venue Was Improper For The Marriage Fraud Count In The Western District of Tennessee and Legal Arguments Showing That Marriage Fraud Is Not A Continuing Offense

Marriage Fraud is an offense that is rarely prosecuted in the United States mainly because the United States Customs and Immigration Services (USCIS) provides an alternative punitive penalty via the denial of the application for the immigration benefits that was sought through the said marriage fraud. As such, instances where the Sixth Circuit adjudicated Marriage Fraud cases are extremely rare. More rare or even non-existent are Sixth Circuit cases adjudicating whether Marriage Fraud is a continuing offense.

However, the Fifth and Eleventh Circuit Courts of Appeals have recently ruled that Marriage Fraud is not a continuing offense.

The questions before this Court in the present case is whether venue was proper for the Marriage fraud count in the Western Disrtrict of Tennessee. The other question is whether or not Marriage fraud is a continuing offense.

Regarding the first question, the arguments put forward regarding the impropriety of venue for the underlying Wire Fraud count applies, in that the marriage was "entered into" in a location other than the Western District of Tennessee. Based on this fact alone, it is abundantly, unequivocally, and

unambiguously clear that venue was improper for the Marriage Fraud count in the Western District of Tennessee.

Regarding the second question as to whether or not Marriage fraud is a continuing offense; in **United States v. Ongaga**, 820 F.3d 152, 159-161 (5th Cir. 2016) the Fifth Circuit laid to rest any contentions regarding this pertinent question.

In **Ongaga**, the Fifth Circuit asserted that only when "the explicit language of the substantive criminal statute compels such a conclusion" or "the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one" will [the Court] construe an offense as continuing.

[The Court] thus should begin with the language of the statute. The Marriage Fraud statute reads:

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more that 5 years, or fined not more than $250,000 or both. The elements of Marriage Fraud require only that the defendant (1) knowingly enter into a marriage (2) for the purpose of evading any provision of the immigration laws. Nothing in the statute's plain language, for instance, indicates that a person need actually apply for immigration benefits to violate the statute. Actions occuring after the marriage do not constitute elements of the offense under § 1325(c). Instead, all the elements of Marriage Fraud are satisfied when the defendant enters into the marriage. In sum, the plain language of the statute does not

first act, but instead continues to be perperuated over time." **United States v. De La Mata**, 266 F.3d 1275, 1288 (11th Cir. 2001).

Offenses Should not be considered continuing unless the explicit language of the ... statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing [offense]." **id.** at 1289 (alterations in original) (internal quotation marks omitted). Here, Congress's use of the phrase "enters into" in the explicit language of the statute--an act that can only occur on the singular date that a marriage takes place--upends the district courts conclusion that Marriage Fraud is a continuing offense. **Rojas**, 718 F.3d at 1320.

To conclude, since Marriage Fraud is not a continuing offense, and since it has not been established that Defendant was--in any way, shape, or form--connected to the Western District of Tennessee; no offense could have continued in the Western District of Tennessee.

Olufolajimi Abegunde (MBA) # 71[illegible]019
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APPENDIX: B

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Filed: January 12, 2021

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Re: Case No. 19-6229, *USA v. Olufolajimi Abegunde*
Originating Case No. : 2:17-cr-20238-7

Dear Mr. Abegunde,

The document which we received from you on January 8, 2021 is being returned to you unfiled because as an individual represented by counsel, you have no right to make pro se filings. All future filings should be made through your counsel.

Sincerely yours,

s/Ryan E. Orme
Case Manager
Direct Dial No. 513-564-7079

cc: Mr. Timothy Charles Flowers
Ms. Debra Lynn Ireland
Mr. John Keith Perry Jr.

APPENDIX: C

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FEB 22 2021

DEBORAH S. HUNT, Clerk

Critically Vital Issues For Counsels Consideration In The Appellate Process

Prepared For:

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March, 2020

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APPENDIX: D

FILED
FEB 22 2021
DEBORAH S. HUNT, Clerk

June 19, 2020

Olufolajimi Abegunde (MBA) #71343-019
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P.O. Box 2000
Folkston, GA 31537

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Attorney At Law
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Building G5
Southaven, MS 38672

RECEIVED
FEB 22 2021
DEBORAH S. HUNT, Clerk

Dear Ms. Lockett,

RE: Humble Request for Your Help As An Ally, and As An Effective Bridge Between Me and Mr. Perry

Hope this letter finds you well.

It was indeed a great pleasure speaking with you ma'am in the course of the last couple of days. I must say that it was indeed relieving to eventually speak with an Attorney from Perry Griffin PC. after multiple unsuccessful attempts over a period spanning eight months.

I am using this medium to make it absolutely and unambigiously clear that I have the utmost amounts of respect for you, and Mr. Perry in particular; and for your entire law firm in general. Additionally, I also want to point out the fact that the circumstances surrounding our phone calls were under the most inconvenient, and uncomfortable conditions. I thus have a feel that you might have come out of the discussions with the impression that I was unnecessarily, and passionately argumentative. I will like to wholly assure you that--that was neither the case, nor was it my intent.

I strongly believe that we are on the same team, and that we share common goals and objectives regarding the present Appellate case.

That said, I must also point out some burning issues that I have been observing in the course of the relationship between me on the one hand, and Mr. Perry, and Perry Griffing PC. on the other.

It appears as though all my attempts at communicating the facts of the case have failed. For example, as soon as Mr. Perry began representing me, I sent him a letter titled "Re: Superseding Indictment". In this letter, I debunked all the falsehoods contained on the superseding indictment. I also made it clear that the government's goal was to confound and complicate a very simple case; thereby mesmerizing all the parties concerned in the case.

At trial, I provided Mr. Perry and Ms. Shae (an Attorney that served as Mr. Perry's co-counsel at trial) a document that contained key counter arguments in response to anticipated dirty tricks by the government. Unfortunately however, it appears that the contents of this particular document were disregarded. I state this because when the government eventually deployed these dirty tricks at trial, we were caught flat footed.

Prior to sentencing, I closely examined the government's response to our Rule 29 Motion for Judgment of Acquittal. This government filing--just like the contents of Timothy Flowers's trial summation--contained an immeasurable number of false misrepresentations of material facts that were intended to further hypnotize the intended targets through acts of perfidious guile,

artful sophistry, and subterfuge.

My exploration of the government filing thus led me to the key epiphany that the government--through its response to the Rule-29 Motion for Judgment of Acquittal--had inadvertently revealed key insights into its appellate strategy. The government effectively provided us answers to a test months before the test itself.

This realization thus led to me developing a comprehensive document that addressed the government's multiple falsehoods by presenting undisputed facts. I also exposed the government's clear malfeasance in that the government violated my Attorney-Client privileged communications by listening-on my Attorney-Client calls. I must point out the fact that I communicated all these issues and concerns to Mr. Perry. I even wrote the Judge regarding this prodigious violation of my constitutional rights by the government.

In all these communications with Mr. Perry, I emphasized, and constantly reinforced the key fact that venue was not proper for the substantive counts in the Western District of Tennessee. Unfortunately however, it appears as though all the concerns I raised were disregarded.

Ms. Lockett, prior to establishing contact with you ma'am, I had been hurting because the issues and concerns I have been raising abinitio, and for nearly two years are not mere phantom claims; they are based on widely available FACTS. Further exacerbating the hurt is that the value of facts have been significantly diminshed in this case. There seems to be a high

level of reverence for and deference to government opinions; thereby elevating government opinions and false statements; and placing the illuminating power of facts in a subordinate position.

With all due respect ma'am, there seems to be an expectation that the prosecutors and case agents are saints incapable of misconduct. As this case has clearly revealed, nothing could be further from the truth. In this case, the government has engaged in highly despicable acts that range from identity theft, criminal impersonation to violating constitutional rights by listening-on Attorney-Client privileged phone calls.

I thus plead that we rid ourselves of all forms of cognitive dissonance. We must not give too much credence to opinions--not my opinions, not the governments opinion, not Mr. Perry's opinion--but place the highest premium on widely available facts of the case.

We cannot afford to elevate government misleading statements or opinions to the same level, or even place opinions above facts. A typical example that reflects the subordination of facts and the elevation of opinion is the issue of venue.

Ma'am please pardon my seeming venting. It is just that I have a vested interest in leaving the God forsaken conditions that I am currently in. I am also frustrated that material and exculpatory facts that I have constantly raised are being disregared or even ignored.

After all is said, upon establishing contact with you ma'am, for the first time in a really long time, I see rays of hope. I feel that you have provided me a listening ear.

I am thus using this medium to plead for an elevation from a listening ear to a strong ally--the role of an effective bridge between me and Mr. Perry. The impact of such an alliance will be immeasurably priceless, and would definitely lead to the reversal of my convictions--my ultimate goal.

Through this process ma'am, I commit to observe and be in full compliance with all reasonable ground rules you set.

Ma'am upon receiving Mr. Perry's Appellate brief, I prepared a hand written document that I had forwarded to Ms. Lannom. I will have my family email you the same document. The document contains clarifications regarding the facts of the case, corrections to inexact assertions on the brief, as well as additional objections that were not raised on the brief.

In addition to the hand written document ma'am, please see attached Sixth Circuit, Supreme Court, as well as other Circuit Court cases that provide bolstering arguments that comprehensively demonstrate the key fact that the government lacked venue regarding the substantive counts in the instant case. Also see attached cases that confirm that Marriage Fraud is not a continuing offense; hence, the government could not have legally charged me with Marriage Fraud in the Western District of Tennessee.

I will be tremendously grateful to receive the governments response to Mr. Perry's appellate brief. I will be happy if you can have it mailed to me as soon as possible. I will also be appreciative if you can request--on my behalf--that Mr. Perry seek an extension of the 22-day time frame for a response by the

defense to the governments brief. Lastly on this point, I will be grateful if you request--on my behalf that Mr. Perry let me view the final brief before filing it to the Sixth Circuit.

To conclude ma'am, I will be tremendously grateful for an opportunity to touch base with you by verbally confering, and exchanging views regarding the subjects of this, and other recent correspondence.

As such, I plead that you call the Case Manager at the D. Ray James Correctional Facility to speak with me. You Ma'am can make the call via the details below:

Case Manager Clark
912-496-6242
9:00am - 4:00pm Eastern Time.

Thanks for your kind consideration. I look forward to hearing from you.

Yours sincerely,

Olufolajimi Abegunde (MBA)

June 22, 2020

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Ms. Leighanne E. Lockett
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5699 Getwell Road
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Southaven MS 38672

Dear Ms. Lockett,

Laying Special Emphasis On The Context Of The Entire Case; Thereby Implicitely Exposing The Weakness Of The Government's Case As Well As The Government's Many Acts Of Misconduct In A Subtle Manner

Upon sending you the letter dated June 19, 2020; where I humbly requested your help as an ally; I realized that I left out a vitally important issue.

This issue has to do with the context of the entire case. I strongly believe that if the case is presented in the right context to the Sixth Circuit, we will be in a position to reshape and regain control of the narrative in the Appellate process.

Unfortunately, from the inception of this case till date, we have been operating based on the government's many false, confounding, confusing, and highly obfuscating narrative. These government acts have thus led us into several rabbit holes, as well as quagmire like situations that seem to have us trapped, and unable to get out of.

Again, an example of a rabbit hole caused by the government confounding the case, is the issue of venue. Other minor examples of quagmire like situations that sink us into rabbit holes are the issues of the closure of my bank accounts; the issue of whether or not my business's Anti Money Laundering (AML) policy requires me to know the sources of the funds that the business deals in; the government bringing the Marriage Fraud count in the Western District of Tennesse etc.

So, the question is: what is the context of the case???

-I was interviewed by agents of the FBI in March 2017. The notes of the FBI interview clearly revealed the facts that in a convivial discussion with the FBI agents, I disputed that an individual is not legally obliged to know the exact sources of the funds the individual deals in. I also vehemently condemned all forms of fraud. Lastly regarding this point, I wholly cooperated with the FBI investigation by providing the FBI agents Ojo's contact information. I also ensured that Ojo contacted the FBI less than one hour after the agents departed from my home.

-As the FBI agents notes also show. When Ojo called the agents, Ojo confirmed that he had told a certain Leke Adenuga to deposit funds into Ojo's account. This point clearly exonerates me. Unfortanately, the agents notes were never raised at trial.

The interview with the FBI agents served as the basis of my indictment on August 24, 2017. The government never provided any evidence to show that I was involved in any conspiracy. That is, nothing in the discovery showed any activity on my part before August 24, 2017 that reflected criminal activity.

-Without any form of evidence, I was indicted on three counts:

Wire Fraud Conspiracy

Money Laundering Conspiracy, and

Aggravated Identity Theft

- While at the airport on February 7, 2018 to change a flight, I was arrested under the false pretext that I had intended to flee the United States.

Ten days later I was haled to the Western District of Tennessee where I have absolutely no business in. The initial indictment clearly reveals the fact that there is no connection between the $9,000 that was obtained after a real estate firm was defrauded in the Washington state, on the one hand; and the Western District of Tennessee, on the other hand. In other words, the funds did not originate from, terminate, or move through the Western District of Tennesse.

-Upon realizing this fact, I drafted a Motion to Dismiss the case, and sent it to my attorney on record at the time--William Massey-- who agreed to file it. Sadly, Mr. Massey developed cold feet after he had been paid, and began urging me to reach an agreement with the government. I must point out the fact that it was this draft Motion to Dismiss that served as the basis of my indictment on Witness Tampering. This seems to me the most obfuscating, misleading, and wicked act of subterfuge by the government.

-At the bond hearing on June 25, 2018; after a woeful performance by Mr. Massey, I was denied bond. On cross

examination, David Palmer, the FBI case agent testified that the $9,000 that I had directed to be refunded back to Alonso--the co-defendant who had inadvertently deposited the funds into Ojo's account--was not refunded, but spent. This is highly significant because this point shows that the government built its case on a faulty foundation. The fact that the funds were returned and not spent reflects the key fact that there was no intention to defraud any individual of their possession. Also, at the bond hearing, prior to setting a trial date, the Judge asked the prosecutor Debra Ireland if the case was set to go to trial, and as to whether or not the government would be returning a superseding indictment. To this, Ireland responded by stating that the government would not be returning a superseding indictment. Ireland also stated that I might be facing other charges elsewhere.

-Around two months after, the government returned a superseding indictment where--all of a sudden--they dropped the Aggravated Identity Theft Charge, and added a Marriage Fraud Conspiracy Count, as well as a Witness Tampering count.

Upon receiving the superseding indictment, I drafted a document titled "Re: Superseding Indictment" where I made it clear that the superseding indictment reflected the weakness of the government's case. I provided facts on how to counter the false naarratives on the superseding indictment.

-At trial, several government acts of malfeasance were revealed. It was revealed that the government had hired a fellow detainee at the West Tennessee Detention Facility to spy on me.

It was also revealed that Agent Palmer had stolen my identity, and criminally impersonated me.

-A key exculpatory point that was missed by the defense at trial was the fact that the government provided Instant Message communications and pictures of receipts of all the transactions my business was involved in. However, the government utterly failed to provide any receipt pictures, or communications between me and Ojo on the one hand; or between me and anyone else regarding any $9,000 transaction around the time Alonso deposited the funds. This provides exculpatory circumstantial evidence regarding why I could not have had any connection to the $9,000 transaction. However, this point has never been raised. This key point clearly debunks any argument that I was aware of the $9,000 transaction. Furthermore, regarding this point, the evidence presented at trial never showed that any transaction that could be traced to me--through pictures of receipts or Instant Message Communications--was in any way, shape, or form associated with fraud. I was simply a licensed business man involed in trading currencies. I also took reasonable steps to know my customers.

-Regarding quagmires, I must state that the only requirement (as the FINCEN representative testified at trial) or obligation was that I take reasonable steps to know my customers (KYC). There was no onbligation for me to know the sources of funds I dealt in.

-At sentencing the judge stated that my AML policy stated that I must know the sources of funds that I dealt in. This is absolutely false, it is another quagmire that is not supported by

the record.

-**Prosecutorial Misconduct**: During trial summation the government made several improper statements that were flagrantly false. These statements misled the jury, and significantly prejudiced me. As the pattern showed through out the case, Timothy Flowers delibrately made these statements before the jury. I must point out the highly significant fact that the statements were presented to the jury in Power Point style. This point is profoundly relevant because Flower's took his time to prepare the Power Point slides that were presented to the jury. Flowers's statements were not sponteneous, they were premeditated, and calculated to intentionally mislead the jury. Finally, regarding this point, it is my view that the government engaged in these wicked acts because of the lack of evidence linking me to crimes in the Western District of Tennesse; and because of the overall weakness of the governments case.

Timothy Flowers's several acts of prosecutorial misconduct can be easily substantiated by viewing the record or even requesting the powerpoint slides. A typical and grave example of Flowers's prosecutorial misconduct was when Flower's told the jury that the $9,000 was not reversed because of any actions taken by me. Rather, Flowers stated, the funds were unilaterally reversed by the bank without any input from me. This is highly significant because the fact that I engineered the reversal of the funds clearly reflects the fact that I had no intention of dispossessing anyone of their belongings--a key element of the charged crime.

Yet, this key point, as well as other key points were not raised at trial.

To conclude ma'am, it is my view that in other to gain an advantage in the appellate process, me must totally control the narrative by presenting the facts contained on the record, as well as the facts stated on this letter, to the Sixth Circuit. It is easier for a panel of three Circuit Judges to see through the facade created by the government if we present the facts. I know for a fact that even though I'm yet to see the governments response to our applellate brief; the brief contains many obfuscations and misleading statements.

Thanks for your kind consideration. I look forward to hearing from you.

Yours sincerely,

Olufolajimi Abegunde (MBA)

07-15-2020

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Dear Ms. Lockett,

Response To The Government's Appellate Brief That Contains Critically Vital Points That Are Of The Highest Significance

I will breakdown this response into two parts, Matters of law and clarifying matters of fact by exposing the government's assumptions, opinions, speculations, and conjecture that were camaflagued as evidence.

Matters of law

1 The government's false claim on page 19 of the government's brief that "Abegunde challengets the sufficiency of his convictions for conspiracy

to commit wire fraud and money laundering, but not, for Marriage-fraud conspiracy or Witness tampering.

This government assertion is blatantly and absolutely false. The truth is that the Rule 29 general challenge of the sufficiency of the evidence covers all four counts.

This key point is highly significant because the government failed to provide sufficient evidence for the marriage fraud and witness tampering counts.

ⓐ Marriage Fraud: The government lacked venue in the Western District of Tennessee for the Marriage Fraud count. Of the highest significance is the fact that a general challenge of the sufficiency of evidence preserves the issue of venue for the marriage fraud count. "[The Sixth Circuit] therefore hold[s] that a general challenge to the government's proofs in a Rule 29 motion for judgment of acquittal suffices to preserve the issue of venue." United States v. Ramer 883 F.3d 659, 682 (6th Cir. 2018).

ⓑ Witness Tampering: Regarding the witness tampering count, the government simply speculated without providing evidence that Defendant's goal of sending Ms. Caffey a series of documents that contained a "Motion to Dismiss" was sent to mislead Ms. Caffey by creating the false impression that the charges would be dismissed. At trial, Ms. Caffey took the stand and never mentioned any thing to this effect. There is simply no evidence on the record to support this government opinion.

Furthermore, at the end of trial during jury deliberations a question came in from the jury regarding the definition of a formal court proceeding. This is a key point because the indictment states that the objective of tampering with the witness was to dissuade Ms. Caffey from testifying against Defendant at a "formal court proceeding."

Fortunately, the government failed to provide any evidence to prove this point. Hence, it is incumbent on the Sixth Circuit to analyze the record to find evidence to support the government's theory.

2. The Government Completely Ignoring The Plain Reading and Sixth Circuit Interpretation of 18 U.S.C. 3237(a).

In justifying venue in the Western District of Tennessee for the wire fraud counts and money laundering count; on pages 25-28 of the government's brief, the government totally ignored the Sixth Circuits plain reading, and the Sixth Circuit's constant explanation of the text of 18 U.S.C. 3237(a).

Additionally, the government ~~qu~~ cites United States v. Grenoble, 413 F.3d 569, 573 (6th Cir. 2005); but the government failed to quote the actual text of Grenoble.

In Grenoble the Sixth Circuit ~~stated~~ held that

18 U.S.C. 3237(a) provides in pertinent part that "Any offense involving ... transportation in interstate or foreign commerce ... is a continuing offense and except as otherwise ~~stated~~ expressly provided by an enactment of congress, may be inquired of and prosecuted in any district from, through, or into which such commerce ... moves." Grenoble, 413 F.3d at 573 (quoting 18 U.S.C. 3237(a)).

The Sixth Circuit has explained that "[a] plain reading of the text" shows "that venue in a [wire fraud] case is limited to districts where the [transportation in interstate or foreign commerce] is deposited, received, or moves through." United States v. Petlechkov, 922 F.3d 762, 769 (6th Cir. 2019); United States v. Wood 364 F.3d 704, 713 (6th Cir. 2004) (citing 18 U.S.C. 3237(a)) (emphasis added).

3 Plain Error or De novo Review of The Issue of Venue

On page 26 of the government's response, the government falsely asserts that: "Because Abegunde did not raise this venue objection in the district court, however, this court reviews only for plain error ..."

Unfortunately for the government, the government's argument does not take recent Sixth Circuit precedent into account. As stated, the Sixth Circuit, in United States v. Ramer 883 F.3d 659, 682 (6th Cir. 2018)

held that a general challenge to the government's proofs in a Rule 29 Motion for Judgment of acquittal suffices to preserve the issue of venue.

Since Defendant raised a general Rule-29 motion, the issue of venue is preserved for de novo appellate review and not plain error review.

(4) The Issue of Severance

On page 14 of the government's response, the government states that "Critically, Abegunde used the immigration status he obtained through his fraudulent marriage with Caffey to open multiple financial accounts for business and personal use. Those accounts then facilitated Abegunde's receipt and transfer of funds ~~obtained~~ obtained through fraudulent activities.

The above statement is false in its entirety, and false statements cannot serve as the basis for a joinder.

Defendant had opened several bank account — business and personal — prior to Defendant's Marriage

None of the funds deposited into Defendant and ~~Def~~ Ms. Caffey's joint bank account can be linked to any type of fraudulent activity whatsoever

Agent Vance and Agent Palmer testified that they could not ascertain exactly the reasons why Defendant's bank accounts were closed. In other

words, there is no evidence that Defendant's bank accounts were closed because of suspicion of fraud. Conclusions that Defendant's accounts were closed because of fraud is not supported by the record, and is totally based on government speculation.

Based on the fact that the pinder of offenses was based on false information on the indictment — false information that was altered by both agent Vance, and agent Palmer at trial when they both stated that they did not know the exact reason why the account was closed — that greatly prejudiced Defendant, so the pinder of offenses was improper.

Finally, there is absolutely no evidence that the joint account was used to receive, disguise, and launder money from victims of internet and computer fraud. The $9,000 that brings Defendant into the case was not deposited into any bank account that was opened as a result of Defendant's marriage.

Establishing The Actual Facts of The Case, AND Exposing The Government's Assumptions, Opinions, Speculation, Conjecture, and Outright Falsehoods.

"An inference is not suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that is known to exist." Siewe v. Gonzalez, 480 F.3d 160, 168 (2d Cir. 2007) (alterations omitted) (quoting Bickerstaff v. Vassar Coll., 196 F.3d 435, 448 (2d Cir. 1999)).

"Impermissible speculation, on the other hand, is a complete absence of probative facts to support the conclusion reached." Lavender v. Kurn, 327 U.S. 645, 653, 66 S.Ct. 740, 90 L.Ed. 916 (1946). While [the court] must defer to a jury's reasonable inferences, [the court] give[s] no deference to a jury's impermissible speculation. United States v. D'Amato 39 F.3d 1249, 1256 (2d Cir. 1994).

"Where a fact to be proved is also an element of the offense... It is not enough that the inferences in the governments favor are permissible. [The court] must also be satisfied that the inferences are sufficiently supported to permit a rational juror to find the element, like all elements, is established beyond a reasonable doubt." United States v. Martinez, 54 F.3d 1040, 1043 (2d Cir. 1995); see also Sand et al., Supra § 6.01 ("whether based upon direct or circumstantial evidence, or upon logic, reasonable inferences drawn from such evidence, [the jury] may be satisfied of the guilt of the defendant beyond a reasonable doubt before [it] may convict."). "It would not satisfy the Constitution to have a jury determine that the defendant is probably guilty." United States v. Lorenzo, 534 F.3d 153, 159 (2d. Cir. 2008) (internal quotation marks and alterations omitted).

Personal beliefs, conjecture, and/or speculation are not considered to be direct evidence. Grizzell v. City of Columbus Police, 461 F.3d 711, 724 (6th Cir. 2006).

An opinion is simply not evidence of wrongdoing. United States v. Paulus 2019 U.S. App. LEXIS 18770 (6th Cir. 2006).

Please refer to pages 22-25 of the document titled "Critically Vital Issues for Counsels Consideration In The Appellate Process" for additional cases that distinguish between Speculation and Inferences. The said document is dated March, 2020.

On the governments response to the appellate brief, the government made more than two dozen assertions that are not just blatantly false misrepresentations of material fact; these assertions are not supported by the record.

The truth of the matter is that there is absolutely no nexus between Defendant and any fraudulently obtained funds in the Western District of Tennessee. There is also no direct nexus between Defendant and any other fraudulently obtained funds elsewhere.

What brings Defendant into the case is $9,000 that was deposited into an an account that was neither owned by or operated by Defendant. Since there is no connection between Defendant and fraud, the government has chosen to distract all the parties concerned by misrepresenting material facts falsely. To achieve this, the government relied on opinion testimony from non-other than the agents that investigated the case.

The governments evidence did not connect the links in the logical chain. None of the 50,000 pages of evidence containing defendant's communications showed an agreement

between Defendant and any other indicted "co-conspirator or any one else, to engage in a Business Email Compromise (BEC); to defraud any individual or business; or to engage in any criminal activity related to wire fraud or money laundering.

Hence, the government filled the evidentiary void, as well as the gaps in the logical chain with false misrepresentations of material fact, speculation, and the baseless injection of opinions.

Please see below instances where the government falsely misrepresented material facts in reaching it's inferences.

1 The government inferred that Defendant Controlled Accounts That Received Diverted Funds. The government reached this inference based on the following assumptions, opinions, speculations, conjecture, and false misrepresentations of material facts:

(a) Point-of-sale transactions took place on Ojo and Oguntoye's accounts when they were not in the United States.

The Fact: ~~Th~~ It amounts to pure speculation to conclude — without any evidence in the form of I.P address location matches showing that Ojo's online bank account was accessed at Defendant's home; CCTV footage showing Defendant using Ojo's debit cards at the location of the Point-of-sale; locating Ojo's debit cards after Defendant's home was searched; lastly, none of Ojo's financial

effects were located at Defendant's home.

It amounts to intellectual laziness to ~~infer~~ fill this evidentiary gap with an assertion not supported by any form of evidence

b "The Phone number associated with Ojo's account belonged to Abegunde"

The Truth: When Ojo visited the U.S he did not have a ~~bas~~ U.S. phone number, and since he was Defendant's guest, Defendant let Ojo use Defendant's phone number to open a bank account. Defendant must point out the fact that the reason Ojo opened the account was to deposit a check that funded Ojo's stay in the U.S.

c "Wells-Fargo recalled the wire tranfer based on fraudulent conduct."

The Truth: Well-Fargo did not recall the funds based on any fraudulent conduct, Wells-Fargo ~~recalled~~ reversed the $9,000 transaction after receiving permision from Defendant because Defendant was told that a certain Alonso was in the bank, and that Alonso had inadvertently deposited the $9,000 into Ojo's account.

Certain questions arise based on the government's falsehood that the funds were recalled without any interference from Defendant:

(i) Why werent the funds deposited into Ms. Ogunfaye's account not recalled?

(ii) If I indeed controlled Ojo's account, why was Ojo indicted?

(iii) Why wasn't Ms. Ogunfaye indicted?

(iv) The government is observing Defendant's role in the reversal because Defendant's reversal means Defendant did not intend to deprive anyone of their funds.

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d "Because many of his accounts had been closed, Abegunde used accounts in the names of others to accept funds and convert United States Currency into Nigerian Naira."

The Truth: ~~White Defend~~ Defendant ran a Money Service Business that was licensed with FINCEN and the Georgia Department of Banking and Finance. This business engaged in remittances, currency exchange, brokerage services, and arbitrage. These activities involve the use of third party accounts. It must be pointed out that none of the third party transactions can be traced to fraudulent activities.

e "Abegunde conducted ~~this business~~ over WhatsApp, an encrypted messaging service."

The Truth: WhatsApp is a world/global instant messaging application that has over two billion users worldwide. It is free, and it allows for ease in sending all kinds of documents, and multimedia files such as pictures, and photographs.

This is important because Defendant's business process requires documenting communications as well as the preservation of documents that showed proof of transactions. These proof of transactions take the form of photographs.

Defendant must point out that these so-called encrypted messages were not deleted from Defendant's phone.

Additionally, the Fourth Amendment of the United States constitution provides the right of the people to be secure in their persons and property against unreasonable search and seizure. Based on this provision Defendant had a right to use WhatsApp for business communications.

Furthermore, WhatsApp is not illegal. Lastly, is the government admitting to eavesdropping on unencrypted message services. As Defendant does not understand why the government is raising the communication platform used by Defendant.

f Defendant had to beg, incentivize, and lobby to use others accounts because he did not have accounts of his own

The fact: It is not illegal to beg, incentivize and lobby people to use their accounts for legitimate transactions especially because Defendant did not have bank accounts.

g Despite claiming to be a legitimate business man, Defendant did not want funds to be paid into accounts that could be "tracked" back to him.

The fact: This refers to a conversation Defendant had with a certain Kayode Adegoye "Money Guy Dejabo" regarding wire transactions. In ~~these convers~~ this particular conversation, Defendant declined to do business because the individual was offering wire transactions. Defendant's business model does not support wire transactions because of the risks where the proceeds of a BEC can be wired into a bank account

provided by Defendant, thereby implicating Defendant in a conspiracy to commit wire fraud. It was Defendant's consciousness of this possibility that led to the conversation about accounts and tracking.

h By October 2016, Abegunde had full access and control over the accounts where Ramos had deposited the fraud proceeds.

The Fact: The fact that Defendant offers a bank account name and number to a customer cannot be a basis to conclude that Defendant controlled the bank account. ~~The~~ Besides the government opinion, there is absolutely no evidence that ~~the~~ Defendant had "full access and controll" over the accounts.

Defendant must point out the fact that ~~Ojo's account~~ there was absolutely no communication or ~~bet~~ photograph of any $9,000 transaction into Ojo's account around the date of the BEC.

The records also reflect the fact that Defendant had sent Ojo many deposit slips prior to the October transaction. These transaction confirmations were ~~confirmed~~ acknowledged by Ojo. If Defendant had control over Ojo's account, why would Ojo acknowledge the transactions into Ojo's account?

If it is the government's contention that because Defendant offered Ojo's account information in communications with Defendant's customers, Defendant controlled Ojo's account; ~~Wh~~ then did Defendant

also control the other accounts on the summary chart. If Defendant controlled the accounts, why weren't the ~~accounts in oth~~ owners of the accounts indicted like Ojo?

Why cant the government accept the most plausible explanation that in brokering transactions between remitters and people that needed to exchange currency; account information would have changed hands in order to bridge / broker such transactions?

This is an easy, and fact based inference that is supported by the evidence on the record.

2 Abegunde lied to the FBI about his role in these transactions.

The government relies on the case agent's opinion to reach this inference

(a) Agent Kevin Hall who actually interviewed Defendant in March 2017; did not testify that Defendant had lied to Agent Hall. Agent hall testified that Defendant and the said agent had "convivial" discussions.

The conclusion about Defendant lied to the FBI came from a WhatsApp message between Defendant and Ojo where Defendant stated that "they asked if you were part of FJ Williams, I lied about that." This statement is immaterial because the agents came looking for Ojo and not Defendant. All the questions posed to Defendant were answered correctly, and Defendant fully co-operated with the agents by

Providing the agents' Ojo's contact information, and ensuring that Ojo contacted the agents less than one hour after the agents' departed Defendant's home.

Additionally, Defendant stands by Defendant's statement that only the perpetrator of fraud is guilty/culpable and not the merchant who (D) is unaware that the funds spent at his business ~~is~~ are fraudulently obtained. In other words, if the merchant does not know the sources of funds that are spent in the merchants establishment, the merchant cannot be responsible if the alleged funds are fraudulently obtained.

Lastly, regarding Defendant lying to the agents; Agent Hall testified that he was unaware that Defendant had lied to him. This illustrates the immateriality of Defendant's conversation with Ojo.

(b) Ojo claimed that Abegunde had acted correctly by lying, and that there was "no crime on seeing [an] opportunity and taking it." To this, Abegunde simply stated, "LOL"

The Fact: It is absolutely preposterous for the government to reach conclusions by claiming to have God-like powers of interpreting the contents ~~of~~ of Defendant and Ojo's minds.

The record of Defendant and Ojo's communications showed several WhatsApp phone calls between Defendant and Ojo. Several discussions

had transpired prior to text messages. Speculating that Defendant's conversation was reinforcing a lie is not only outrageous it is impermissible.

Other False Statements On The Government's Brief

(a) Investigators learned that Abegunde used his joint accounts with Caffey to facilitate BEC transactions and to launder the proceeds of their brokered marriage.

The Fact: This statement is absolutely false and amounts to prosecutorial misconduct because this statement is not supported by the record. On the contrary, the agent's testified that the only transaction that could be linked to a BEC was the $9,000 transaction which could not in any way, shape, or form be linked to Defendant.

(b) Abegunde tried to make Ms. Caffey believe the case was not going to proceed by posing as his attorney, writing a motion to dismiss, and sending it to Caffey

The fact: This is another manufactured falsehood by the government that is not supported by the record.

(c) Abegunde testified in his defense ... that his marriage to Caffey was legitimate

The Fact: This statement is false and is not supported by the record.

(d) ... That the funds from Whatcom BEC had been wired by mistake; and that he had admonished Ojo about the transaction.

The Fact: Defendant was told by Brian Ancona of Wells Fargo that a certain Alonso was in the bank to complain about an inadvertent deposit into Ojo's account. This is how Defendant reached the conclusion about the inadvertent nature of the funds that were ~~to~~ deposited into Ojo's account.

Regarding Defendant admonishing Ojo, this exculpatory point cannot be overemphasized because this point is supported by the record of conversations between Defendant and Ojo. If this conversation can be shown, then ~~it stm~~ the governments case falls flat. The logic is simple, If Defendant admonished Ojo, then Defendant could not have had any knowledge of the $9,000 transaction. Also, this means Defendant didn't control the account.

~~Lastly, Ojo, In~~ Lastly, In Ojo's conversations with the FBI, Ojo stated that he had directed a certain Leke Adenuga to deposit the funds into his account.

The Governments Insufficient Evidence On All Counts

① Wire-Fraud Conspiracy

Regarding the Wire-Fraud Count on page 22 of its response, the governmet offers the following ~~evidence~~ conjecture camoflagued as evidence:

ⓐ When the Wells-Fargo investigator and FBI

~~agent~~ questioned him (Abegunde) about the Whatcom BEC, Abegunde lied about his involvement and said he was merely moving money

The Facts

(i) For the upteenth time neither the Wells Fargo agent or the FBI questioned Defendant about the Whatcom BEC. The FBI merely asked about Ojo and the Wells Fargo agent pleaded for a reversal of the inadvertently deposited funds.

(ii) There was no reason for Defendant to lie in both instances. It is a fact that ~~the Agents~~ Ojo contacted the agents immediately after they departed Defendants home.

(iii) It is also a fact that the $9,000 was reversed only after Defendant approved the reversal.

(iv) Lastly, If the bank had the power to unilaterally reverse funds without approval, why didn't the bank reverse the Ms. Ogunfaye transaction ???

(v) Of the highest significance is the fact that the statement by the government that Defendant lied to the Wells-Fargo agent and the FBI is not supported by the record. Brian Ancona of Wells Fargo and Kevin Hall of the FBI both testified at trial, and neither of them testified to this.

(b) He then contacted Ojo and laughed about there being "no crime in seeing an opportunity and taking it."

The Facts: Defendant must point out certain facts

(i) The fraudulently obtained $9,000 was deposited into Ojo's account and not Defendant's account in October 2016. These funds were reversed in October 2016 without incident.

~~(ii) The FBI interviewed Defendant six months later~~

(ii) After facilitating the reversal of the funds, Defendant strongly admonished Ojo for carelessness in procuring funds.

(iii) The FBI interviewed Defendant six months later in March 2017 where Defendant wholly cooperated with the FBI. Defendant had multiple conversations with Ojo on the day of the FBI interview. In a conversation Ojo stated that there is nothing wrong with seeing an opportunity and taking it. Without having access to the full conversation, it is impossible for anyone to divine the actual context and meaning of Ojo's statement.

(iv) But this does apply to not the government. The government filled this evidentiary gap with its opinion; thereby leaving the jury to speculate its way into a verdict of guilt beyond a reasonable doubt.

C Th Abegunde received proceeds of a crime, lied about it to the FBI, and joked about his conduct with a co-conspirator

The Facts

(i) Ojo and not the Defendant received funds in his account

(ii) Since the FBI never discussed the proceeds of the Whatcom fraud, Defendant could not have lied about the fraud.

(iii) Defendant's alleged lie was regarding Ojo being a part of FJ ~~Will~~ Williams — Defendant's business. As stated this alleged lie is immaterial because it had absolutely nothing to do with the Whatcom BEC.

(iv) No human being can divine — accurately — the contents of Defendant's conversation. In the instant case, the government speculated.

2 Money Laundering Conspiracy Count

Regarding the Money Laundering Conspiracy Count the government offered the following conjecture camaflagued as evidence.

(a) Abegunde accepted small transfers of fraud proceeds in bank accounts bearing the names and identifiers of other individuals — just as he did on other ~~occa~~ occasions.

The facts: (i) The agents' ~~tes~~ (Palmer and Vance) testified that the only funds that was associated with fraud was the $9,000. As stated, this $9,000 cannot be logically linked to Defendant.

(ii) No other transaction involving Defendant can be linked with any BEC.

(iii) Defendant's business operations required the use of bank accounts.

(b) Abegunde arranged the transactions through encrypted WhattsApp Communications, which are difficult to track.

The Truth

(i) WhatsApp is a perfectly legal communication tool used by two billion people worldwide.

(ii) The government assertion that encrypted WhattsApp communications denote concealment stretches credulity. Does the government suggest that two billion people worldwide are concealing something.

(iii) America is a free country where peoples communications are not tracked. Or did the government just admit to tracking unencrypted communications? Furthermore Defendant, just like other people subject to American jurisdiction has a right to be secure from unreasonable tracking.

(c) That conduct supplied the jury with the proof of Abegunde's participation in a concealment based conspiracy to commit money laundering.

The Facts

No funds were laundered by Defendant.

3. Conspiracy To Commit Marriage Fraud

The evidence in insufficient for this count because the government lacked venue — a major requirement for prosecuting the count.

This point must be raised.

Witness Tampering

There is no evidence on the record to suggest that ~~the~~ Defendant ~~made Ms~~ tried to make Ms. Caffey believe the case was not going to proceed by posing as Abegunde's attorney, writing a motion to dismiss, and sending it to Ms. Caffey.

This statement is a figment of the government's imagination, and is not supported by the record.

The Summary Charts

Regarding the Summary Charts the ~~Agent's~~ agents' testified that besides the $9,000 transaction, no other transaction can be linked to fraud.

This point raises significant concerns because:

(i) Rule 1006 of the Federal Rules of Evidence provides that "The proponent of the summary must also have made the documents available" to the other side so the opposing party can "attack" the authenticity or accuracy of a chart, summary, or calculation, with an opportunity to prepare for cross-examination, or to offer exhibits of it's own as rebuttal evidence." United States v. Bray, 139 F.3d 1109 (6th Cir. 1998).

(ii) At trial, and at sentencing, the government provided supporting documents of several transactions involving Defendant's business. The government agents testified that none of the said transactions can be linked to

fraud; besides the $9,000 transaction.

~~(III) Also, none of the transactions besides the $9,000 transaction could be linked to fraud~~

(III) While the government provided supporting documents — instant message communications, and pictures of deposit slips — for all the transactions, the government utterly failed to provide any instant message communications or pictures of deposit slip of the $9,000 transaction.

(IV) This point reinforces the key fact that Defendant was not in any way linked to the $9,000 transaction.

(V) ~~Regarding~~ Since no transaction involving Defendant ~~[illegible]~~ could be linked to fraud, then this shows that Defendant ran a perfectly legitimate business.

(VI) The $9,000 transaction — which was not linked to Defendant — was the exception and not the rule.

Other Key Issues

— Regarding the joinder of the marriage fraud count, the government — on page 17 of its brief — in order to justify the joinder of offenses falsely asserted that: "For instance, the jury learned Abegunde used a USAA bank account jointly held with Coffey to conduct transactions, and that an indivi-

dual that Abegunde recruited made at least six cash deposits into it. Prior to this statement, the government falsely asserted that: "Evidence that Abegunde entered a fraudulent marriage explained how he obtained access to financial resources, including bank accounts, which Abegunde then used to launder the proceeds of the larger wire fraud scheme."

The Fact: The above statement is blatantly false. No funds that were deposited into any jointly held account between Defendant and Ms. Caffey can be linked to fraud.

Additionally, the jury did not hear such a statement, because the statements are not on the record.

These dozens of false statements that are not supported by the record must be exposed to the Sixth Circuit.

Conclusion

For additional cases that offer potent points regarding challenging the sufficiency of the government's evidence, as well as cases about opinion testimony, please refer to the document I sent earlier titled "Critically Vital Issues for Counsels Consideration In The Appellate Process." More specifically, please refer to pages 22-38 of the said document.

Regarding sentencing, the Probation Officer stated on the PSR that evidence that Defendant engaged in money laundering is limited.

Lastly, Defendant urged Ms. Caffey not to talk to the government without effective assistance of Counsel. Defendant did not urge Ms. Caffey not to talk to the government. Defendant simply urged a good lawyer

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October 19, 2020

Olufolajimi Abegunde (MBA) #71343-019
D. Ray James Correctional Facility
P.O. Box 2000
Folkston, GA 31537

The Honorable Judge Lipman
United States District Court
Western District of Tennessee
167 North Main Street
Memphis, TN 38103

Cc: Mr. John Keith Perry
Attorney At Law
Perry Griffin PC.
5699 Getwell Rd. Building G-5
Southaven, MS 38672

Dear Judge Lipman,

PETITION AND SUPPLICATION FOR JUDICIAL NOTICE PURSUANT TO RULE 201(c) FED. R. EVID. REGARDING CLEAR AND OBVIOUS ERROR AT SENTENCING IN THE IMPROPER APPLICATION OF U.S.S.G. §2S1.1(a)(2) IN PLACE OF THE APPLICABLE AND DESIGNATED U.S.S.G.--§2S1.1(a)(1)

A sentence will be found to be procedurally unreasonable when the district court failed to accurately calculate the sentencing recommendation of the U.S.S.G. **United States v. Anderson** 566 F.3d 319, 324 (6th Cir. 2008) See also **United States v. Hazelwood,** 398 F.3d 792, 800-01 (6th Cir. 2005); accord **Gall v. United States,** 128 S. Ct. 586, 596, 169 L. Ed. 2d 445 (2007)

[The Court] conduct[s] de novo review of a district court's legal conclusions regarding the guidelines. **United States v. Kaminski,** 501 F.3d 655 (6th Cir. 2007).

The district court's factual findings are reviewed for clear error. **id.**

"If a defendant fails to raise an objection before the

district court... review is for plain error." **United States v. Corp** 668 F.3d 379, 386; see also Fed. R. Crim. P. 52(b).

Generally a remand is waranted when the district court committed an error in computing the Guidelines' recommended sentencing range. **Hazelwood,** 398 F.3d at 801.

U.S.S.G. §1B1.2 Applicable Guidelines

(a) Determine the offense guideline section applicable to the offense of conviction (i.e., the offense conduct charged in the count of the indictment or information of which defendant was convicted).

§1B1.2

Refer to the statutory index (Appendix A) [of the U.S.S.G.] to determine the Chapter Two offense guideline referenced in the Stautory Index for the offense of conviction. **See U.S.S.G §1B1.2.**

The Charged Offenses

The Underlying Charged Offense--Conspiracy to Commit Wire Fraud:

Appendix A of the **U.S.S.G.** matches **18 U.S.C §1343** with **U.S.S.G. §2B1.1** which in turn places the base offense level at 7.

The defrauding of Whattcom Land Title Company yielded a total loss of $60,000. **U.S.S.G. §2B1.1(b)(1)(D)** requires an increase of 6 offense levels for a loss more than $40,000.

Hence, total offense level for the conspiracy to commit wire fraud = 7(Base Offense Level) + 6 (Offense Level Increase for Loss More Than $40,000.

=Total Offense Level of 13.

The Consequentially Improper Computations for the Money Laundering Conspiracy Count

Appendix A matches **§18 U.S.C. 1956(h)** with **U.S.S.G §2S1.1.** Application of **U.S.S.G. §2S1.1(a)(1)** requires that [the defendant] be responsible for the underlying offense either because he committed it, or it is relevant conduct. **Anderson** 526 F.3d at 324.

In the instant case Defendant was convicted of the underlying offense of conspiracy to commit wire fraud.

As stated the total offense level for the underlying offense of wire fraud conspiracy is 13.

U.S.S.G. §2S1.1(b)(2)(B)--Specific Offense Characteristics-- directs that if the defendant was convicted under §1956 increase by 2

Since Defendant was convicted of Obstruction of Justice, the **U.S.S.G.** requires an additional 2 offense level increase.

Hence the total offense level for the Money Laundering Conspiracy conviction

=13+2+2

=17

A total Offense Level of 17 for a defendant with Criminal History Category 1 equates to a guideline range of 24 to 30 months.

Defendant Was Sentenced On A Totally Improper and Contrived Guideline

Analysis

In preparing the Pre-Sentencing Report (PSR), the probation officer improperly applied **U.S.S.G §2S1.1(a)(2)**--the guideline adopted by the court in sentencing Defendant.

U.S.S.G. §**2S1.1(a)(2)** is used to calculate the sentence if the defendant either is not responsible for the underlying offense or if the proper offense level for the underlying offense cannot be calculated. **See U.S.S.G.** §**2S1.1(a)(2).**

In the instant case, Defendant was actually convicted of an underlying offense, and as calculated above, the offense level for the underlying offense was easily determined. Hence **U.S.S.G.** §**2S1.1(a)(2)** is not applicable to Defendant.

Sixth Circuit Precedent Regarding Disputes In The Application of §2S1.1(a)(1) and §2S1.1(a)(2)

In cases where there are disputes--in the application of **U.S.S.G.§2S1.1(a)(1)** and **§2S1.1(a)(2)**--in terms of the applicable sentencing guideline; the Sixth Circuit has consistently ruled that as long as there is an underlying offense, the appropriate and applicable guideline is **U.S.S.G. §2S1.1(a)(1).**

Defendant has searched through cases in the Sixth Circuit, and there is absolutely no case where an underlying offense existed, and the Sixth Circuit agreed that the application of **U.S.S.G. §2S1.1(a)(2)** was proper.

In **United States v. Anderson,** 526 F.3d 319 (6th Cir 2008) the Sixth Circuit ruled that **U.S.S.G. §2S1.1(a)(1)** was the applicable guideline and was proper since the defendant was involved and was responsible for participating in the underlying

drug conspiracy. **Anderson,** 526 F.3d at 324

In **United States v. Long** 457 Fed. Appx. 534 (6th Cir. 2012) the Sixth Circuit ruled that the district court should have applied **§2S1.1(a)(2)** because defendant Long could not have committed the underlying offense. **Long,** 457 Fed. Appx. at 547.

The court therefore vacated Long's sentence and remanded for resentencing with the instruction that the district court apply **U.S.S.G. §2S1.1(a)(2).**

Of the highest significance, in **United States v. Harmon** 409 F.3d 701 (6th Cir. 2004) where--just like the instant case--the underlying offense was wire farud, the Sixth Circuit ruled that since the conditions of **§2S1.1(a)(1)** that "(A) the defendant committed the underlying offense..." and "(B) the offense level for the underlying offense be determined..." the method set forth in **§2S1.1(a)(2)** was not applicable to defendant Harmon, and the Probation Officer that prepared the Pre-Sentencing Report erred in applying **§2S1.1(a)(2). Harmon** 409 F.3d at 706-07.

<u>The Invited Error Doctrine</u>

The only exception to the proper application of **§2S1.1(a)(1)** is the case of **Invited Error.** In the context of the instant case, the Invited Error doctrine applies when the defendant actually advocates for the application of **U.S.S.G. §2S1.1(a)(2).**

[The Sixth Circuit] has applied the Invited Error doctrine in the context of sentencing. **United States v. Thompson** 509 Fed. Appx. 449, 452 (6th Cir. 2012).

In **United States v. Hanna** 661 F.3d 271 (6th Cir. 2011) the

defendant argued on appeal that the district court improperly calculated his base offense level under **U.S.S.G. §2S1.1(a)(2)** when, as [the Sixth Circuit] determined, it should have sentenced him under **U.S.S.G. §2S1.1(a)(1). Hanna,** 661 F.3d at 291-93.

There, in denying the defendant relief, [The Court] noted that "the district court's decision ... to sentence Hanna under **§2S1.1(a)(2)** was directly in response to Hanna's urging that it take that very course... The Court ruled that [T]he doctrine of 'invited error' therefore precludes reliance on this error as grounds for reversal." **Hanna** 661 F.3d at 293.

Defendant must categorically state that the devastatingly damaging and catastrophic error at sentencing was not--in any way, shape or form--invited by Defendant.

Conclusion

The Plain Error standard requires that the defendant show (1) Error (2) That it is clear or obvious (3) That it affects the defendant's substantial rights; (4) If the elements are satisfied, [the Sixth Circuit] may exercise its discretion to remedy the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. **Puckett v. United States** 566 U.S. 129, 135, 129 S. Ct. 1423, 173 L.Ed. 2d 266 (2009).

The phrase "affects substantial rights" "in most cases means that the error must have been prejudicial: it must have affected the outcome of the district court proceedings." **United States v. Ataya** 884 F.3d 318, 328 (6th Cir. 2018) (internal ellipses

omitted) (quoting **United States v. Olano** 507 U.S. 725, 734, 113 S.Ct. 1770, 123 L. Ed. 2d 508 (1993)).

But for the error in applying **U.S.S.G. §2S1.1(a)(2)**, defendant would have probably been sentenced to a term of imprisonment of around 24-30 months as computed above. Unfortunately however, in applying **U.S.S.G. §2S1.1(a)(2)** defendant was sentenced to a term of imprisonment of 78 months.

Defendant has been significantly prejudiced by this sentencing error because as of October 19, 2020; defendant has already been incarcerated for more than 38 months.

Hence, based on the facts and extant case law contained herein, Defendant thought it wise to notify the Court about this consequentially significant and highly prejudicial error.

Thanks for your kind consideration.

Yours sincerely,

Olufolajimi Abegunde (MBA)

APPENDIX: E

February 16, 2021

Olufolajimi "FJ" Abegunde (MBA) #71343-019
Reeves County Detention Center III
P.O. Box 2038
Pecos, TX 79772

Mr. John Keith Perry
Attorney At Law
Perry Griffin PC.
5699 Getwell Rd., Building G5
Southaven, MS 38672

Dear Mr. Perry,

Request That Counsel Withdraw As Defendant's-Appellants Attorney On Record

Hope this letter finds you well.

I recently received the devastating news that the appeal was denied. It is Defendant-Appellant's view the denial of the appeal inter alia is mainly as a result of:

1.) Counsels failure to aggressively and forcefully point out the fact that a majority, if not all the inferences put forward by the government in the instant case were wholly manufactured; are not just contrary to the evidence, the governments inferences are not supported by the evidence.

Post trial, when Appellant had the extremely rare

opportunity to raise this key issue with Counsel, Counsel was generally dismissive, stating that the Appellate Court would view the record in its entirety, and come to realize the true facts of the case. In other words, it was Counsels position that it was not Counsels obligation to point out the facts of the case to the Appellate Court.

2) The fact that there was effectively no communication between Defendant-Apellant and Counsel throughout the Appellate process. This is the case even though Defendant-Appellate made an innumerable number of attempts to communicate with Counsel. Hence, all Defendant-Appellant's strategic decisions regarding how the Appellate process should be approached, were completely ignored by Counsel.

It just turned out that the issues that Defendant-Appellant vehemently pointed out to Counsel, and pleaded that Counsel pay attention to; the issues that Counsel ignored, were the issues that the Court's Judgment was based on.

3) A general perfunctory attitude towards the case by Counsel.

The perfunctory, and in Appellants view, Counsels contemptuous treatment of Defendant-Appellant throughout the process was crowned by Counsels failure to promptly notify Defendant-Appellant that the Court had reached a decision regarding the case.

As a matter of fact, it was not until Defendant-Appellant's brother reached out to Counsel on Thursday February, 11, 2021 that Defendant-Appellant became aware of the Courts Judgment. Adding insult to injury is the fact that the Court had reached its decision around one month before on January 14, 2021.

Based on the above stated reasons, inter alia, Defendant-Appellant respectfully requests that Counsel Immediately withdraw as Defendant-Appellant's Attorney on Record.

Defendant-Appellant pleads that Counsel Immediately Send Defendant-Appellant all the transcripts of the pre-trial, trial, and Sentencing proceedings.

Defendant-Appellant further pleads that Counsel preserve all correspondence between Defendant-Appellant and Counsel since Counsel began representing Defendant-Appellant.

Thanks for your kind consideration.

Yours sincerely,

Abegunde

Olufolajimi "FJ" Abegunde (MBA)

Olufolajimi Abegunde (MBA) #71343-019
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