IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

IN RE: JASON DANIEL GANDY, Movant

S.D. Tex. No. 4:12-CR-503-1 | Direct Appeal No. 18-20823

APPLICATION FOR AUTHORIZATION TO FILE A SECOND OR SUCCESSIVE

MOTION

UNDER 28 U.S.C. § 2255(h)(1)

STRUCTURE OF THE APPLICATION

This application is organized in two parts. Part One contains the authorization request, governing standard, principal Count Seven gateway, and the remaining count-specific material in its proper roles as corroboration, evidence as a whole, Brady evidence where actually withheld, or alternative claims. Part Two preserves the four-year suppression history, counsel-of-choice record, challenged rulings, and the Exhibit A-Y diligence record. Part Two supplies discovery, access, authentication, and prejudice context for the claims presented in Part One.

SCOPE OF THE APPLICATION

The principal gateway is the newly discovered Count Seven evidence, including J.A.'s April 23, 2019 sworn testimony and any pretrial Government records first discovered after trial. The K.D., K.V., Count Three, and Count Five materials are presented as corroboration, evidence as a whole, Brady material where actually withheld, and proposed merits claims. Part Two provides the context necessary to understand discovery, access, authentication, diligence, and why the contradictions did not reach the jury.

CONTROLLING 2026 AUTHORITY — BOWE v. UNITED STATES

The Supreme Court has clarified that Section 2255(h) incorporates Section 2244's certification procedures, but not Section 2244(b)(1)'s old-claim bar or Section 2244(b)(2)(B)'s additional state-prisoner content restrictions. Bowe v. United States, 607 U.S. 13, 37-40 (2026). Section 2255(h)(1)'s text therefore controls this federal-prisoner application. Unlike Section 2244(b)(2)(B), Section 2255(h)(1) contains no separate statutory due-diligence element and no additional requirement to prove that innocence exists 'but for constitutional error.' Id. Bowe does not reduce the demanding requirement that the newly discovered evidence, if proven and viewed with the evidence as a whole, clearly and convincingly show that no reasonable factfinder would have found the movant guilty. The diligence record remains relevant to discovery date, Section 2255(f)(4), credibility, and any equitable defenses after authorization.

WHY THE APPLICATION SATISFIES THE AUTHORIZATION STANDARD

The application makes the required prima facie showing on a claim-specific basis. J.A.'s age-seventeen answer was sworn testimony in a judicial proceeding, concerns the elemental first-meeting date, and - combined with his fixed birth date - places the earliest possible meeting after Count Seven's entire charged period if true. Objective records and identified percipient witnesses provide independent means to test that chronology. Older records are used as the statutory 'evidence as a whole' and, where the Government possessed but did not disclose them, as evidence supporting a proposed Brady claim. The suppression, counsel, sealing, and access history explains why material contradictions did not reach the jury and why the relevant records were not available to Jason Gandy. The proposed successive motion asserts cognizable Fifth Amendment claims based on materially false trial testimony and suppression of Government-held contradictory interview evidence. See In re Robinson, 917 F.3d 856, 868-70 (5th Cir. 2019).

The Court need not decide at authorization which sworn account is ultimately true. It need decide only whether the new evidence, if proven and considered with the evidence as a whole, has sufficient possible merit for fuller district-court exploration. J.A.'s post-trial sworn testimony supplies direct evidence of falsity and materiality concerning the charged Count Seven chronology; the identified Government records and objective chronology supply the means to evaluate it. In re Hearn, 418 F.3d 444, 447-48 (5th Cir. 2005).

The application therefore does not contend that every preserved issue independently opens the gateway. It asks principally for authorization of the Count Seven due-process/Brady claim and, alternatively, authorization limited to any other claim the panel finds independently supported by newly discovered evidence. That narrower request permits claim-specific authorization without requiring every supplemental issue to satisfy the gateway independently.

PART ONE — THE § 2255(h)(1) GATEWAY SHOWING

INTRODUCTION

I, Jason Daniel Gandy, respectfully request authorization under 28 U.S.C. §§ 2244(b)(3) and § 2255(h)(1) to file a successive motion to vacate. The principal gateway is the newly discovered Count Seven evidence: J.A. testified under oath after trial that he was seventeen when he first met me, although Count Seven charged a closed 2007 period when he was sixteen. That evidence supports proposed Fifth Amendment claims that the conviction rests on materially false trial testimony and that Government-held contradictory interview evidence was suppressed. The remaining count-specific material is preserved and evaluated according to its proper role as corroboration, evidence as a whole, Brady evidence where actually withheld, or an alternative claim if the panel finds it independently satisfies § 2255(h)(1).

The central new evidence is J.A.'s April 23, 2019 sworn testimony that he was seventeen when he first met me. J.A. was born April 15, 1991, so his sworn answer places the earliest possible meeting at April 15, 2008 — after Count Seven's charged 2007 period. The Government's trial proof was directly contrary: J.A. testified in 2018 that he was sixteen and met me in August 2007. Objective travel, residence, property, permit, email, phone, and computer records provide the means to test which sworn account is true.

The supplemented record bears on the remaining counts as well. K.D.'s recorded Edwards account denies that a massage or payment ever occurred, while his trial answer on payment was expressly uncertain and undefended by cross-examination. K.V.'s full cross-examination exposed speculative Acer attribution, unusual massage economics, and his own stated fear that noncooperation would affect his Army career — and the complete DE 23 record shows Agent Johnson personally questioned me and was present for K.V.'s questioning within hours, materially strengthening the causation inquiry. Count Five was tried only after the Government changed 2006 to 2005 over a defense objection, while I was outside the courtroom. Count Three must be assessed against what forensic witness Chappell actually said — an internet-cache finding on a three-user laptop — not the appellate shorthand that child pornography was simply "found on the computer." And the Brady ground identifies specific categories of government-controlled evidence that have never been produced in any form, at any stage of this case.

I. GOVERNING STANDARD

Bowe now confirms that this federal-prisoner application is governed by § 2255(h)'s own substantive requirements. Bowe v. United States, 607 U.S. 13, 37–40 (2026). Its holding forecloses importing § 2244(b)(1)'s old-claim bar or § 2244(b)(2)(B)'s separate diligence and constitutional-error requirements into § 2255(h)(1), while leaving intact the statute's clear-and-convincing innocence requirement.

Section 2255(h)(1) permits a successive motion based on newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would establish by clear and convincing evidence that no reasonable factfinder would have found me guilty. At authorization, the application need make only the required prima facie showing; final proof belongs in the district court. United States v. Hanner, 32 F.4th 430, 434 (5th Cir. 2022); In re Morris, 328 F.3d 739, 740-41 (5th Cir. 2003); In re Campbell, 750 F.3d 523, 530 (5th Cir. 2014); In re Will, 970 F.3d 536, 541 (5th Cir. 2020); United States v. Wiese, 896 F.3d 720, 723-24 (5th Cir. 2018); United States v. Clay, 921 F.3d 550, 554 (5th Cir. 2019); United States v. Hernandez, 708 F. App'x 195, 197-98 (5th Cir. 2019).

The evidence must be considered cumulatively, not item by item in isolation. Kyles v. Whitley, 514 U.S. 419, 436-37 (1995). This application separates genuinely post-trial evidence (J.A.'s 2019 testimony; the Brady items never produced) from older corroboration and procedural context, but evaluates their combined effect against the Government's complete proof. The gateway inquiry requires the reviewing court to consider all the evidence, old and new, rather than reapplying the deferential sufficiency-of-the-evidence standard used on direct appeal. House v. Bell, 547 U.S. 518 (2006); Bousley v. United States, 523 U.S. 614 (1998); Schlup v. Delo, 513 U.S. 298 (1995). United States v. MacDonald, 641 F.3d 596, 610-17 (4th Cir. 2011), confirms that age of the conviction does not itself defeat authorization. I present evidence directed to guilt, not sentencing or generalized misconduct. See In re Webster, 605 F.3d 256, 258-59 (5th Cir. 2010).

The authorization question is limited in an additional respect: the Court need not decide at this stage whether every statement was involuntary, every challenged item is suppressible, every disputed ruling was erroneous, or every government-controlled record is ultimately material, nor resolve allegations concerning judicial methodology, counsel withdrawal, sealing, public access, or the ultimate remedy for any structural error. Those matters explain the missing record, diligence, and the need for fuller district-court proceedings; they are not additional conditions I must win before authorization may issue. If the panel concludes that one supplemental dispute does not require resolution at authorization, the proper course is simply not to decide that dispute

— not to treat it as defeating the independent Count Seven chronology or any other count-specific ground. Reyes-Requena v. United States, 243 F.3d 893, 899 (5th Cir. 2001); In re Hearn, 418 F.3d 444, 445, 447-48 (5th Cir. 2005); In re Robinson, 917 F.3d 856, 868-70 (5th Cir. 2019). I accordingly request ground-specific and claim-specific authorization as an alternative to wholesale denial throughout this application.

II. COUNT SEVEN — J.A.'S POST-TRIAL SWORN TESTIMONY AND THE

OBJECTIVE CHRONOLOGY THAT TESTS IT

Count Seven of DE 115 charged conduct involving Minor Victim No. 4 from “on or about August 1, 2007, through November 3, 2007.” DE 115 at 6. The jury instructions confirm Minor Victim No. 4 as the Count Seven witness. DE 192 at 3-90 to 3-91. At the April 23, 2019 damages hearing in Alfaro v. Gandy, No. 4:18-cv-01761 (S.D. Tex.), J.A. testified under oath that he was born April 15, 1991, and that he was seventeen when he first met me. Civil Hearing Tr. 11:8-11.

In 2018, J.A. testified that he was born April 15, 1991 (DE 190 at 2-210); that in approximately August 2007 he was sixteen (2-210 to 2-211); that I picked him up in Navasota in August 2007 (2-215); and that he participated in five to seven paid massage encounters over a week and a half in Houston, then went to Austin for roughly two and a half months (2-218 to 2-228). On cross, J.A. acknowledged a contingency-fee civil action and agreed a conviction would make that case easier to win (2-237 to 2-240). The August 21, 2015 Edwards notes add occurrence-level contradictions: J.A. did not say he felt like a prisoner or had to escape through a window — he left through a window only to avoid a face-to-face departure — and he “NEVER said he didn't want to do it.”

Because J.A. was born April 15, 1991, his sworn seventeen-years-old answer places the earliest possible meeting at April 15, 2008 — excluding every day charged in Count Seven. A summer 2008 meeting is chronologically possible on age alone and can only be excluded by objective records placing me elsewhere; a summer 2009 meeting would place J.A. at eighteen, since he turned eighteen on April 15, 2009.

Sentencing-Transcript Corroboration and the 2006/2008 Family-Date Distinction

My December 18, 2018 sentencing transcript supplies a first-person chronology that must be weighed against J.A.'s later testimony. I told the court I lived in San Diego during the summer of 2007, had documentation of the Hillside Drive residence, bought a 2007 Toyota Tundra and a toy hauler that summer, and did not return to Texas until October 2007. DE 207 at 34-35. DE 207 separately records that my mother was dying of cancer and died in 2008. Id. at 36-37. The preserved photograph shows two separate gravestones marking two distinct deaths that should not be treated as one: my grandmother, who died March 14, 2006, and my mother, who died

September 13, 2008.

Independent corroboration of my 2007–2008 whereabouts comes from two sources generated for entirely unrelated purposes. First, K.D. — a Government witness called against me on Count Six, with no connection to J.A. and no motive to help my Count Seven defense — testified without prompting that he managed a property for me in Austin in 2008, for less than six months, ending because, as K.D. put it, Gandy "was returning from California where he was living at that time due to the ill health of his mother, and unfortunately she passed away on his way from California." DE 190 at 2-162 to 2-163. Second, at my sentencing — seven months before J.A.'s 2019 civil testimony existed — I stated under oath that I lived in San Diego in summer 2007 and did not return to Texas until October 2007, adding: "So what he's saying is not true." DE 207 at 34-35.

The headstone of my mother, Brenda Lee Botkin Weathersby (May 22, 1957 – September 13, 2008), fixes the exact date of the drive K.D. described. Read together, K.D.'s testimony, my own pre-2019 sworn statement, and an objective vital-records date all place me outside Texas for large stretches of 2007 and 2008. Later public accounts from 2019 and 2023 describe J.A. as sixteen; they are adverse and must be disclosed, but they do not erase the legal significance of a post-trial sworn statement that, if true, excludes the entire charged period.

The Objective Property Chronology

The property chronology matters because it tests the locations embedded in J.A.'s account and prevents the contradiction from being dismissed as a harmless one-year memory lapse. The records presently identified show two independently verifiable transactions:

Property	**Date**	**Record**	**Count Seven significance**
1701 Sylvan Drive, Austin	Oct. 9, 2007	Travis Central Appraisal District deed history: Federal National Mortgage Association to Jason Gandy; instrument 2007188570TR.	Postdates the alleged August 2007 Austin sequence; prevents the address from being assumed as the August 2007 setting without occupancy proof.
739 24th Street, San Diego; APN 628-070-39-00	July 2008	San Diego assessor record identifies the parcel; public sale-history sources report a $100,000 July 2008 transfer; certified deed still requested.	Tests whether I was living and working in San Diego during summer 2008, the only summer compatible with J.A.'s sworn age-seventeen answer.

I obtained building and plumbing permits for 739 24th Street after acquiring it, and had just added a bathroom before leaving San Diego for Texas on September 13, 2008. The City of San Diego maintains address-searchable Development Services records through its official Accela Citizen Access portal; the requested records are every building, plumbing, combination, inspection, or code record associated with the parcel from July 1 through October 31, 2008. Until obtained, the permits are presented as a precise, verifiable lead — not a completed exhibit. If confirmed, contemporaneous construction activity would place a person at a specific property during a defined period and could identify contractors, receipts, photographs, or witnesses bearing on whether the Government could move J.A.'s meeting story from summer 2007 to summer 2008.

The proposed chronology is therefore concrete and falsifiable: summer 2007 (I state I was living in San Diego — Acer, tax box, Toyota, toy-hauler, residence, travel, telephone, and photograph records can test that account); October 9, 2007 (1701 Sylvan Drive acquisition); July 2008 (739 24th Street acquisition); summer 2008 (reported permit and construction activity); September 13, 2008 (my mother died as K.D. testified I was returning from California); summer 2009 (J.A. turned eighteen). The property evidence should be kept at three distinct levels of proof: present official proof (the two deed-history records, DE 190/DE 207, and the civil-hearing transcript); corroborating public-record leads (sale-history and address-history reporting, which should not be treated as substitutes for the certified deed); and certified or agency records still requested (the July 2008 grant deed, the complete permit and inspection file, contractor records, and the death certificate).

Kevin Buensuseso's Corroborating Account

A preserved photograph, identified by my stepmother, Julie Gandy, shows Kevin Buensuseso holding my handwritten innocence-claim page. The page records a March 10, 2020 conversation in which Kevin reportedly remembered being with me in San Diego from July through October 2007, including at a rented room overlooking Black's Beach and Torrey Pines and a Mission Bay rental maintained until mid-October, and states that Kevin was willing to testify. This is offered as contextual corroboration preserving the identity of a percipient witness and the substance of an account recorded years before this application — not as a substitute for sworn testimony. Kevin's declaration or testimony should authenticate the page and photograph, explain the basis for his recollection, identify fixed anchors he personally observed (the residence, the toy hauler, the Tundra, visits, and activities), and identify any contemporaneous photographs, messages, or travel records.

Kevin's account converges with, rather than repeats, the San Diego residence, vehicle, toy-hauler, travel, telephone, photograph, Acer-laptop, and tax-box evidence identified above; its value lies in personal knowledge plus objective anchors. Because notarization has not been available, Kevin may instead execute an unsworn declaration under 28 U.S.C. § 1746, subscribed as true under penalty of perjury, stating only facts within his personal knowledge. Dallas Craig Hughes may separately corroborate when Kevin gave him the same account, including a reported 2020 Bureau of Prisons call; Hughes's testimony does not replace Kevin's firsthand account, but is offered to establish that Kevin reported it years before this application. If BOP records of that call — audio, call-detail logs, approved-number records, or retention/deletion documentation — remain in Government custody, I request their preservation and production; loss of the audio would not erase Kevin's firsthand knowledge, Hughes's earlier receipt of the account, or call metadata capable of confirming the communication occurred. No statement is attributed to Kevin in this application unless and until he signs a declaration; if one is obtained after filing, I request permission to lodge it promptly as a supplemental exhibit.

Neither I nor my family received notice of the April 23, 2019 civil hearing, and the record contains no proof either of us was informed J.A. testified he was seventeen. Sean Buckley appeared at the hearing but did not communicate the testimony to us. I presently recall first noticing the "seventeen" answer approximately in 2024; the precise date is being reconstructed from correspondence and prison records. The testimony was buried in a separate civil transcript while I was incarcerated, experienced repeated COVID infections, serious vision limitations, and restricted record access — diligence facts developed further in Part Two, Section E.

III. COUNT SIX — K.D.'S QUALIFIED TRIAL TESTIMONY AND EDWARDS ACCOUNT

Count Six charged an attempted sex-trafficking offense involving Minor Victim No. 3 from June 1 through August 31, 2005. K.D., called "Mr. D" at trial, testified at DE 190, 2-143 through 2-164. Asked whether he received money, he answered: "I wanted to say yes. To be honest, I don't recall the actual exchange of him giving the money, but I think so." Defense counsel then stated: "We have no questions for this witness, Your Honor." The jury never heard the Edwards account tested through cross-examination.

The August 18, 2015 Edwards investigation records K.D. rejecting the victim characterization, describing leading HSI questioning, and stating categorically that he never performed a massage with me and was never paid. K.D. described me as a mentor and role model, stated that I "didn't hurt people," and asked why a three-hour interview had been reduced to a one-page Government account: "Where is the other information?" He also reported he was not permitted to hear a recording that could confirm the Government's characterization.

K.D. also reported that D.V. told him D.V. was eighteen when with me — a statement attributed to D.V. through K.D., not K.D.'s firsthand observation. The complete Edwards recording and underlying Government interview must be produced so the factfinder can assess context, accuracy, and admissibility.

IV. COUNTS ONE, TWO, AND FOUR — K.V., DIAZ, AND THE INVESTIGATIVE CHAIN

The September 10, 2012 Diaz report records K.V. saying he told police what they wanted to hear

EXHIBIT Z

KEVIN BUENSUSESO PHOTOGRAPH AND MOVANT'S PROFFER

Jason Daniel Gandy proffers that Kevin Buensuseso adopted every statement written on the attached page and confirmed those statements during the telephone call identified on that page.

The attached photograph shows Kevin physically holding that same page, with his fingers visible along the left edge. The photograph is offered as present corroboration of Kevin's possession and adoption of the page. The identified Bureau of Prisons telephone recording, call-detail log, approved-number record, or retention information is requested as additional confirmation of the call; it is not represented as presently attached.

This exhibit corrects any qualification in the application suggesting that no statement may be attributed to Kevin before a later declaration is obtained. Gandy does not represent that the photograph is itself notarized testimony. He represents that Kevin orally adopted the page and confirmed it in the identified call. Kevin may later authenticate those facts through testimony or a declaration under 28 U.S.C. section 1746.

Respectfully submitted: ________________________________

Jason Daniel Gandy, Reg. No. 73006-279

Date: ___________________

EXHIBIT Z - PHOTOGRAPH OF KEVIN HOLDING THE PAGE

INNOCENCE CLAIM

A. Check all that apply to your case:

- ____ DNA will prove my innoceasе
- ✓ An alibi will prove my innocence
- ____ The victim(s) mistakealy idendfied not as the criminal actor
- ✓ The victim iied ebcar the incident
- ____ The victim has recanted
- ____ Socneane elie has adcuined commining the ccture aod aaid I yous oot involved
- ____ I geve a 6itoe corfeccicn
- ✓ **Other:** Describe what acw evidence eaiss that would prove your actual innocence. hnlude addiiicnal pages, if rrectied.

The Travis County Appraisal District Shows the day I bought 1701 Sylvan dr. Austin TX 787, I've Never lived in or bought another home in Austin as the Judge Rosenthal suggested when she Refused to allow Sean Buckley to submit the TCAD.org evidence into court b/c it was not "notarized".

B. Deecribe what the police cr pnsecuиce say you did to commit the crime for which you were oonvicted but acs clcuniisg innocence; ff you reerc chergcal to an eccompiios, or as s perty to the crime, deecribe what role they say you played in the cffienee. Irrdode addiional pegss, if needed. They Say I was with him in 2007.

Newly Discovered Evidence:

C. Describe your version of eersic. Irrdode a deinded descciption of what you were doing, what happened, what witnesses (aborg wilh thrir conkct eiheemiioe) ozald verify yoer alibi/version of evenis, and any other informaiion you feel is important. Include addiiional peges, if needed.

email: kbuens47a@yahoo.com

3-10-20 at 12:20 TX time I spoke to Kevin Buensoceso 858 357-1561 887 Pete St #246 San Diego CA 92101. Who Remembers being with Me July-Oct 2007. Even Remembers House I rented a Room in La Jolla overlooking Blacks Beach & Trailer Park I Rented in until Mid October in Mission Bay. I Thank God he's Willing To Testify & Can Help y'all obtain More Proof (Mitigating) which Zack has in My Tax Box Seized from my Home on the 2nd Warrant Specifically to take whatever was in the locked closet Under Stairs in Duplex 2330 Trujillo Houston TX 7700

D. Provide the names/contact information of any other potential witnesses who did not testify at trial, along with a brief description of threr potential testimony. Include addiiional peges, if needed.

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Cropped to remove surrounding background; photographed page and visible fingers preserved.

so questioning would stop, and that “not everything he told police really happened.” It records denials concerning oral sex, comments, and photographs, and K.V.'s mother's statement that K.V. repeatedly said I had done nothing wrong. The report predates trial and was available to the defense — Alston retained and paid Diaz, and every later attorney received it upon retention — so it is not gateway evidence itself; it is older corroboration and impeachment the jury never received. K.V.'s full cross-examination exposed additional contradictions and credibility issues: his claim that I placed the Acer in his backpack for self-protection was only a guess made six years later (DE 190 at 2-125 to 2-127); he received an unusually large $80 share of a $140 massage despite no license, facility, or training (2-119 to 2-123); and he acknowledged concern that failure to cooperate could affect his Army career (2-134 to 2-136). K.V. also testified he was “trying to help Jason,” did not want me “to get in trouble,” and “really liked Jason” (2-109 to 2-111 / ROA 945-947) — testimony the prosecutor itself echoed, telling the jury the witnesses “were here because they were under subpoena. They didn't want to be here.” DE 192 at 3-129. K.V. confirmed the Acer was in his backpack, that neither he nor I used it on the travel day, that he denied knowing the password or accessing or downloading material, and that his first CAC account was not “the entire truth” because he was trying to help me, protect both of us, and keep information from his mother. DE 190 at 2-108 to 2-111, 2-124 to 2-127. That testimony establishes an incomplete first account and a motive for it; only the recordings and prompt chronology can show how the account actually developed.

The July 20–26, 2012 Sequence and the Corrected Record of Agent Johnson's Role

The July 20, July 25, and July 26, 2012 sequence — my interrogation, my represented transport, and K.V.'s subsequent questioning — is the factual predicate for a Ceccolini causation and free-will inquiry. United States v. Ceccolini, 435 U.S. 268 (1978). I contend Homeland Security Agent Johnson obtained information from me during the July 25 transport, while I was represented, that was then used to confront K.V. the next day.

The complete DE 23 record must be read as a sequence, not from a single answer, and it establishes a materially more complicated picture than a simple observer role. Agent Johnson placed the start of my July 20, 2012 interview at approximately 2:15 p.m., acknowledged I was not free to leave, described a room occupied by Johnson and Detective Roscoe, and agreed questioning lasted more than an hour; she agreed I was cooperative and testified I cried and broke down near the end of the interview. DE 23 at 23-24, 30-31. Her account used the word 'hoped' - that I allegedly hoped to have a sexual encounter - rather than describing a completed-act admission. My account, preserved in the Speedy Trial record, is that the interview was the culmination of approximately five to six hours of relentless interrogation after I had not slept for four days. Investigators repeatedly asked the same questions until, exhausted and crying, I said 'maybe hope' and 'okay, maybe fantasize' to appease them, using their suggested words so the questioning would stop and I could sleep. I maintain those words were theirs, not mine, and were not admissions of completed conduct.

On the identical questioning of K.V., DE 23 contains an internal contradiction that this application resolves in favor of the more complete reading rather than the shorthand one.

Counsel asked Johnson: “And he was being, I guess, interviewed by you and Detective Roscoe?”

Johnson answered: “Yes.” DE 23 at 25. Moments later, counsel asked, “You personally did not interview the fifteen-year-old. Is that correct?” Johnson answered, “That is correct,” and said somebody from the Child Advocacy Center interviewed him. Id. Johnson placed that interview approximately six hours after my arrival and admitted, “I was present, yes,” while the CAC interviewer questioned K.V. DE 23 at 26. On the next page, counsel addressed Johnson: “So, when you were interviewing, he — the child mentioned that Jason was his friend. Is that correct?” Johnson answered, “Yes.” DE 23 at 27.

Those answers cannot fairly be reduced to “Johnson merely observed” the Child Advocacy Center interview. At minimum, they distinguish an initial Johnson/Roscoe encounter from the later formal CAC interview, or they reveal internally inconsistent testimony about Johnson's participation. Either way, Johnson had personally questioned me, possessed the information attributed to me, remained present during K.V.'s questioning, and was in a position to supply, repeat, or exploit that information immediately. I personally watched the video of K.V.'s interrogation and heard and recognized Agent Johnson's voice questioning K.V. — a firsthand identification, not a legal conclusion — and the questioning occurred immediately after Johnson had obtained statements from me and Johnson used those statements when questioning K.V. This should be developed in a declaration specifying when and where I viewed the recording, how I recognized Johnson's voice, the questions or subjects I heard her raise, and whether those subjects included information Johnson had just obtained from me. Until the recording and contemporaneous notes are produced, the filing-safe formulation is that DE 23 contains an internal contradiction, I identify Johnson's voice from the video, and the primary evidence can conclusively resolve the dispute.

The relevant causal chain, put in order, is not speculative: (1) Johnson and Roscoe questioned me in custody; (2) Johnson obtained information and attributed statements to me; (3) K.V. was questioned within hours; (4) Johnson admitted being present; (5) DE 23 contains both an affirmative answer that K.V. was interviewed by Johnson and Roscoe and a later denial that she personally interviewed him; and (6) I state the video preserves Johnson's voice questioning K.V. The question is not merely whether some unidentified investigator later learned of my statements — it is whether the same agent who obtained the challenged statements immediately used them to shape K.V.'s account. That sequence bears directly on temporal proximity, identity of the interrogator, direct transfer of information, prompts used, K.V.'s initial reluctance, and the presence or absence of an independent source — all elements of the required Ceccolini inquiry.

DE 34 and DE 46 supply the earlier bridge from the challenged statements to the searches. DE 46 states that DE 34, filed April 1, 2013, fully explained the custodial interrogation and quotes four separate requests for counsel, and that counsel came to the airport but agents obstructed access on the (disputed) ground that he was not a criminal attorney. DE 46 alleges that agents used my statements as the "bulwark" of affidavits for warrants covering my residence, vehicle, and an unattached structure, and that once the statements were purged, the affidavits lacked probable cause and nexus. DE 46 at 1-7. DE 46 at 5 further states that the airport inspection of the Acer "uncovered no images characteristic of child pornography," and that K.V.'s report of pornography on the computer did not identify illegal child pornography, who displayed it, or whether I was present. Id. at 5 n.1. DE 46 records defense allegations, not a judicial finding — which is precisely why the four-year absence of a constitutionally adequate suppression determination, discussed in Part Two, and the missing underlying affidavits, recordings, and forensic materials, matter.

This application does not present the July 25-to-26 witness-development chain as an adjudicated fact. It identifies a concrete, testable contention: the Government controls the July 25 transport log, route, vehicle assignment, agent roster, recording, notes, and communications; Agent Johnson's contemporaneous and supplemental reports; the complete July 26 K.V. audio/video, transcript, report, interviewer notes, and prompt chronology; and the materials needed for a before-and-after comparison of what investigators knew before transport, what new information was allegedly obtained from me, and where that information first appeared in K.V.'s questioning. Attenuation cannot be presumed merely because K.V. later testified live; the inquiry requires the actual causal route, elapsed time, intervening circumstances, investigative prompting, independent-source evidence, and the witness's exercise of free will.

Chappell testified that three people used the single Acer — OCL Martinez, Jason Gandy, and K.V. DE 192 at 3-56 to 3-58. User attribution must therefore come from forensic evidence, not speculation; the complete forensic image, cache paths, source URLs, timestamps, active-user profiles, and examination protocols are indispensable. The Government also acknowledged at Rule 29 that it could not locate the alleged nude photographs within the devices available for presentation, DE 192 at 3-64 — a fact that must be reconciled with DE 46's airport-inspection statement and the later cache evidence, and that creates a classification, chain-of-custody, and attribution question requiring the original evidence rather than an assumption favoring either side.

V. COUNT THREE — WHAT CHAPPELL ACTUALLY TESTIFIED

Chappell himself used the term “internet cache” repeatedly in his own direct testimony, describing a temporary folder where he located images he “believe[d] to be child pornography.” DE 192 at 3-20 to 3-21. He agreed on cross that the images came from the internet rather than anexternal device (3-57 to 3-58), and agreed the exhibits “could be described as photographs from a nudist colony of some kind” (3-57 / ROA 1198).

The Government's reliance on United States v. Barry, 634 F. App'x 407 (5th Cir. 2015), does not fit: Barry involved a five-day bench trial built on 37,000+ messages, admitted production and distribution, and image-by-image Dost findings. My record is materially different — 52 generically described internet-cache images, a partially captured source URL, three users on a single laptop, and no comparable production or distribution evidence. DE 46, page 5, states that the airport inspection of the computer “uncovered no images characteristic of child pornography” — a fact the appellate summary omitted when it characterized the case as forensic discovery of child pornography in the cache. Without image-specific proof — source URL, cache path, timestamps, and user-profile attribution for each image — the appellate shorthand does not answer classification, knowledge, or attribution.

VI. COUNT FIVE — THE GOVERNMENT CHANGED THE ONLY YEAR THAT MADE MINOR STATUS POSSIBLE

Count Five as returned charged November 1 through December 27, 2006. Before jury selection, while I was outside the courtroom changing clothes, the Government asked to replace both 2006 references with 2005, because 2006 created “a factual impossibility” — D.V. could not have been under eighteen in 2006. DE 189 at 1-9 to 1-11. The court ruled: “I will grant the variance with the change. I am not sure it is a variance.” Id. at 1-11.

D.V. testified he met me online “around the age of 17,” met me in person in 2005 “I believe,” and could not remember his eighteenth birthday. ROA 1004-1024. A July 26, 2012 hotline report states D.V. knew me “from 2006-2008” — conflicting with the Government's need to move the count to 2005. The KGriff comprehensive report (Nov. 16, 2020, Kathleen Griffin to Julie Gandy Dec. 3, 2020) places D.V. at 703½ Marshall Street on December 21, 2005 — the same date as a Texas driver's-license record at that address — materially stronger chronology evidence than an isolated recollection, though the underlying licensing records still require authentication.

VII. PROPOSED BRADY CLAIM — IDENTIFIED GOVERNMENT-HELD CONTRADICTIONS

This proposed claim does not ask the panel to treat records still sought as evidence already proved. It relies on Government-generated contradictory interview materials presently identified in the record and uses the additional recordings and files as targeted categories for later production only if authorization is granted.

Brady v. Maryland, 373 U.S. 83, 87 (1963), requires disclosure of evidence favorable to the accused and material to guilt or punishment. The presently identified Government interview materials, not the hoped-for contents of unproduced recordings, supply the proposed claim; any additional records would be later corroboration or primary-source proof.

Brady violation has three components: the evidence must be favorable — exculpatory or impeaching; it must have been suppressed by the State; and prejudice must have ensued. Strickler v. Greene, 527 U.S. 263, 281-82 (1999). Materiality is judged cumulatively, not item by item. Kyles v. Whitley, 514 U.S. 419, 436-37, 441 (1995).

The Fifth Circuit has authorized a successive habeas petition on this exact posture — a capital case out of the same district, decades after conviction, where the state had never produced material impeachment and exculpatory evidence. In re Will (Will v. Davis), 970 F.3d 536, 541-45 (5th Cir. 2020), held that a movant's inability to have obtained withheld evidence sooner does not defeat a Brady-based successive application, because it is the government's suppression — not the petitioner's diligence — that explains the delay. A movant is not required to show independent diligence in ferreting out evidence the government concealed. Banks v. Dretke, 540 U.S. 668, 695-96 (2004), held that a defendant is entitled to presume prosecutors have fully discharged their Brady obligations, and that the government's own suppression — not the defendant's failure to independently discover it — supplies both cause for any procedural default and the explanation for delay.

The Specific Items

The following specifically identified categories are alleged to remain in Government control and to have been unavailable to trial or prior post-conviction counsel. Their existence, custody, and contents must be proved; the application does not assume that every requested item exists or is favorable.

1. The complete July 20, July 25, and July 26, 2012 recordings and Agent Johnson's notes.

The Government controls the recordings of my interrogation, the transport during which I contend Johnson obtained information from me while I was represented, and the subsequent questioning of K.V. Only Johnson's notes and the Government's interview reports currently stand in for these recordings. If the recordings show that information obtained from me after I invoked counsel supplied the factual premise investigators used to confront K.V., that is Brady/Giglio material bearing directly on Counts One, Two, and Four.

2. The complete Edwards interview recordings — K.D., J.A., and D.V. The August 2015 Edwards investigation produced written notes recording K.D.'s categorical denial (Count Six), J.A.'s denial that he felt imprisoned or wanted to stop (Count Seven), and chronology material touching D.V. (Count Five). K.D. himself asked, “Where is the other information?” If underlying recordings exist in Government custody, the notes are necessarily incomplete impeachment material under Giglio v. United States, 405 U.S. 150, 153-54 (1972).

3. DE 46's underlying forensic file and the relationship between the airport finding and the trial forensic narrative.

The complete forensic extraction — full cache metadata, recoverable source URLs, timestamps, and user-profile attribution — has never been produced in a form allowing image-by-image classification, knowledge, or attribution analysis under United States v. Steen, 634 F.3d 822, 826-28 (5th Cir. 2011). Any internal record reconciling DE 46's airport finding with the later cache-based prosecution theory has likewise never been produced. Both bear directly on Count Three.

4. The Jamie Van/BAM/Luke/Lucas Montagne investigative disposition records. K.V.'s trial testimony referenced conduct involving a person identified at trial as “Jamie Van,” predating K.V.'s relationship with me. Whether that individual was investigated, cleared, declined for prosecution, or has any relationship to law enforcement is a fact within Government control that has never been disclosed, and bears on Counts One, Two, and Four.

5. Full production or unsealing of every document DE 302 itemizes as “not filed under seal.” DE 302 (March 31, 2025) itemizes specific documents, including DE 98, that it states were never filed under seal — a finding contradicted by the sealed-ex-parte transcript caption and the court reporter's own confirmation (Part Two, Section B, item 10). If DE 302's itemization is accurate, those documents should be producible now without further order; if inaccurate, the discrepancy is itself a record-integrity problem bearing on why this evidentiary picture was never assembled.

I request that the district court, upon authorization, order production of the five categories above, or in camera review if the Government asserts privilege or work-product objections, so the court can determine materiality under Kyles' cumulative standard. Consistent with Will and Banks, the fact that these items were not obtained earlier is attributable to their remaining in Government custody, undisclosed, throughout trial, direct appeal, and the first § 2255 proceeding — not to any lack of diligence on my part.

Separately, DE 46 and the trial record already authenticate the identity, seizure, Government custody, and forensic examination of the Acer and related property, through the Government's own filing and trial witnesses — the Acer is not an unidentified device supported only by my recollection. The unresolved issue is production and completeness, not existence. The same applies to the tax box and other seized property to the extent DE 46, the search records, trial testimony, property-return litigation, or counsel correspondence identifies its seizure; I request the search-warrant returns, inventories, property receipts, and chain-of-custody records needed to identify precisely what was taken and what remains in Government custody.

VIII. THE EVIDENCE AS A WHOLE

The new sworn Count Seven chronology is not evaluated alone. It is considered with J.A.'s financially interested trial account; the preserved travel, property, permit, and email chronology; Kevin Buensuseso's corroborating account; K.D.'s categorical recorded denial against his uncertain trial recollection; K.V.'s repudiation evidence and the corrected DE 23 record of Agent Johnson's role; the missing-photo admission on Count Two; the three-user/cache/classification issues on Count Three; the fact that Count Five became legally possible only after a one-year date change during my absence from the courtroom; the Government-generated interview contradictions identified in Section VII; and the additional categories sought only as possible corroboration.

The Diaz report, Edwards materials, DE 46, trial and sentencing transcripts, and other pretrial records are not mislabeled as newly created evidence merely because I assembled or understood them later. They are offered as the evidence as a whole against which the genuinely post-trial J.A. testimony and any genuinely withheld government records must be assessed — a distinction that answers any objection to the age of individual corroborating items without surrendering their cumulative force. Likewise, my request for government-controlled records does not ask the panel to assume every requested item exists or proves innocence; it identifies targeted categories tied to particular counts and requests production or in camera review after authorization. The gateway showing does not rise or fall on speculation about every requested record — the strongest present showing remains the sworn Count Seven chronology considered with the existing objective and testimonial corroboration.

The Government will characterize much of this as impeachment, hearsay, old evidence, or attenuation. The answer is count-specific and ground-specific: each item concerns whether the charged relationship or conduct existed, not peripheral credibility, and the proposed Brady claim rests on identified Government-generated contradictions while separately identifying primary-source records that may remain undisclosed.

IX. ANTICIPATED RESPONSES AND COMPLETE RECORD REQUIRED

Dost supplies six nonexclusive considerations for lascivious exhibition; no single factor is dispositive. Steen, 634 F.3d at 826-27. Ceccolini does not create an automatic live-witness exception — it requires a factual inquiry into causal distance, free will, elapsed time, and independent source. Harris permits impeachment with some Miranda-defective but voluntary statements; Mincey and Portash bar impeachment use of involuntary statements — relevant because DE 91 reserved impeachment use without ever resolving voluntariness. The civil transcript is offered as a certified record of J.A.'s sworn testimony, not as an unsworn family account. Conflicts between that testimony, J.A.'s trial testimony, and later public accounts create a credibility issue that cannot be resolved by selecting one statement at the authorization stage; the same is true of objections that other materials contain hearsay or require authentication. Any statement attributed to D.V. through K.D., any investigator summary, and any Kevin declaration should be evaluated according to its actual source and purpose — some establish chronology, some impeach, some identify discoverable records, some corroborate independent evidence — and I ask the district court to authenticate the civil transcript and objective chronology records, obtain the complete recordings and forensic materials, and assess admissibility on a complete record.

The district-court record should include the complete July 20/25/26, 2012 recordings and agent notes; the complete Diaz report and K.V. family materials; the complete Edwards files and interview recordings for K.D., J.A., and D.V.; the complete KGriff report and underlying source-database documentation; the complete Jamie Van/BAM/Luke/Lucas Montagne investigative file; the Acer forensic image, extraction reports, and cache metadata; the certified property, permit, and vital-record documentation identified in Section II; and DE 23, DE 34, DE 46, DE 89, DE 91, DE 98, DE 115, DE 174, DE 178, DE 189, DE 190, DE 192, DE 207, and the trial exhibits needed to reconstruct each count.

X. REQUEST FOR AUTHORIZATION

I request authorization to file the proposed successive § 2255 motion. I do not ask this Court to conduct discovery, authenticate evidence, or decide the suppression and structural-error questions at the certification stage. Those are district-court matters if authorization is granted.

If the Court concludes the prima facie showing is sufficient only as to particular claims or counts, I request claim-specific authorization rather than denial of the entire application.

CONCLUSION TO PART ONE

This record does not present a technicality in search of a remedy. It presents post-trial sworn evidence contradicting the charged chronology, count-specific evidence bearing on whether alleged commercial acts occurred, a corrected and strengthened record of the investigative chain behind Counts One, Two, and Four, identified Government-generated interview contradictions, and specifically described categories of records alleged to remain in Government control. The authorization standard requires a prima facie showing, not final factfinding by this Court. I request an order authorizing the district court to consider a second or successive motion under 28 U.S.C. § 2255(h)(1), with ground-specific and claim-specific authorization as an alternative to wholesale denial.

PART TWO — SUPPLEMENTAL RECORD

This Part is not required to grant authorization. Part One is complete on its own. Part Two exists because I contend the evidentiary gaps described in Part One did not arise by accident — they trace to an approximately four-year suppression vacuum, a forced restructuring of my retained counsel, and a pattern of rulings by District Judge Lee H. Rosenthal. These are my own characterizations of the record, offered for the Court's discretionary consideration and for the public record — not adjudicated findings.

A. WALLER IDENTIFIES THE SUPPRESSION REMEDY THAT COULD CHANGE THE EVIDENTIARY CASE

Waller v. Georgia held that the Sixth Amendment public-trial guarantee applies to suppression hearings, and ordered a new public hearing followed by a new trial if the hearing suppressed material evidence or materially changed the parties' positions. 467 U.S. 39, 46-50 (1984). Presley v. Georgia, 558 U.S. 209, 214 (2010), confirms trial courts must consider alternatives to closure even when the parties do not propose them. DE 34 and DE 46 challenged represented questioning and derivative warrants; DE 89 recorded that counsel was still waiting for rulings; DE 98 later treated an open suppression hearing as unnecessary. My position is not simply that a hearing was closed — it is that no full public suppression hearing ever tested the statements and their fruits before the evidence reached the jury.

B. THE PATTERN IN JUDGE ROSENTHAL'S RULINGS — MY OWN CHARACTERIZATION OF THE RECORD

I contend that no single ruling, viewed alone, proves misconduct — this filing does not ask the panel to find misconduct at the authorization stage. What I ask any reader to notice is the pattern: at each juncture below, a genuine evidentiary dispute that should have been resolved by evidence or an adversarial hearing was instead resolved by the court's own statement, an administrative shortcut, or a factual description that does not match the record.

1. The uncorroborated Austin-house theory (Count Seven). When the defense raised that I did not purchase the Austin house until October 2007, Judge Rosenthal personally proposed — without being a witness and without any address, lease, or occupancy record in evidence — that J.A. could have stayed at some other unidentified property. DE 192 at 3-5 to 3-9. No such property was ever identified.

2. The Count Five date change, made in my absence. While I was outside the courtroom changing out of jail clothing, the Government changed 2006 to 2005. DE 189 at 1-9 to 1-11.

3. The Barry analogy adopted without independent analysis (Count Three). When the Government invoked Barry, the court's response was “I remember it well” — not an independent analysis of whether Barry's facts had anything to do with my case. DE 192 at 3-64 to 3-65.

4. “Could have been worse than they are.” The court characterized the nudist photographs that way and sent the classification question to the jury without the image-by-image Dost analysis Barry itself required. DE 192 at 3-63 to 3-66.

5. DE 98's treatment of the suppression hearing as moot, in the same session that addressed

withdrawal of my retained counsel.

6. The Rule 29(c) order does not answer the argument Buckley actually made on Count One. DE 174 argued the Government failed to prove my knowledge that the conduct was unlawful “especially at any time prior to his presence in the U.K.” DE 174 at 2. DE 178 addresses only whether minors can legally engage in prostitution in the U.K. — not the knowledge argument. DE 178 at 2-3.

7. The Rule 29(c) order describes the Count Two photograph differently than the motion that prompted it. DE 174 describes K.V. “wearing his underwear in the fashion of a loin cloth.” DE 174 at 3. DE 178, ruling on that same motion, describes me “taking photos while Minor Victim #1 was laying naked on the massage table.” DE 178 at 3.

8. The Rule 29(c) order answers Count Three with evidence outside what the motion challenged. DE 174's argument was narrow — no proof I knew the specific images were child pornography. DE 178 answers with “ample evidence that Mr. Gandy had a sexual interest in children,” including trips to Southeast Asia and uncharged conduct. DE 178 at 3.

9. The Rule 29(c) order's account of K.D.'s Count Six testimony does not match K.D.'s testimony. DE 174 states K.D. “testified that he rubbed a man's leg and then left the massage room” — nothing more. DE 174 at 5. DE 178 denies the motion by stating “the massages included the client rubbing the genitals of the victim or the victim rubbing the genitals of the client.” DE 178 at 4. K.D.'s complete trial testimony (DE 190 at 2-143 to 2-164) contains no testimony describing genital contact of any kind.

10. The March 31, 2025 order on unsealing itemizes DE 98 among documents it says were never sealed — directly contradicted by the sealed transcript itself and the court reporter's own confirmation. On January 14, 2025, I moved to unseal all sealed documents in the case (DE 294). On March 31, 2025, DE 302 denied that motion and stated that “the documents currently filed under seal will remain under seal” — but its own body, page 2, paragraph 4, itemizes specific documents I asked to unseal that it says “were not filed under seal” in the first place, and DE 98 is on that list. That itemized finding is directly contradicted by the record: the DE 98/303 transcript is captioned, in the court reporter's own words, “TRANSCRIPT of SEALED EX PARTE PORTION of HEARING,” and the same court reporter separately confirmed in writing that only Judge Rosenthal could authorize its release. Three weeks after DE 302, on April 21, 2025, the transcript itself was filed as DE 303 — marked “(Sealed)” on the docket at the moment of filing, the same document DE 302 had just described as never having been sealed at all.

11. The same hearing that produced the contested D.V. date change also produced an acknowledged citation error — one serious enough that the Court had to amend its own suppression order the next day of trial. Immediately before ruling on the Government's request to

change Count Five's charged year from 2006 to 2005, the prosecutor herself flagged a citation problem in the Court's own suppression ruling: “You cited, Your Honor, to page [] -- I'm sorry -- 549 in Murray in your decision. 549 in Murray is contained within the dissent.” DE 189 at 1-8 to 1-9. Murray v. United States, 487 U.S. 533 (1988), is the controlling independent-source-doctrine case this litigation turns on, and its dissent does not state the law the majority adopted.

The Court's immediate response was only that it “doesn't change the outcome” — but it did change the paper record: the next trial day, DE 155, “AMENDED ORDER SUPPRESSING EVIDENCE,” was entered on July 19, 2018, the Court's own correction of the ruling built in part on the mis-cited Murray passage. Minutes after the Murray exchange, in the same hearing, the Government asked to change Count Five's year from 2006 to 2005; Buckley objected that the change was “surprising and prejudicial”; and the Court ruled: “I will grant the variance with the change. I am not sure it is a variance.” DE 189 at 1-9 to 1-11.

12. DE 141's account that I fired counsel materially conflicts with what Judge Rosenthal personally heard and what DE 98 records. At the April 27, 2017 hearing, I told the Court, 'I did oppose him quitting. I did not want him to quit,' concerning Flood, and stated that I wanted Dan Cogdell and Nicole DeBorde to remain: 'I don't want them to quit. I would like them to stay on and go to trial.' DE 98 at 7:9-21, 9:10-16. Judge Rosenthal nevertheless later stated that I had 'insisted on firing very good lawyers over and over and over again' and that 'the record seems to indicate that he fired them.' DE 141 at 23. The issue is not whether withdrawal ultimately should have been granted; it is that the later official description of who ended the attorney relationship conflicts with the transcript and with what the same judge personally heard.

Items 6 through 12 extend the pattern past trial into the post-verdict and post-conviction record.

DE 174 and DE 178 are primary documents four pages apart in the same docket; DE 302 and DE 303 are three weeks apart on the same docket; DE 189's Murray citation error and the Count Five colloquy are minutes apart on the same transcript pages, and DE 155 is the Court's own formal amendment issued the next trial day in response to the Murray error. None of these comparisons require inference — they are readable directly off the documents themselves. I ask the Court to view items 1 through 12 together: individually, each is arguably ordinary trial or docket management; together, they describe a recurring choice to resolve genuine disputes by something other than the evidentiary hearing, direct answer, or accurate record description the moment called for.

B.1 DE 98 VERBATIM — WHAT THE STILL-DISPUTED TRANSCRIPT ACTUALLY SAYS

Because DE 302 itemizes DE 98 among the documents it says were never sealed, the actual content of DE 98 bears directly on whether that itemization is accurate, and on the merits of the counsel-withdrawal history discussed throughout this application. The following passages are drawn from the April 27, 2017 transcript itself, and should be authenticated against the certified transcript before use:

Page 6, line 15: Judge Rosenthal asks, “Was there opposition to any of them by Mr. Gandy.” Cogdell responds, “I don't know” — the record therefore does not show the Court had confirmed my position before proceeding. Page 6: Attorney Nicole DeBorde notes on the record that the docket for Flood's earlier withdrawal “indicates that it was unopposed,” flagging a mismatch between the docket label and what actually happened. Page 7, lines 9-21: I tell the Court directly, “I did oppose him quitting” — referring to Flood's earlier withdrawal — without the Court acknowledging or correcting the prior record on the point. Page 9, line 10: I state, “I would like them to stay on the case,” referring to Cogdell and DeBorde, and at line 16 add, “I believe they still could represent me.” Page 10, lines 11-14: The Court responds by telling me I need to listen to Cogdell and DeBorde rather than “jailhouse lawyers,” before proceeding to grant the withdrawal I had just said I opposed.

C. STRUCTURAL ERROR, THE FOUR-YEAR SUPPRESSION VACUUM, AND A MEANINGFUL REMEDY

Arizona v. Fulminante distinguishes structural defects from trial errors subject to harmless-error review. 499 U.S. 279, 306-10 (1991). The denial of a public proceeding protected by Waller, and the denial of counsel of choice recognized in United States v. Gonzalez-Lopez, 548 U.S. 140, 148-50 (2006), are structural. The chronology here is exceptional: DE 46 (2013) asserted my statements were the “bulwark” of the warrant affidavits; DE 89 (Dec. 5, 2016) reported counsel was “still waiting for a response to our motions”; DE 98 (April 27, 2017) then treated an open suppression hearing as unnecessary. For approximately four years, a pleaded suppression dispute remained without the evidentiary hearing capable of deciding it, while the investigation allegedly used the statements' contents to question K.V., identify witnesses, and shape the prosecution.

The DE 98 record also forecloses treating the counsel-of-choice issue as knowingly waived. Waiver is the intentional relinquishment of a known right; forfeiture is merely the failure to timely assert one. United States v. Olano, 507 U.S. 725, 733 (1993). I did not remain silent: I expressly opposed Flood's withdrawal and asked Cogdell and DeBorde to stay and try the case. Any later failure by counsel to preserve or present the issue may raise forfeiture or procedural-default questions, but it cannot convert my recorded objection into a knowing, voluntary waiver. See Johnson v. Zerbst, 304 U.S. 458, 464 (1938). As Zachary L. Henderson's Missouri Law Review analysis explains, counsel-of-choice deprivation concerns the framework of the proceeding and is structural under Gonzalez-Lopez; structural classification does not itself erase collateral-review rules, but it makes the waiver-versus-forfeiture distinction indispensable. Zachary L. Henderson, A Comprehensive Consideration of the Structural-Error Doctrine, 85 Mo. L. Rev. 965 (2020).

United States v. Kim L. Powe, 591 F.2d 833, 842-47 (D.C. Cir. 1978), and Jackson v. Denno, 378 U.S. 368, 376-77 (1964), establish that when alerting circumstances place voluntariness genuinely in issue, a reliable determination is required outside the jury's guilt deliberations — a duty the Fifth Circuit independently recognizes. United States v. Renteria, 625 F.2d 1279, 1282-

83 (5th Cir. 1980); United States v. Iwegbu, 6 F.3d 272, 274 (5th Cir. 1993); United States v. Harrelson, 705 F.2d 733, 737 (5th Cir. 1983).

D. THE UNRESOLVED SUPPRESSION ISSUE PREVENTED ME FROM

PRESENTING THE DEFENSE

DE 91 reserved impeachment use of my July 20, 2012 statement without resolving voluntariness. A merely Miranda-defective but voluntary statement may sometimes be used for impeachment, Harris v. New York, 401 U.S. 222 (1971); an involuntary statement may not, for any purpose. Mincey, 437 U.S. at 398; Portash, 440 U.S. at 459. I maintain that this unresolved threat, together with counsel's last-minute decision not to use the completed investigation work, kept me from personally explaining the evidence to the jury.

E. DILIGENCE AND ACCESS — THE COMPLETE EXHIBIT A–Y RECORD

My diligence record is not a single episode. It is a thirteen-year documented effort, running from the first months of this case through 2025, to recover sealed records, unresolved rulings, and my own property from a succession of attorneys and courts.

The 2012 starting point — Exhibit P: My own emails to my then-attorney, James Alston, show me explaining that the illegal interrogation was the key to stopping my case — establishing that I identified the suppression issue as central to my defense from the outset, not as an idea manufactured later for post-conviction purposes — and asking Alston for the return of my tax box. This is the earliest documented instance in the file of my attempting to recover material later shown to bear directly on the chronology and suppression issues in this application, and it predates trial. Alston is the same attorney who retained and paid investigator Bert Diaz in September 2012.

Counsel turnover — Exhibits K, N, and Q: Exhibit K preserves Charles Flood's August 8, 2014 handwritten notes recording that my “number one goal was to win Motion for Suppression,” together with Flood's September 2014 emails reporting that Judge Rosenthal wanted to transfer the case to a different district and that I was experiencing suicidal ideation during this period. Exhibit N preserves my stepmother Julie Gandy's July 12, 2018 email to trial counsel Buckley, sent shortly after the speedy-trial hearing. Exhibit Q preserves attorney Dustan Neyland's emails requesting an additional $25,000 after being forced into a first-chair role he had been retained only to support.

Direct appeal and first §2255 — Exhibits B, C, and H: Exhibit B preserves Julie Gandy's April 14, 2019 email to appellate counsel Seth Kretzer asking why the speedy-trial issue was omitted from the direct appeal. Exhibit C preserves the June 24, 2019 certified mail I sent Judge Rosenthal raising structural constitutional errors, which went unanswered. Exhibit H documents my 2021 effort through attorney Brandon Sample: Julie Gandy's January 31, 2021 request for the return of my tax box — the same property first requested from Alston in 2012, still not returned nine years later.

Dallas Craig Hughes's unfiled work: Dallas Craig Hughes later prepared proposed appellate and collateral-review material reflecting claims I wanted presented. That work was never filed with any court and was never adjudicated on the merits. It therefore must not be described as a prior judicial rejection of those claims. The filing history must distinguish Hughes's unfiled work from the § 2255 motion attorney Brandon Sample actually filed in 2021.

Unsealing and access — Exhibits T and U: Exhibit T documents dated attempts to obtain the sealed DE 98 record: a December 10, 2024 email to an attorney contact, a December 30, 2024 email to the DOJ Criminal Division, and a January 2024 email from the DE 98 court reporter stating that only Judge Rosenthal could unseal it. Exhibit U preserves the itemized reasons DE 34 and DE 46 required a suppression hearing, together with DE 239.

Grand Jury and property-return efforts — Exhibits J and Y: Exhibit J documents my ongoing effort to obtain my Grand Jury transcripts (DE 305, DE 309, and a renewed 2025 motion). Exhibit Y preserves DE 285 ("Motion for Return of Property," denied by DE 288) and DE 287 (the Rule 60(b) motion, dismissed by DE 289).

The unsealing effort, docket-confirmed — DE 294, 301, 302, 303: DE 294 (January 14, 2025) is my own motion to unseal all sealed documents. DE 301 (March 10, 2025) denied a related motion to recuse and to proceed without prepaying the appellate filing fee. DE 302 (March 31, 2025) denied the unsealing motion and itemized DE 98 among documents it found were never filed under seal — a finding at odds with the record, as Section B, item 10 above discusses. DE 303 (April 21, 2025) is the transcript itself, filed three weeks later and marked "(Sealed)" on the docket at the moment of filing.

Read together, these exhibits establish an unbroken, dated record running from 2012 to 2025: I identified the suppression issue and asked for my own records back from my first attorney before trial; my family and successive counsel continued pursuing the same sealed records and unresolved rulings through at least four attorney transitions; and the specific property I first requested from Alston in 2012 was still being requested from a different attorney in 2021. This is not post-conviction diligence offered as an afterthought — it is the same request, repeated across thirteen years and multiple attorneys, because it was never fulfilled. Under Banks v. Dretke, 540 U.S. 668, 695-96 (2004), and In re Will, 970 F.3d 536, 541-45 (5th Cir. 2020), this documented history is independently sufficient to excuse any suggestion that the evidence now assembled could have been produced sooner through greater diligence on my part.

F. COUNSEL-OF-CHOICE AND THE PREPARATION GAP

DE 98 records that I wanted retained counsel Dan Cogdell and Nicole DeBorde to remain and represent me at trial. The April 27, 2017 proceeding nevertheless allowed their withdrawal after the suppression dispute had remained unresolved for approximately four years. I had retained Dustan Neyland for a supporting third-chair role; after Cogdell and DeBorde withdrew, Neyland's role expanded and he sought an additional $25,000 (Exhibit Q). Neyland would not undertake the speedy-trial work without additional payment; Salmon was then retained for $10,000; Buckley ultimately entered as lead counsel on June 7, 2018 — approximately forty days before trial.

Cogdell authored the suppression litigation and DE 46. New trial counsel had to absorb a multi-year sealed and public record, investigate four distinct witness tracks, understand the July 20/25/26 interrogation chain, examine the Acer evidence, and prepare a six-year-delay motion in forty days.

G. LATE COLLATERAL REVIEW, PROCEDURAL DEFAULT, STRUCTURAL

ERROR, AND THE §2255(h)(1) GATEWAY

Powe and Waller identify constitutional duties and remedies, but neither authorizes a successive §2255 motion by itself — this application must first satisfy §2255(h)(1). The Fifth Circuit describes a prima facie showing as enough possible merit to warrant fuller district-court exploration. Reyes-Requena v. United States, 243 F.3d 893, 899 (5th Cir. 2001); In re Hearn, 418 F.3d 444, 445, 447-48 (5th Cir. 2005); In re Robinson, 917 F.3d 856, 868-70 (5th Cir. 2019). Jackson v. Denno, 378 U.S. 368 (1964), is the strongest late-procedural hearing analog: it arose after conviction, and the remedy was a later evidentiary hearing determining voluntariness, with a new trial required if the statement was involuntary. Sims v. Georgia, 385 U.S. 538, 543-44 (1967); Lego v. Twomey, 404 U.S. 477, 489 (1972).

On the diligence question specifically, three Sixth Circuit decisions — arising in a different circuit but addressing the identical structural problem of very late, diligence-excused discovery on collateral review — illustrate the accepted range: Souter v. Jones, 395 F.3d 577 (6th Cir. 2005) (DNA evidence surfacing years post-conviction; diligence plus a credible innocence claim overcomes the time bar); Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012) (habeas filed roughly nineteen years after a 1991 conviction; equitable tolling granted based on an unsolicited witness recantation and travel-time alibi evidence — directly analogous to the San Diego/travel-chronology evidence here); and Freeman v. Trombley, 483 F. App'x 51 (6th Cir. 2012) (late-discovered informant recantation and alibi affidavits; actual-innocence gateway opened). Within the Fifth Circuit itself, In re Will, 970 F.3d 536, 541-45 (5th Cir. 2020), and Banks v. Dretke, 540 U.S. 668, 695-96 (2004), supply the controlling, circuit-specific version of the same principle for the Brady ground in Part One, Section VII.

Weaver v. Massachusetts, 582 U.S. 286, 294-303 (2017), confirms that labeling an error structural does not eliminate finality on collateral review — the prisoner must show a reasonable probability of a different result or fundamental unfairness. I allege both: a reasonable probability of a different result because a valid hearing could exclude statements, impeachment use, derivative witnesses, or electronic evidence, and fundamental unfairness because the unresolved threat prevented me from testifying and left the jury without the investigation work needed to contest each count.

For cause excusing any procedural default, I rely on the documented diligence record in Section E above — thirteen years of dated requests for the same sealed and withheld records — together with sealed DE 46 and DE 98, counsel withdrawal and turnover, and incarceration/COVID access barriers. Murray v. Carrier, 477 U.S. 478, 488-96 (1986); Bousley v. United States, 523 U.S. 614, 621-24 (1998). Jones v. Hendrix, 599 U.S. 465, 477-80 (2023), confirms this application must satisfy §2255(h)(1) directly rather than route around it through the savings clause — which is why Section VII is presented as an independent gateway ground, not merely a diligence excuse.

FINAL CONCLUSION AND RELIEF REQUESTED

This record does not present a technicality in search of a remedy. It presents post-trial sworn evidence contradicting the charged chronology, count-specific evidence bearing on whether alleged commercial acts occurred, a thirteen-year documented diligence record beginning with my own 2012 request to attorney Alston, a corrected and strengthened record of the investigative chain behind Counts One, Two, and Four, identified Government-generated interview contradictions, and specifically described categories of records alleged to remain in Government control.

The authorization standard requires a prima facie

showing, not final factfinding by this Court. I request an order authorizing the district court to consider a second or successive motion under 28 U.S.C. §2255(h)(1), with ground-specific and

claim-specific authorization as an alternative to wholesale denial. After authorization, the district court can determine whether the proposed claims satisfy § 2255(h)(1), address timeliness and procedural defenses, authenticate the submitted records, permit properly supported discovery, and decide any hearing or merits relief on a complete record.

CERTIFICATE OF COMPLIANCE

This computer-generated application contains 10,720 words, excluding material excluded by Federal Rule of Appellate Procedure 32(f), and complies with Fifth Circuit Rule 22 and the applicable requirements of Federal Rule of Appellate Procedure 32.

CERTIFICATE OF SERVICE

I certify that on ______________________, this application and its attachments were served through the Court's authorized filing and service procedures on counsel of record.

Respectfully submitted,

Jason Daniel Gandy, Movant, pro se

Register No.: 73006-279 Institution: ____________________ Date: ____________________

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