No. 13-16588

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

MARK J. FALCON,
Defendant-Appellant.

On Appeal from the United States District Court
for the District of Arizona

The Honorable Judge Frank R. Zapata
USDC Case No. 4:11-cv-00006-FRZ

APPELLANT'S REPLY BRIEF

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SUMMARY OF REPLY ARGUMENT

On appeal, the United States answers arguments that it *wishes* Mr. Falcon had made, but fails to answer the arguments *actually* made. Try as it might, the Appellee United States cannot overcome the Constitutional arguments raised below, and indeed, even ignored such substantive arguments until now.

Initially, the United States tries to argue summary judgment was proper because it attached partially illegible copies of loan agreements and self-issued Certificates of Indebtedness below, and that Mr. Falcon never expressly denied taking out loans (even though he did not admit the conduct either). However, the United States ignores the fact that Mr. Falcon did dispute the evidence below, and the relaxed evidentiary burden applied below is actually part of – and highlights – the Constitutional violation here. In any event, the facts remain at issue: the loan documents *are* illegible, the government printed its own proof of the debt – disputed below – that was largely inadmissible yet apparently considered here under a relaxed burden of proof, and Mr. Falcon has been stripped of his defenses to student loan debt that is presumptively non-dischargeable in bankruptcy, including a statute of limitations defense. Mr. Falcon's argument then and now is that the combination of these facts and others amounts to an unconstitutional deprivation of due process by causing special hardships and oppressive effects for

all such student borrowers like himself.

Second, the United States has undeniably waived any argument as to standing by failing to timely raise and litigate that ,factual issue in District Court, where a relevant factual litigation and inquiry could have – and would have – been made by Mr. Falcon, including concerning inadmissible hearsay evidence based on the purported conduct of third parties. The United States' belated effort to argue standing fails because the argument is inherently based on timing and hearsay conclusions as to what third parties allegedly did in relation to the debt, hearsay evidence that Mr. Falcon disputed below. Had the United States timely and properly raised the argument below, litigation, discovery and inquiry about this evidence could have been raised. The United States cannot ignore such factual issues in District Court and lay in wait to raise a standing argument that relies on disputed hearsay assertions regarding the conduct of third parties (the guarantor and others), not factual assertions about the government's own conduct.

Finally, on the merits, the United States blatantly mischaracterizes the record below by claiming that the District Court "found that Falcon failed" to raise such Constitutional arguments (Answering Brief 12-13), and claiming that "the district court correctly held, a Rule 59(e) motion was not appropriate." (Answering Brief at 14.) The District Court never made such rulings. If such

desperation is not enough to convince this Court that the United States is flailing about in search of rulings that were never made in order to try to win this appeal, the United States then mis-describes the legal arguments Mr. Falcon did make below, and incorrectly suggests a Constitutional legal argument still must show a genuine issue of disputed fact. (Answering Brief at 17.)

The principles at stake here are not merely debt and repayment, but whether the current state of federal education lending has become predatory and abusive of people merely trying to better themselves and become more productive members of society, by creating an eternal student debt subject to oppressive hardships and special burdens.

> [T]oday, more than ever before in the history of the United States, education is the fault line, the great Continental Divide between those who will prosper and those who will not in the new economy.[1]
>
> Whether a society forgives its debtors and how it bestows or withholds forgiveness are more than matters of economic or legal consequence. They go to the heart of what a society values.[2]

Pardo, Rafael, & Michelle Lacey. "Undue Hardship in the Bankruptcy Courts: An

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1 President William Jefferson Clinton, Address at Princeton University Graduation (June 4, 1996) (excerpts available in *Excerpts from Address to Princeton Graduates*, N.Y. TIMES, June 5, 1996, at B6, *available at* LEXIS, News Library, NYT File).

2 Bruce H. Mann, *Failure in the Land of the Free*, 77 AM. BANKR. L.J. 1, 1 (2003).

Empirical Assessment of the Discharge of Education Debt." *U. Cin. L. Rev.* 74 (2005): 405. Mr. Falcon has established a violation of federal due process in the instant case.

I. MR. FALCON PROVIDED AMPLE EVIDENCE TO SUPPORT HIS OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT; IN ANY EVENT, THE ISSUE ON APPEAL IS A CONSTITUTIONAL CLAIM, NOT JUST A DISPUTE OVER THE FACTS.

First, the United States argues that Appellant Falcon failed to present any evidence opposing the MSJ, therefore Summary Judgment was proper. However, Mr. Falcon referred to the evidence presented by the United States, and argued: 1) the loan agreements were partially illegible, and 2) the Certificates of Indebtedness were "hearsay" evidence used to prove the debt, as well as citing case law and applying it to the facts in order to argue unconstitutionality. Therefore Appellant Falcon presented all the evidence needed to support his arguments in opposition to Summary Judgment.

The local rule of civil procedure in the District of Arizona states:

> Any party opposing a motion for summary judgment must file a statement, separate from that party's memorandum of law, setting forth: (1) for each paragraph of the moving party's separate statement of facts, a correspondingly numbered paragraph indicating whether the party disputes the statement of fact set forth in that paragraph and a reference to the specific admissible portion of the record supporting the party's position if the fact is disputed; and (2) any additional facts that establish a genuine issue of material fact or otherwise preclude judgment in favor of the moving party.

L.R.Civ. 56.1(b).

In his Opposition, Mr. Falcon complied with the local rule by setting out numbered paragraphs which cited to the record set forth by the United States, showing genuine issues of material fact. Specifically, he cited to Exhibits 1 & 3, copies of the purported promissory notes as being illegible and therefore raising a genuine issue of material fact as to whether the notes were actually evidence of what the United States was claiming as the basis for its lawsuit. (ER 60-61.) Mr. Falcon cited to the Certificates of Indebtedness as inadmissible hearsay, thus raising an issue as to whether the United States had proven the validity of the debt. (ER 60.) In his objection, and in the Motion to Alter/Amend the Judgment, Mr. Falcon challenged the constitutionality of the abrogation of the statute of limitations, and among other things, argue that abrogating the statute of limitations and raised the issue of whether the action to collect a debt after 17 years later worked an unconstitutional deprivation of due process.

Mr. Falcon met his burden of presenting evidence to support his Opposition by relying on the evidence set forth in the United State's Motion for Summary Judgment & Exhibits. To attach the same exhibits to his Opposition would have been duplicative.

Significantly, Mr. Falcon correctly challenged the admissibility of the

Certificates of Indebtedness. The Certificates here did contain inadmissible hearsay concerning the conduct of third parties, and were not certified by a Custodians of Record. The federal statute which permits such certificates to be admitted as government records concerns records of the government, but does not extend to wholesale descriptions of what third parties not working for the government purportedly did or did not do.

Below, the United States cited *United States v. Petrof-Kline*, 557 F.3d 285, 290 (6th Cir. 2009), and *United States v. Wright*, 850 F.Supp. 965, 967 (D. Utah 1993), to argue the Certificates were admissible under Federal Rule of Evidence 803(8). (ER 95.) However, documents prepared for litigation do not fall under hearsay exceptions in Federal Rule of Evidence 803(6) or 803(8). *See Palmer v. Hoffman*, 318 U.S. 109, 111-114, 63 S.Ct. 477, 87 L.Ed. 645 (1943) (report prepared for purpose of litigation inadmissible under Rule 803(6)); *United States v. Feliz*, 467 F. 3d 227, 234, 237 (2d Cir. 2006) (documents prepared for litigation not admissible under the Rule 803(6) business records or 803(8) public records exceptions; *Certain Underwriters at Lloyd's, London v. Sinkovich*, 232 F.3d 200, 205 n.4 (4th Cir. 2000) ("well established that documents made in anticipation of litigation are inadmissible under the business records exception").

Here, an unidentified employee of the Department of Education described as

a Loan Analyst for "*Litigation Support*" merely signed on October 25, 2010 that "Pursuant to 28 U.S.C. § 1746(2), I certify under penalty of perjury that the forgoing is true and correct." (ER 86, 91; italics added.) The purpose of Federal Rule of Evidence 803(8) is not to provide for admissibility of records created for the ultimate purpose of litigation, which was undeniably the case here since the person who signed the Certificate states that he or she signed the certificate in a "litigation support" role.

Moreover, the unidentified person who signed these Certificates with an illegible signature did not aver they were custodian of records and familiar with the records retention of the agency, among other things. In contrast, in *United States v. Lawrence*, 276 F.3d 193, 197 (5th Cir. 2001), also cited by Appellee on appeal (Ans. Br. at 8), the Court held that concerns raised about the affiant not having any personal knowledge of the events declared in the Certificate was "cured" by specific averments in the Certificate there where an identified declarant specifically stated that they were

> familiar with how the DOE maintains records related to student loans, that she was in custody and control of Lawrence's student loan records, that these records are kept in the course of DOE's regularly conducted student loan business, that the promissory notes are "true copies of the documents transmitted to DOE by the Lake Air National Bank," and that DOE took assignment of the loans.

United States v. Lawrence, 276 F.3d 196.

In the Certificates here, there are no such declarations about being familiar with how the Department of Education maintains the records or that the affiant was in custody or control of the records, or that such records are kept in the regular course of regularly conducted student loan business, or that any loan copies were true copies of documents submitted to the agency. (See ER 86, 91.)

Similarly, in *United States v. Petrof-Kline*, the Court relied on *Lawrence* and similar declarations in a Certificate of Indebtedness. In *Petrof-Kline*, the declarations in the Certificate were that a Mr. Barry Blum's declaration specifically stated that:

> as Chief of the Referral Control Section" ("RCS"), [he] is authorized to examine the records and claims of the HHS and to execute a Declaration of Facts based on these examinations; that "all documents attached hereto and referenced above are true and correct copies of official records maintained by HHS"; that "these files are kept in the ordinary course of HHS' regularly conducted activities and are made at or near the time by, or from, information transmitted by a person with knowledge"; and that HHS took assignment of the loans from Sallie Mae, and Sallie Mae took assignment of the loans from Bay Bank.

United States v. Petrof-Kline, 557 F.3d at 293.

Again, none of those sorts of detailed declarations exist in the Certificates here, which were signed by an unidentified loan analyst for *litigation support*. (See ER 86, 91.) There is no reference to how the records are maintained, how they are kept, or that the signer was a custodian of records authorized to execute a

declaration of facts. The Certificates here contained inadmissible hearsay and did not satisfy Federal Rules of Evidence 803(6) or 803(8), much less Federal Rule of Civil Procedure 56(e).

In addition, the Certificates went far beyond asserting or summarizing government records, and instead made inadmissible hearsay assertions as to what third parties purportedly did in relation to allegedly seeking collection on the debt, and as to when Appellant Falcon purportedly defaulted to third parties – the lender and a guarantor – not the government. They assert facts related to alleged demands made by the lender and guarantor but without any support. (ER 86, 91.) The Certificates even made legal conclusions about the effect of 34 CFR 682.410(b)(4). (ER 86, 91.)

In conclusion, Appellee United States is incorrect to suggest that this Court should simply ignore the Constitutional claim based on Appellee's unsupported suggestion that there was no factual dispute over the debt. There was, and Mr. Falcon challenged the evidence on hearsay and other grounds. In any event, as supported by the record and described in Mr. Falcon's Opening Brief on appeal, the issue for this Court on appeal is a Constitutional claim erroneously rejected below, not just a dispute over the facts.

II. THE UNITED STATES WAIVED ANY STANDING ARGUMENT BY NOT RAISING THIS FACTUAL CLAIM BELOW, WHICH IS FACT-INTENSIVE AND UNDENIABLY BASED ON INADMISSIBLE HEARSAY ASSERTIONS ABOUT THE CONDUCT OF THIRD PARTIES; IN ANY EVENT, MR. FALCON HAS STANDING BECAUSE THE ABROGATION OF THE PERIOD OF LIMITATIONS IS THE INJURY HERE, AND THAT HAPPENED BEFORE MR. FALCON ALLEGEDLY DEFAULTED.

Appellee argues that Mr. Falcon lacks standing because, even if the prior statute of limitations had been in place, the lawsuit was filed within 6 years of the date the loan was assigned to United States. The debt was assigned to The US Dept. of Education on 5/6/05. The United States argues that because this was within the 6-year statute of limitations that would have been in place had it not been abrogated entirely, that Mr. Falcon has suffered no injury, and therefore has no standing.

Any standing argument was waived because this is the first time the United States has raised the argument. When the United States fails to raise a standing argument in District Court, the argument is waived on appeal because the government failed to raise such factual questions in a timely fashion below. *United States v. Garcia*, 882 F.2d 669, 701 (2nd Cir. 1989) (government waived standing argument in Fourth Amendment case by failing to argue issue in District Court), citing *Steagald v. United States*, 451 U.S. 204, 209, 101 S.Ct. 1642, 1646, 68 L.Ed.2d 38 (1981) (factual question of whether defendant had a reasonable

expectation of privacy in the dwelling waived by government because it "failed to raise such questions in a timely fashion during the litigation"); cf. *United States v. Persico*, 832 F.2d 705, 715 n. 2 (2d Cir.1987) (where "government concedes that it did not raise [the] issue in the district court, and has offered no justification for its failure to do so" we will "deem the issue to be waived"), cert. denied, 486 U.S. 1022, 108 S.Ct. 1995, 100 L.Ed.2d 227 (1988).

The United States has undeniably waived this argument as to standing by failing to litigate that factual issue in the District Court, where a relevant factual litigation and inquiry could have – and would have – been made by Mr. Falcon, including concerning the inadmissible hearsay evidence about the purported conduct of third parties.

The belated effort to argue standing fails in this particular case because the argument is inherently based on timing and hearsay conclusions as to what third parties (the lender and a student loan guaranty agency) allegedly did in relation to attempts to collect on the debt, hearsay evidence that Mr. Falcon disputed below. That evidence was inadmissible, as described earlier, and contained inadmissible hearsay statements as to when Mr. Falcon purported defaulted and conduct purportedly done by third parties. If the United States had timely raised a standing argument below, discovery and inquiry about evidence concerning third-party

conduct could have been raised by Mr. Falcon.

The United States cannot ignore such factual issues in District Court and lay in wait to raise a standing argument that relies on disputed hearsay assertions regarding the conduct of third parties (the guarantor and the lender), which did not rest on factual assertions about the government's own conduct and records.

In any event, the statute was abrogated in 1991 - the same year Mr. Falcon took out his last loan. Thus, regardless of when the statute *could have* run, Mr. Falcon was deprived of the availability of the defense as to the United States *before any alleged default occurred*.

Moreover, the fact remains that the prior limitation period was *not* the law at the time, thus the United States' argument is irrelevant. The standing argument is in fact really a disguised effort to argue the merits of the statute of limitations claim, yet Mr. Falcon was precluded from the right to raise the defense below under current law.

The injury is the loss of defenses to collection. In *United States v. Griffin*, 707 F.2d 1477, 1478 (C.A. D.C. 1983), the student, Mr. Griffin, defaulted on his federally insured student loans, and asserted a defense that the quality of the education was inadequate, and that it was common for students to graduate from the school with no marketable skills. “The question presented on appeal is whether

Griffin may raise against the government defenses he might have raised against the school in a suit to collect on the loan." *Griffin*, 707 F.2d at 1478. After several years of investigation, the school appeared to be a shambles at best, and a scam at worst. The federal government responded to an inquiry as to whether students could raise this defense against the United States by saying,

> a school run for profit is a "seller" for purposes of a Federal Trade Commission rule requiring consumer credit contracts to specify that subsequent holders are subject to the same claims and defenses as the original seller.

Griffin, 707 F.2d at 1479. The court went on to explain,

> Thus, the regulations protect student defenses both before and after the government pays a default claim... [W]hen the United States acquires the note as subrogee, it cannot become a holder in due course and, under the laws of most states, is subject to any defenses the student may have against the holder of the loan... **the evident purpose of the rule is to ensure that students are not forced to repay loans for which they have valid defenses**, even if this means the government will run some risk of not being reimbursed for a default claim it has already paid a school.

Griffin, 707 F.2d at 1482-4 (emphasis added).

Therefore courts have held that where the US becomes a holder of the debt, the borrower retains a defense that the education was inadequate. It follows that to deny this defense to collection would be unfair, and work a special hardship on the borrower, who never got what they paid for.

One of the primary considerations underlying statutes of limitations is also

fairness to the defendant. See, "Developments in the Law--Statutes of Limitations," 63 Harv.L.Rev. 1177, 1185 (1950). A statute of limitations forces plaintiffs to bring their claims in a timely manner, otherwise a plaintiff "could await a propitious time when witnesses or parties were unavailable and thereby effectively deprive a defendant of any defense the defendant may have." *Bancorp Leasing and Financial Corp. v. Agusta Aviation Corp.,* 813 F.2d 272 (9th Cir. 1987) (citing *Whittington v. Davis*, 350 P.2d 913, 915 (1960). Witnesses' memories fade, evidence may be lost, or destroyed, and interest may accumulate to excessive amounts. See *Order of R.R. Telegraphers v. Railway Express Agency, Inc*., 321 U.S. 342, 349, 64 S.Ct. 582, 586, 88 L.Ed. 788 (1944); Note, "Tolled Statute of Limitations v. Long-Arm Statute Amenability," 12 Wake Forest L.Rev., 1041, 1053 (1976).

Indeed, evidence *was lost or destroyed* in the decades that passed before a lawsuit was filed. The United States could not produce a legible copy of the original promissory notes, presumably because the originals have long since been lost or destroyed due to the passage of time. It is equally unfair to find a borrower liable based on a document which cannot be read nor the terms understood as it is to find a borrower liable for loans that paid for a grossly inadequate education, as in *Griffin*.

As noted, the statute of limitations was abrogated in 1991 - the same year Mr. Falcon took out his last loan. Regardless of when the statute *would have* run, Mr. Falcon was deprived of the availability of the defense as to the United States *before any alleged default occurred*. The United States cannot have its cake and eat it too, by arguing that he cannot raise the defense, but even if the law had not been changed that he ought to have lost anyway even though the merits was not ever litigated. The factual issues underlying a statute of limitations defense would have been the subject of litigation, disclosure and discovery, and entirely rest on the premise that the law afforded such a defense. It does not, and Mr. Falcon was not permitted to raise such a defense, much less seek discovery about related facts concerning assignment, etc.

Even if, for the sake of argument, the prior limitations period was in place, the summary judgment motion asserts that Mr. Falcon defaulted on 12/22/93, 9/11/94, and 8/27/97. However, the Certificate of Indebtedness says merely that PHEAA demanded payment, but there is no evidence of this, and no date given. (ER 86, 91.) These are hearsay assertions by an unidentified loan analyst for litigation support purposes, who does not assert any personal knowledge of such facts or anything to establish the reliability of such assertions. If they never demanded payment, or had demanded payment immediately, then the 6-year

Statute of Limitations would have run *before* the time the loan was assigned to Department of Education. Mr. Falcon challenged these unsubstantiated hearsay assertions concerning the conduct of third parties, and which was relied upon by the United States in making factual assertions about the alleged conduct of the third parties and alleged default dates.

III. STATING A CLAIM THAT HAS BEEN RECOGNIZED BY OTHER COURTS BUT NOT YET RULED ON BY THE SUPREME COURT DOES NOT NEGATE THE VALIDITY OF THE LEGAL ARGUMENT.

The United States contends that Mr. Falcon cites no cases *holding* that the abrogation of the statute of limitations for student loans was unconstitutional. This mis-states the argument, which is that there is a valid due process claim here, and that the *combination* of factors here amounts to the "special hardships or oppressive effects" noted by the Supreme Court, including not only the lack of a limitation on collections, but also the United States' ability to print its own proof of the debt with a relaxed burden of proof, a presumptive lack of other relief via bankruptcy, and the ability to withhold federal benefits, sufficient to find the collection of the debt unconstitutional.

Additionally, simply because no court has yet ruled the statute unconstitutional based on the combination of factors raised in this case does not mean that his arguments fail. If that were the case, the Topeka Board of Education

would have won merely by pointing out that there was no prior case law holding that separate-but-equal schools were unconstitutional. *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, 38 ALR2d 1180 (1954).

But in *Brown*, as here, the heart of the matter is that education has become a core American value:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Id. at 492-3.

Therefore, as a society that values both education and the rule of law, the United States should be able to understand that a defense of a statute of limitations to a loan for the purpose of trying to succeed in life via an education is not a case of a man trying to avoid his "honest obligations", but rather a man who is demanding that the United States promptly bring its legitimate claims, with sufficient evidence to prove the claims, when collecting on a debt for something as

fundamental to society as education.

The fact that prior courts have reached certain rulings on the issue before does not preclude this Court from finding the abrogation of the statute to be unconstitutional based on the arguments made here. This general legal principle has been applied in many contexts by other courts, including the U.S. Supreme Court. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 741, 138 L.Ed.2d 772 (1997) (Conc. Op., J. Stevens) ("But just as our conclusion that capital punishment is not always unconstitutional did not preclude later decisions holding that it is sometimes impermissibly cruel, so is it equally clear that a decision upholding a general statutory prohibition of assisted suicide does not mean that every possible application of the statute would be valid."). The United States' simplistic effort to suggest that a due process argument must have been upheld for a different party before it could ever be applied here, while ignoring the fact that the due process claim here has been recognized by other federal courts, is not well taken.

IV. THE "UNDUE HARDSHIP" STANDARD FOR DISCHARGING STUDENT LOANS IN BANKRUPTCY CASES IS UNRELATED AND CANNOT BE COMPARED TO THE DUE PROCESS "SPECIAL HARDSHIPS AND OPPRESSIVE EFFECTS" STANDARD AT ISSUE HERE.

The United States claims that, because a debtor *can* discharge student loans in bankruptcy upon a showing of "undue hardship", that this shows that there is no

"special hardship" posed to student borrowers. (Ans. Br. p.18.) The two standards apply in entirely different legal contexts. First of all, the United States' argument entirely overlooks the fact that student loan debt is presumptively statutorily non-eligible for discharge. That is part of the unique burden imposed on this specific class of debt.

Second, the "undue hardship" bankruptcy standard is applied to individual borrowers in bankruptcy cases to determine whether there is any chance that the debtor will be able to pay on the loan without imposing undue hardship on a debtor and their family. In contrast, the "special hardship and oppressive effects" standard has not yet been refined by the United States Supreme Court, but would apply only to a "class of debtors" in relation to the abrogation of the statute of limitations, rather than examining the financial viability of a bankruptcy debtor. The issue has to do with the abrogation of the statute of limitations defense and its effect on a special class of debt, and has nothing to do with individualized financial evaluations.

Additionally, even the "undue hardship" standard has been inconsistently enforced in bankruptcy courts. *See* Pardo, "Undue Hardship in Bankruptcy Courts", at p.411 ("A concern arises that Congress's failure to define undue hardship, the requisite condition for discharge of educational debt, has resulted in a

fragmentation of debtor relief—that is, inconsistent and unprincipled application of the standard by bankruptcy courts"). Simply because an individual debtor could or could not show "undue hardship" in some sort of future affirmative adversary litigation yet to be brought in a bankruptcy court has nothing to do with whether the circumstances surrounding being pursued for what has now become "eternal student loan debt" are not especially oppressive to the entire class of such debtors.

In its Answering Brief, on the merits, the United States blatantly mischaracterizes the record below by claiming that the District Court "found that Falcon failed" to raise such Constitutional arguments (Answering Brief 12-13), and claiming that "the district court correctly held, a Rule 59(e) motion was not appropriate." (Answering Brief at 14.) The District Court never made such rulings. (ER 3, 7-11.)

If such desperation is not enough to convince this Court that the United States is flailing about in search of rulings that were never made in order to try to win this appeal, the United States then mis-describes the legal arguments Mr. Falcon did make below, and incorrectly suggests a Constitutional legal argument still must show a genuine issue of disputed fact. (Answering Brief at 17.)

In the present case, Mr. Falcon has established the circumstances of how abrogating the prior statute of limitations – thus creating "eternal student loan

debt" – are especially oppressive to the entire class of such debtors, and that special and undue hardships exist for student loan borrowers. He has established a violation of federal due process under the frame-work set forth and discussed in the Opening Brief on appeal.

CONCLUSION

Mark J. Falcon respectfully asks this Court to find the 1991 statute abrogating any statute of limitations for federally guaranteed loans unconstitutional, and dismiss the case, and to reverse the District Court's judgment and orders in this case.

Summary Judgment was erroneous because Mr. Falcon adequately raised genuine issues of material fact and law in District Court, as to whether collection of alleged student loans some 27 years after the first loan and nearly 20 years after last loan in 1991, when combined with the special hardships and burdens, was an unconstitutional deprivation of due process on him and all student loan debtors in Mr. Falcon's situation.

DATED: November 10, 2014 Respectfully submitted,

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No. 13-16588

CERTIFICATE OF COMPLIANCE

As required by F.R.A.P. 32(a)(7)(c), I certify that this brief is proportionally spaced and contains 4,889 words (not including this certificate and the signature block), and complies with F.R.A.P. 32(a)(7)(B)(ii). I relied on my word processor to obtain the count. I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

s/Vince Rabago
Vince Rabago, Esq.

No. 13-16588

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2014, a copy of the foregoing APPELLANT'S REPLY BRIEF was served via CM/ECF on the following:

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