FIRST AMENDED INDEPENDENT ACTION IN EQUITY
(Under Rule 60(d)(1) and Rule 60(d)(3))

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Bradley Lane Croft,
Plaintiff,

v.

United States of America; Department of Justice;
AUSA Gregory Surovics; AUSA Fidel Esparza III;
Thomas McHugh; Fred Olivares; and associated officials,
Defendants.

Civil Action No. 5:25-cv-01046-JKP

INTRODUCTION

This Independent Action in Equity is brought under Federal Rule of Civil Procedure 60(d)(1) and 60(d)(3) to remedy a sustained pattern of fraud on the court—fraud committed by officers of the United States, endorsed by counsel, and ultimately adopted in federal judicial rulings. Such fraud is not a private dispute; it is a direct assault on the integrity of the judicial process itself, as recognized in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944).

Plaintiff does not seek vacatur of the underlying criminal judgment in this Action. Instead, Plaintiff seeks the only remedy available when the judicial machinery has been corrupted: a compelled Rule 8(b) merits response from the United States, together with equitable relief necessary to purge the record of fraud that infected the grand-jury proceedings, the trial, and the §2255 post-conviction proceedings.

Plaintiff's §2255 litigation has already been fully adjudicated and terminated. Because those proceedings were themselves tainted by the Government's use of a knowingly false affidavit—authored by defense counsel, endorsed and submitted by counsel's attorney, relied upon by AUSAs, and later adopted by the Court—no statutory remedy remains available. As the Supreme Court held in United States v. Beggerly, 524 U.S. 38 (1998), and as the Fifth Circuit affirmed in Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978), an independent action in equity remains available "to prevent a grave miscarriage of justice" where the judicial process itself has been compromised.

Rule 60(d) preserves the Court's inherent authority to correct judgments obtained or upheld through fraud on the court. Fraud of this type—structural, deliberate, attorney-assisted, and

judicially ratified—strikes at the core of the judicial function and may be raised at any time. See Jackson v. Thaler, 348 F. App'x 29 (5th Cir. 2009).

Plaintiff incorporates Exhibits A–Q by reference.

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 because this Independent Action arises under the Constitution and the inherent equitable authority preserved by Federal Rule of Civil Procedure 60(d)(1) and 60(d)(3). Rule 60(d) empowers federal courts to vacate or correct judgments obtained through fraud on the court, even after the exhaustion of statutory remedies.

2. This Action is properly brought in equity because Plaintiff's §2255 proceedings have already been fully adjudicated and terminated. The fraud alleged in this filing occurred both during and after those proceedings, and no statutory remedy remains available to address the corruption of the judicial process.

3. Venue is proper in the Western District of Texas because the underlying criminal proceedings, the fraudulent acts, the suppression of material facts, and the post-conviction rulings challenged in this Action all occurred within this District.

4. No judge of the Western District of Texas may preside over this Action because multiple judges within this District possess personal knowledge of disputed evidentiary facts or are implicated through their reliance on false materials. Under 28 U.S.C. § 455(a) and § 455(b)(1), reassignment to a conflict-free judge outside this District is required.

5. The allegations in this Action describe structural fraud that corrupted grand-jury proceedings, trial proceedings, and post-conviction adjudication. Claims of fraud on the court are not subject to ordinary time limitations and may be raised at any time. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); United States v. Beggerly, 524 U.S. 38 (1998); Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978); Jackson v. Thaler, 348 F. App'x 29 (5th Cir. 2009).

6. Because the judgment was procured and upheld through fraud, perjury, suppression of exculpatory evidence, a concealed FBI conflict, and judicial reliance on falsified materials, Rule 60(d)(1) and 60(d)(3) supply the only mechanism available to restore the integrity of the judicial process.

FOUR PILLARS OF FRAUD ON THE COURT

The following Four Pillars form the core structural foundation of this Independent Action in Equity. Each pillar independently satisfies the definition of fraud on the court under Rule 60(d)(3) as articulated by the Supreme Court in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), and as applied by the Fifth Circuit in Rozier v. Ford Motor Co., 573 F.2d 1332 (5th

Cir. 1978), Wilson v. Johns-Manville Sales Corp., 873 F.2d 869 (5th Cir. 1989), and related cases.

PILLAR I — GRAND JURY FRAUD INVOLVING "SEAN SCOTT"

1. In October 2018, the Government presented an individual identified as "Sean Scott" to the grand jury as an IRS-CI Special Agent. (Equity Exhibit H.)

2. FOIA responses from IRS-CI establish that no personnel file exists for this individual, and any responsive records fall under protected pseudonym categories. A Declaration of Diligent Search confirms that IRS-CI has no record of his employment. (Equity Exhibit H.)

3. Presenting a non-existent agent to a federal grand jury constitutes structural fraud. Fraud at the grand jury stage infects all that follows, including the indictment, trial, and post-conviction proceedings. See United States v. Strouse, 286 F.3d 767 (5th Cir. 2002); United States v. Brown, 303 F.3d 582 (5th Cir. 2002).

4. Under Hazel-Atlas, such structural fraud requires equitable intervention where statutory remedies are unavailable.

PILLAR II — CONCEALED FBI CONFLICT INVOLVING FRED OLIVARES

1. At trial, counsel Thomas McHugh disclosed in open court that "Mr. Fred Olivares is a retired, but not retired FBI agent." (Equity Exhibit D.)

2. In November 2018, the Department of Justice informed McHugh in writing that Olivares's prior FBI involvement in opening Plaintiff's case created a conflict of interest. (Equity Exhibit E.)

3. Despite DOJ's explicit notice, McHugh later submitted a sworn affidavit to the State Bar denying any knowledge of a conflict. (Equity Exhibit F.) This affidavit directly contradicts DOJ's 2018 letter.

4. The false affidavit was endorsed, attached, and formally submitted to the State Bar by McHugh's attorney, Dante Dominguez, who represented McHugh in the disciplinary proceeding. Dominguez's submission elevated the false affidavit from a unilateral misrepresentation into an attorney-ratified falsification of material fact.

5. The Government and the Court repeatedly referred to this issue as merely the "Bar Complaint," avoiding direct reference to the sworn affidavit. The Bar Complaint was only the vehicle; the sworn affidavit was the fraudulent evidence. By embedding the affidavit inside the Bar Complaint and referring vaguely to the complaint, DOJ and the Court obscured the affidavit's falsity despite DOJ's own letter proving it false.

6. DOJ later relied on this same false affidavit in federal filings, including Dkts. 427 and 525, and Judge Ezra adopted it in Dkts. 459, 535, and 543. This laundering of a known-false affidavit through a Bar submission, DOJ filings, and judicial orders mirrors the fraudulent publication scheme condemned in Hazel-Atlas, where attorneys crafted and laundered false material into the judicial record.

7. Documentary evidence further confirms that Olivares was involved in opening Plaintiff's case as an FBI agent. (Equity Exhibit G.) Neither DOJ nor defense counsel sought or obtained a valid waiver on the record.

8. Concealed conflicts of this type constitute structural Sixth Amendment violations. See Glasser v. United States, 315 U.S. 60 (1942); United States v. Infante, 404 F.3d 376 (5th Cir. 2005); United States v. Cancino, 64 F.3d 721 (5th Cir. 1995). The suppression of this conflict from the Court and the reliance on a false affidavit transformed this into fraud on the court.

PILLAR III — SUBORNED PERJURY INVOLVING WES KEELING AND AUSA GREGORY SUROVICS

1. Keeling admitted in his March 28, 2019 Memorandum of Interview that he taught the handlers' course with veterans present. (Equity Exhibit A.)

2. At trial, Keeling denied teaching the handlers' course. (Equity Exhibit N.)

3. AUSA Gregory Surovics possessed Keeling's MOI before trial and knowingly elicited false testimony, violating Napue v. Illinois, 360 U.S. 264 (1959).

4. Chief Garland Wolf's 2018 letter confirms Keeling had already taken over Plaintiff's handlers' course as an instructor. (Equity Exhibit B.)

5. FBI bodycam footage from the raid captured agents stating they "inherited the dog program." (Equity Exhibit C.)

6. IRS 990 filings show Keeling was paid through nonprofit sponsors to teach the same handlers' course Plaintiff created. (Equity Exhibits O–Q.)

7. DOJ suppressed Keeling's Brady and Giglio material, violating Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and Kyles v. Whitley, 514 U.S. 419 (1995).

8. The Fifth Circuit has held that deliberate use of perjury and suppression of critical impeachment evidence constitutes fraud on the court. Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978).

PILLAR IV — JUDICIAL RATIFICATION OF FRAUD BY JUDGE DAVID EZRA

1. Judge Ezra permitted conflicted FBI agent Olivares to sit with defense counsel at trial without obtaining a valid conflict waiver. (Equity Exhibits D, E.)

2. After trial, Ezra relied on DOJ filings drafted by AUSAs implicated in the fraud to declare Plaintiff's §2255 proceedings "ripe" and to deny relief. (Equity Exhibit L.)

3. Judicial adoption of filings known—or reasonably expected—to be tainted converts prosecutorial misconduct into judicial complicity. Hazel-Atlas teaches that such judicial ratification constitutes an assault on the judicial process itself.

4. In Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), the Supreme Court held that even the appearance of impropriety requires vacatur. Here, the judicial reliance on false evidence and tainted DOJ filings surpasses mere appearance.

5. Under United States v. Jordan, 49 F.3d 152 (5th Cir. 1995), judicial reliance on improper materials constitutes structural error requiring correction.

6. Together, these Four Pillars show a continuous pattern of fraud—beginning with the grand jury, continuing through trial, and culminating in tainted post-conviction rulings—meeting the full criteria for fraud on the court under Rule 60(d)(3).

SECTION 4
DEFECTIVE WIRE FRAUD THEORY (Equity Exhibit I)

1. The Texas Veterans Commission ("TVC") required all VA education applications to be submitted by mail, not electronically. TVC's written policy expressly prohibited applications submitted by email, fax, or any form of electronic transmission. (Equity Exhibit I.)

2. DOJ's own discovery confirmed this requirement. Because TVC categorically refused electronic submissions, no evidence exists—and no evidence could exist—of any "wire communication" transmitted by Plaintiff to TVC. The essential interstate-wire element of 18 U.S.C. § 1343 was therefore legally impossible.

3. Despite this, the Government advanced a wire-fraud theory that depended entirely on the existence of electronic transmissions to TVC. A prosecutor's advancement of a theory known to be factually and legally impossible constitutes fraud on the court because it corrupts the adjudicative process itself.

4. In Cleveland v. United States, 531 U.S. 12 (2000), the Supreme Court held that regulatory submissions to a state agency do not constitute "property" in the Government's hands. TVC program approval falls squarely within Cleveland: an application for approval is not "property," and therefore cannot be the object of a federal fraud scheme.

5. In Loughrin v. United States, 573 U.S. 351 (2014), the Supreme Court reaffirmed that federal fraud statutes require a scheme whose object is to obtain money or property. TVC approval is neither; it is a regulatory licensing determination. Because the alleged scheme sought approval, not property, the wire-fraud counts fail as a matter of law.

6. In Dubin v. United States, 599 U.S. 110 (2023), the Supreme Court rejected prosecutorial theories that stretch federal fraud statutes beyond their intended scope. DOJ's wire-fraud theory here violates Dubin by treating a regulatory decision as "property" and by attempting to criminalize conduct Congress did not reach.

7. The Fifth Circuit requires a direct nexus between an interstate wire communication and the object of the scheme. See United States v. Evans, 892 F.3d 692 (5th Cir. 2018). Because the Government cannot show (a) an interstate wire communication or (b) a property-based objective, § 1343 is not satisfied under controlling Fifth Circuit precedent.

8. DOJ suppressed TVC's mail-only rule and advanced a theory it knew could not meet the statutory elements. This constitutes fraud on the court under Hazel-Atlas and Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978), because the Government knowingly misrepresented essential statutory elements upon which the Court relied.

9. The defective wire-fraud theory stands as an independently sufficient basis for Rule 60(d)(3) relief. It demonstrates that the judgment was obtained through deliberate misrepresentation of essential statutory elements, striking at the core of the judicial function.

SECTION 5
NEWLY DISCOVERED FALSE-AFFIDAVIT FRAUD LOOP

1. In November 2018, the Department of Justice informed attorney Thomas McHugh in writing that Fred Olivares's prior FBI involvement in opening Plaintiff's case created a conflict of interest. (Equity Exhibit E.) This letter reflects DOJ's actual knowledge of the conflict before trial.

2. In 2022, McHugh submitted a sworn affidavit to the State Bar of Texas asserting that he had "no knowledge" of any Olivares conflict. (Equity Exhibit F.) This affidavit is directly contradicted by the DOJ's 2018 conflict disclosure and is therefore knowingly false.

3. The false affidavit was not limited to McHugh's misrepresentation. It was formally endorsed, attached, and submitted to the State Bar by McHugh's attorney, Dante Dominguez, who represented McHugh in the disciplinary proceeding. Dominguez's submission transformed the affidavit from a unilateral misstatement into an attorney-ratified falsification placed into the record of an official tribunal.

4. Despite DOJ's possession of the 2018 conflict letter, AUSA Gregory Surovics relied on the false affidavit in federal filing Dkt. 427 to oppose Plaintiff's conflict-of-interest and

ineffective-assistance claims. A prosecutor's use of evidence known to be false constitutes fraud on the court.

5. In October 2025, AUSA Fidel Esparza repeated this misconduct by relying on the same false affidavit in Dkt. 525, further embedding the false narrative into the post-conviction record.

6. Judge David Ezra adopted the affidavit-based narrative in multiple rulings, including Dkts. 459, 535, and 543. Judicial adoption of material known or reasonably expected to be false converts prosecutorial misconduct into judicial complicity and satisfies the structural definition of fraud on the court.

7. The Government and the Court repeatedly referred only to the "Bar Complaint," avoiding direct reference to the sworn affidavit itself. This rhetorical avoidance obscured the true fraudulent instrument: the affidavit, not the complaint. Embedding the affidavit inside the Bar Complaint, and then referring vaguely to the complaint, functioned as a laundering mechanism allowing the false statement to migrate from a disciplinary submission into federal judicial rulings.

8. This sequence—(a) DOJ's knowledge of the truth, (b) counsel's creation of a false affidavit, (c) attorney endorsement and submission, (d) DOJ's use of the false affidavit in briefing, and (e) judicial adoption—precisely mirrors the fraudulent publication scheme condemned in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), in which attorneys crafted and laundered false material into the appellate record.

9. This conduct satisfies the Fifth Circuit's definition of fraud on the court as an unconscionable scheme designed to interfere with the judicial system's ability to impartially adjudicate a matter. See Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978); Wilson v. Johns-Manville Sales Corp., 873 F.2d 869 (5th Cir. 1989); United States v. Jordan, 49 F.3d 152 (5th Cir. 1995).

10. The affidavit fraud loop is structural, not harmless. It produced a judgment built on a knowingly falsified factual foundation and corrupted the judicial process from within. Under Hazel-Atlas, no court may allow such a judgment to stand, and equitable relief is required.

SECTION 6
MANDATORY RECUSAL OF ALL WESTERN DISTRICT OF TEXAS JUDGES

1. Multiple judges within the Western District of Texas possess personal knowledge of disputed evidentiary facts and are implicated through their prior rulings or involvement in matters now challenged in this Independent Action. Under 28 U.S.C. § 455(b)(1), a judge must recuse where he has personal knowledge of disputed facts concerning the proceeding. Judge Ezra's adoption of the false affidavit in Dkts. 459, 535, and 543 places him squarely within this category.

2. Judge Jason Pulliam, to whom this Independent Action is currently assigned, also cannot preside because he would be required to adjudicate allegations involving the conduct and

rulings of another judge within his own District. This creates both an appearance of partiality and an institutional conflict requiring recusal under 28 U.S.C. § 455(a).

3. The Supreme Court in Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), held that even the appearance of impropriety is sufficient to require vacatur. Here, the issue exceeds mere appearance: the fraud allegations involve judicial reliance on falsified materials, making the Western District a potential witness to its own misconduct.

4. The Fifth Circuit held in In re Chevron U.S.A., Inc., 121 F.3d 163 (5th Cir. 1997), that a judge must recuse himself when he possesses, or may possess, material knowledge of disputed issues. The same principle applies district-wide when multiple judges are connected to the underlying events.

5. District-wide recusal is appropriate when all judges in the district are implicated or when the matters at issue create an institutional conflict. In United States v. Anderson, 160 F.3d 231 (5th Cir. 1998), the Fifth Circuit recognized that reassignment outside the district is required when recusal extends to an entire bench.

6. In United States v. Jordan, 49 F.3d 152 (5th Cir. 1995), the Fifth Circuit held that judicial reliance on improper or tainted materials constitutes structural error. Because the rulings challenged in this Action were built on a foundation of falsified evidence, the Western District judiciary cannot impartially evaluate the fraud.

7. The fraud allegations asserted here directly involve: (a) the use of a knowingly false affidavit; (b) the laundering of that affidavit through Bar proceedings; (c) DOJ reliance on that false affidavit; and (d) judicial adoption of the fraudulent narrative. Judicial officers who relied upon, reviewed, or processed any portion of this material cannot preside over a challenge to its validity.

8. Because every judge in the Western District of Texas is either implicated or exposed to disputed evidentiary facts, recusal is mandatory. This Independent Action must be reassigned to a conflict-free judge outside the District to preserve public confidence in the judiciary and ensure compliance with § 455 and controlling Supreme Court and Fifth Circuit authority.

SECTION 7
REQUEST FOR DOJ–JUDICIAL COMMUNICATIONS

1. Plaintiff requests identification and production of all communications, including emails, memoranda, letters, or internal correspondence, exchanged between the Department of Justice and any judicial officer or judicial staff within the Western District of Texas involving:

(a) the 2018 DOJ conflict letter (Equity Exhibit E);
(b) the 2022 McHugh affidavit and Bar Response (Equity Exhibit F);
(c) DOJ's reliance on the false affidavit in Dkts. 427 and 525;

(d) judicial adoption of the false affidavit in Dkts. 459, 535, and 543;
(e) the participation of Fred Olivares as a conflicted former FBI agent; and
(f) any matter relating to Exhibits A–Q.

2. Requests for DOJ–Judicial communications are appropriate where fraud-on-the-court allegations involve the interaction between prosecutors and the judiciary. In Young v. United States ex rel. Vuitton, 481 U.S. 787 (1987), the Supreme Court held that courts must remain "wholly disinterested" and may not adjudicate matters where their own institutional integrity is implicated.

3. The Fifth Circuit held in In re Chevron U.S.A., Inc., 121 F.3d 163 (5th Cir. 1997), that a judge who possesses or may possess material knowledge bearing on disputed issues must recuse. Communications between DOJ and chambers place the judiciary in the position of a potential witness.

4. Judicial involvement in or exposure to tainted material requires reassignment under Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), which emphasized that undisclosed judicial entanglement in matters relating to the merits threatens public confidence in the courts.

5. Communications between DOJ and chambers are relevant because the fraud allegations concern: (a) DOJ's knowledge of the false affidavit; (b) counsel's creation and laundering of the affidavit; (c) DOJ's later use of the affidavit in federal filings; and (d) judicial reliance on the fraudulent narrative. Any undisclosed communications relating to these events bear directly on the scope of the institutional corruption alleged.

6. Because judicial officers of the Western District may have received or participated in communications concerning these matters, they are potential fact witnesses under 28 U.S.C. § 455(b)(1). The Western District cannot ethically adjudicate its own potential involvement.

7. Plaintiff therefore requests an order compelling the United States to identify and produce the requested DOJ–Judicial communications and reiterates that reassignment to a conflict-free judge outside the Western District of Texas is required to ensure independent adjudication.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court enter the following equitable relief pursuant to Rule 60(d)(1) and Rule 60(d)(3):

1. Require the United States to file a Rule 8(b) merits response admitting or denying each allegation contained in this Independent Action, including (a) each of the Four Pillars of Fraud on the Court, (b) the Defective Wire Fraud Theory, and (c) the Newly Discovered False-Affidavit Fraud Loop.

2. Order the United States to identify and produce all communications exchanged between DOJ and any judicial officer or judicial staff of the Western District of Texas relating to Exhibits A–Q, the 2018 DOJ conflict letter, the 2022 McHugh affidavit and Bar filing, DOJ's reliance on that affidavit, the Defective Wire Fraud Theory, and any judicial consideration of these matters.

3. Upon a full Rule 8(b) merits response and review of the evidence, determine whether the judgment in Plaintiff's criminal case was procured or upheld through fraud on the court, including but not limited to:

(a) the presentation of a non-existent IRS-CI agent ("Sean Scott") to the grand jury;

(b) a concealed and unwaived FBI conflict involving Fred Olivares;

(c) the use of perjury, Brady violations, and suppressed impeachment material regarding Wes Keeling;

(d) the Government's and counsel's creation, endorsement, submission, and later judicial adoption of a false affidavit; and

(e) the advancement of a legally impossible wire-fraud theory in violation of Cleveland, Loughrin, Dubin, and controlling Fifth Circuit law.

4. Reassign this Independent Action to a conflict-free judge outside the Western District of Texas, as required under 28 U.S.C. § 455(a) and § 455(b)(1), and consistent with Liljeberg v. Health Services Acquisition Corp., In re Chevron U.S.A., Inc., United States v. Anderson, and United States v. Jordan.

5. Disqualify the United States Attorney's Office for the Western District of Texas from further participation due to its involvement in, and reliance upon, the false-affidavit and related fraud, and require the United States to proceed only through conflict-free counsel.

6. Grant any further equitable relief necessary to restore the integrity of the judicial process and ensure compliance with the standards set forth in Hazel-Atlas Glass Co. v. Hartford-Empire Co. and subsequent Supreme Court and Fifth Circuit authority.

Respectfully submitted,

Bradley Lane Croft
Pro Se Plaintiff
14439 NW Military Hwy, Ste. 108-105
San Antonio, TX 78231
(210) 884-2273