

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

vs.

CASE NO: 8:05-Cr-475-T-27TGW

THOMAS SPELLISSY

and

STRATEGIC DEFENSE INTERNATIONAL, INC.

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**DEFENDANTS THOMAS SPELLISSY AND STRATEGIC DEFENSE  
INTERNATIONAL, INC.'S JOINT MOTION FOR A CONTINUED STAY OF  
SENTENCE PENDING A HEARING FOR A NEW TRIAL BASED ON NEW  
EVIDENCE.**

Defendants Thomas Spellissy and Strategic Defense International, Inc. (SDI), through their respective undersigned counsel, hereby jointly request this honorable court for a continued stay of sentence under Title 28 USC § 2255. Defendants move to attack the sentence because newly discovered evidence substantiates that the Defendant's have been unjustly convicted of conspiracy to defraud the United States in violation of 18 USC § 371. It is universally known that the US government moved this case to trial and won a jury verdict by using unethical tactics led by a dishonest government law enforcement agent from the Defense Criminal Investigative Service (Special Agent Robert Calvert). Newly discovered evidence proves that not only did Calvert but other Government officials used unethical tactics, and witness tampering, during the legal process of this case.

**MEMORANDUM OF LAW**

**I. 28 USC § 2255. Federal custody; remedies on motion attacking sentence**

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed is subject to

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collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or re-sentence him or grant a new trial or correct the sentence as may appear appropriate.

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

(1) The date on which the judgment of conviction becomes final;

Or

(2) The date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

## **II. Federal Criminal Procedure Rule 33. New Trial**

Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.

Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty.

### **ARGUMENT**

The Defendants have moved for a new trial based on newly discovered evidence not available before or at trial.

It is unconscionable for this court to allow a Colonel (Retired) Tom Spellissy to go to prison when in fact the preponderance of the evidence overwhelmingly proves beyond a reasonable doubt that he is innocent. The evidence brought into the court was obtained

through the unethical actions and behavior of Special Agent Robert Calvert. At the trial the Government's star witness has now been convicted of perjury by discrepancies between his plea and his testimony under oath. The Defendants vigorously attack this sentence because the US Government cannot possibly even know what the truth is because of witness tampering.

Now that the record is complete and all can be seen from the reflective vantage of hindsight, it is quite apparent that Defendant Spellissy was a victim of a concerted effort to convict him at all costs of crimes that he not only did not commit, but are glaringly inconsistent with his lengthy record of unblemished and highly distinguished military service to the United States.

It is without question that the trial judge and this Court can clearly see how Special Agent Calvert's overzealous and unethical conduct in seeking a search warrant for Spellissy's home, based upon an erroneous, dishonest, and incomplete probable cause affidavit, misled the Magistrate Judge into believing that certain crimes had been committed when they simply were not.

This very same agent lied to Bill Burke when he told him that Spellissy's company, SDI was illegal. Burke gave un-contradicted testimony on this very subject. The fact that Burke also gave un-contradicted testimony that he was threatened by the very same agent who lied to a Federal Magistrate Judge in obtaining a search warrant.

New evidence shows that another witness was also tampered with. Sergeant Landers had approval and was ready to testify for the Defense and then some higher ranking person from a higher headquarters told Landers to stand down and wait for further orders.

Burke's plea is based on Burke being pressured, intimidated, confused and not understanding the absolute truth. He has testified at least twice under oath in federal court that he and the Defendants have not committed a crime.

The law provides a mechanism to start the correction of this miscarriage of justice. The undersigned counsel is providing counsel, Pro Bono. It is imperative that Colonel (Retired) Spellissy be available to assist counsel in preparing for an evidentiary hearing and or new trial.

### **Mitigating Circumstance**

The Defendant's wife is recovering from another recent major surgery due to her

continued fight against ovarian cancer. His wife is unable to work for the next several months and they have two minor children.

#### CONCLUSION

According to Eleventh Circuit authority, this motion provides that Defendants Thomas Spellissy and SDI, Inc. are entitled to a stay of sentence under Title 28 USC § 2255.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by Electronic Filing to Sheryl L. Loesch, Clerk of the Court, U.S. District Court, Middle District of Florida, located at U.S. Courthouse, 801 N. Florida Ave., #223, Tampa, FL 33602-3800, and that e-mail notification of this filing will be sent to all interested persons on this 26th day of September, 2007.

s/ Sean P. Cox

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