

Summaries of Successful *Schlup v. Delo* Actual Innocence Claims
SCOTUS and Court of Appeals Decisions
Current through 1/1/2020

Due to the large volume of federal circuit court cases that rely on *Schlup v. Delo* actual innocence claims (over 1,300 as of 1/1/2020), for the purposes of this document we surveyed 430 of those cases that were most likely to be successful. Thus, this list may be incomplete, and attorneys are encouraged to perform additional research in any individual case. If there are successful cases you are aware of (or come across) that are not contained in this document please contact Megan Barnes at megan@justice360sc.org or Wendy Peoples at wendycpeoples@gmail.com.

SCOTUS

Bousley v. United States,

523 U.S. 614, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998)

The Supreme Court held that the defendant procedurally defaulted his claim that his guilty plea was not intelligent because the information provided to him at his plea colloquy was erroneous; however the Court held that the defendant was entitled to argue that constitutional error in his plea colloquy “probably resulted in the conviction of one who is actually innocent” because the district court failed to address his actual innocence and the government did not contend defendant waived the claim by failing to raise it below. Reversed and remanded to allow defendant to attempt to make the actual innocence showing.

House v. Bell,

547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006) (capital)

The Supreme Court clarified several points about the analysis under *Schlup*: first, the gateway claim requires that the habeas court assess the impact all the evidence, new and old, regardless of admissibility, would have on reasonable jurors; second, the defendant does not need to demonstrate his absolute innocence but simply needs to show that it is more likely than not that no reasonable juror would find him guilty beyond a reasonable doubt; and third, the standard of review is not that of §§ 2244(b)(2)(B)(ii) and 2254(e)(2), nor does it require a showing of clear error as to the District Court’s specific findings. The defendant produced evidence that the semen on the victim’s clothes came from her husband, that her husband frequently beat her, that her husband confessed to the murder, that there was a fight between husband and victim, that the injuries to the defendant were not from the murder, and that the blood of the defendant found on the victim’s clothes likely came from cross contamination before arriving at the FBI lab; all of this, while “not a case of conclusive exoneration,” met the standards articulated above. The Supreme Court held that no reasonable juror would convict this defendant and reversed and remanded for a hearing on his procedurally defaulted constitutional claims.

McQuiggin v. Perkins,

569 U.S. 383, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013)

The Supreme Court held, as many Courts of Appeal and district courts had previously recognized, that actual innocence serves as a gateway to not only procedural bars but also to the

expiration of the AEDPA statute of limitations. The exception applies to a “severely confined category” of cases in which new evidence shows it is more likely than not no reasonable juror would have convicted the defendant. The Supreme Court held that the exception survived AEDPA’s passage “intact and unrestricted.” However the timeliness of the petitioners claim may come into play as a factor in determining whether actual innocence has been reliably shown.

First Circuit

[None found under current search parameters]

Second Circuit

Rivas v. Fischer,

687 F.3d 514 (2d Cir. 2012)

The Court of Appeals found that defendant’s newly discovered evidence in the form of testimony from a county coroner and medical and legal professor that the victim died at a time when defendant had an alibi met the *Schlup* standard. When compared to the testimony of the now-disgraced medical examiner who resigned to avoid criminal prosecution and the remaining circumstantial evidence, defendant’s unchallenged expert was able to “cast sufficient doubt upon his guilt” that the court could not “have confidence in the outcome of his trial unless [it could] be assured that his trial was free of non-harmless constitutional error.” While defendant did not qualify for equitable tolling, he had produced “credible, compelling, and essentially unchallenged expert testimony” that made this the “exceptional case” where a reasonable juror would be more likely to find the defendant not guilty. Reversed and remanded for a full consideration of the merits of his underlying constitutional claims.

Stephenson v. Connecticut,

639 F. App'x 742 (2d Cir. 2016) (unpublished/ “summary order”)

The Court of Appeals found that the district court abused its discretion in determining that defendant had not made a credible claim of actual innocence of robbery when defendant presented a notarized letter from the store security officer retracting his statement that defendant had “pushed and shoved him.” This testimony at trial was significant in proving the force requirement for robbery. The district court did not make any credibility determinations regarding the letter when it found that the defendant had not met the actual innocent threshold, yet the Court of Appeals found the letter supported a “colorable, though not necessarily successful” *Schlup* claim. Vacated and remanded for an evidentiary hearing.

Third Circuit

United States v. Davies,

394 F.3d 182 (3d Cir. 2005)

The Court of Appeals ruled that “no reasonable juror would have found defendant guilty” of destroying a building used in interstate commerce when he burned down a local church that raised money for a mission trip. He thus made the necessary showing for actual innocence under *Schlup*, and was entitled to a hearing on the merits for his claim that there was not a sufficient basis for the guilty plea. Reversed and remanded.

Munchinski v. Wilson,
694 F.3d 308 (3d Cir. 2012)

The Court of Appeals held that the defendant’s evidence of various scientific and police reports was both new and reliable as defined by *Schlup*. The Court of Appeals pointed out that *Schlup* does not require a habeas court to “play the role of the jury and weigh all potentially countervailing evidence.” The scientific reports were “exculpatory scientific evidence” – a category explicitly defined in *Schlup* as acceptable. The police reports were of an interview of someone with direct personal knowledge and of an interview with a police dispatcher, and the context of these sufficiently guaranteed reliability. The Court of Appeals found that the defendant passed through the actual innocence gateway and affirmed the district court’s grant of the writ of habeas corpus.

Reeves v. Fayette SCI,
897 F.3d 154 (3d Cir. 2018), as amended (July 25, 2018), cert. denied sub nom. State Corr. Inst. at Fayette v. Reeves, 139 S. Ct. 2713 (2019)

The Court of Appeals found that when a state prisoner asserted an ineffective assistance of counsel claim for failure to present exculpatory evidence that laid the foundation for an actual innocence claim, such evidence qualified as new evidence under the *Schlup* actual innocence gateway. The court held that the defendant’s procedural default from filing a four-month late federal habeas petition was excused, vacated the lower court order and remanded for an evidentiary hearing to determine if the new evidence was reliable. If the district court determined that it was reliable proof of actual innocence, the IAC claim should be reviewed on the merits.

Fourth Circuit

Wolfe v. Johnson,
565 F.3d 140 (4th Cir. 2009)

The Court of Appeals found that the district court abused its discretion by failing to analyze defendant’s *Schlup* claim as a gateway to pursue his procedurally defaulted *Brady* claim and by failing to apply the reasonable juror standard (instead using the “extraordinarily high” *Herrera* standard). Additionally, the district court failed to address whether the defendant had exercised the required diligence in pursuing his actual innocence or *Brady* claims, and improperly rejected the credibility and relevance of the affidavits without determining whether or not defendant was entitled to an evidentiary hearing on that evidence. The court remanded for a determination of whether defendant has met the showing for an evidentiary hearing, for a resolution of the *Schlup* issue, and if warranted an examination of his claims on the merits.

United States v. MacDonald,

641 F.3d 596 (4th Cir. 2011)

The Court of Appeals held that the district court erred when it took an “overly restrictive view” of what constituted the “evidence as a whole” under *Schlup* and *House v. Bell* when defendant raised a Fifth Amendment due process claim. The district court wrongly applied the constraints of § 2244(b)(3), § 2255(f), and § 2244(b)(1), conflating defendant’s proffered evidence – such as DNA test results, affidavits, and fibers – and his claim for relief. The Court of Appeals stated that the district court should have considered the above evidence alongside the newly discovered evidence presented with the due process claim as a holistic package to determine if no reasonable juror would have found the defendant guilty. If so, the Fifth Amendment claim would be able to be considered on the merits. Vacated and remanded for reconsideration under the proper *Schlup* standard.

Teleguz v. Pearson,

689 F.3d 322 (4th Cir. 2012)

The Court of Appeals held that the district court abused its discretion by rejecting defendant’s actual innocence gateway claim when it relied on a misunderstanding of the *Schlup* standard. The district court was inaccurately analyzing each procedurally defaulted claim on the merits and concluding, “I do not find this issue significant enough to excuse [defendant’s] procedural default,” rather than looking to the totality of the evidence. The Court of Appeals highlighted that there is “no jurisprudential support for a requirement that a causal relationship exist for a petitioner’s evidence of actual innocence and a petitioner’s procedurally defaulted claims.” Vacated and remanded for a determination of how a juror would perceive the evidence in the record. Additionally, the district court was advised to determine whether the defendant was entitled to an evidentiary hearing by looking at the “probative force of relevant evidence that was either excluded or unavailable at trial.” As the state courts had not evaluated the credibility of this new evidence, the district court was permitted under *Schlup* to “make some credibility assessments.”

Finch v. McKoy,

914 F.3d 292 (4th Cir. 2019) (capital)

The Court of Appeals held defendant met the “exacting standard” required by *Schlup* when he presented 1) expert testimony that the lineup in which defendant was identified by a single witness was subject to “impermissibly suggestive procedures;” 2) a witness affidavit recanting his identification prior to the crime; 3) an admission by a Deputy that the officer believed defendant was a suspect before arriving on the scene; and 4) expert reports completing undermining the physical evidence presented at trial. The court emphasized that without the physical evidence to shore up the conviction, the eyewitness identification formed the “crux” of the State’s case, and a reasonable juror would not convict without more. Remanded for a hearing on the merits of the case.

Fifth Circuit

Fairman v. Anderson,

188 F.3d 635 (5th Cir. 1999)

The Court of Appeals held that the defendant met the actual innocence exception using the *Ward v. Cain*, 53 F.3d 106 (5th Cir. 1995) standard, because the “petition show[ed], as a factual matter, that he did not commit the crime of conviction.” The primary witness to the altercation testified that, contrary to his trial testimony, he had actually seen the victim holding a knife prior to the defendant’s assault. He alleged that the police threatened him with a murder charge if he testified truthfully at trial. The Court of Appeals held that this new testimony was enough to establish self-defense under Mississippi law, which satisfied the actual innocence exception and allowed the court to consider the underlying claim on the merits. The court found that the state knowingly used perjured testimony from this witness, and affirmed the district court judgement granting relief.

Finley v. Johnson,

243 F.3d 215 (5th Cir. 2001)

The Court of Appeals held that defendant was able to overcome the procedural bar based on a showing that *Brady* evidence would have supported his affirmative defense of necessity. Because the court found that the defendant presented facts that, if accepted by the jury, would result in an acquittal, the defendant made a sufficient showing of actual innocence. Reversed and remanded to the district court for a consideration of the *Brady* claim on the merits.

Floyd v. Vannoy,

894 F.3d 143 (5th Cir.), cert. denied, 139 S. Ct. 573, 202 L. Ed. 2d 415 (2018)

The Court of Appeals held that the defendant, who confessed to the crime, met the demanding *Schlup* standard when he presented 1) newly discovered evidence of improper police interrogation techniques, 2) defendant’s vulnerability to coercion, 3) fingerprint and DNA results undermining defendant’s confession, 4) fingerprint analysis excluding defendant from the crime scene, and 5) an affidavit asserting that defendant did not match the profile of the perpetrator. Because no reasonable juror would convict defendant in light of this new evidence, the Court of Appeals “opened the actual innocence gateway” and reached the merits of the *Brady* claim. The Court of Appeals found that the withheld evidence was favorable to the defense and affirmed the district court’s grant of the writ of habeas corpus.

Sixth Circuit

Souter v. Jones,

395 F.3d 577 (6th Cir. 2005)

The Court of Appeals held that the new evidence presented by defendant – the changed testimony from state pathologists, statements from manufacturer of murder weapon that it was impossible for it to create those wounds, and photos of bloody clothes of victim when defendant had no blood stains – were enough to “chip away at the rather slim circumstantial evidence upon which defendant was convicted.” While the State argued that this evidence was not “new” under the meaning of *Schlup* but rather a retelling of the defense’s argument at trial, the court found that the totality of the evidence met the *Schlup* standard, as it was more likely than not no reasonable juror would have found him guilty if presented with this evidentiary package. The

Court of Appeals explicitly found that an actual innocence exception to AEDPA statute of limitations existed, as Congress enacted AEDPA against the backdrop of and in line with *Schlup*, the exception would be “consistent with the underlying principles of AEDPA,” and “constitutional concerns” weighed in favor of upholding equitable tolling. Reversed and remanded so that defendant may be heard on the merits of his ineffective assistance and due process claims.

Cleveland v. Bradshaw,
693 F.3d 626 (6th Cir. 2012)

The Court of Appeals found that the defendant presented a credible claim of actual innocence with “new and reliable” evidence including 1) the recantation of the only eyewitness to the murder, 2) an affidavit from a forensic scientist which placed the time of death between 12:00am and 1:25am, 3) an affidavit from a childhood friend that he celebrated his birthday with defendant in another city the night of the murder sometime between 10:00pm and 12:00am, and 4) flight records showing the last flight between the cities left at 10:40pm. The Court of Appeals found that the combination of this evidence made it more likely than not a reasonable juror would not vote to convict. Reversed and remanded for a review of his habeas petition on the merits.

Seventh Circuit

Coleman v. Hardy,
628 F.3d 314 (7th Cir. 2010), as amended on denial of reh'g and reh'g en banc (Feb. 7, 2011)

The Court of Appeals held that a defendant convicted of murder and armed robbery presented sufficient evidence to trigger an evidentiary hearing when he presented affidavits of the codefendant and his lawyer that stated defendant “had nothing to do with the murder” along with testimony available at the time of the trial (yet not presented) establishing an alibi. Remanded to the district court for an evidentiary hearing to determine the credibility of this evidence.

Jones v. Calloway,
842 F.3d 454 (7th Cir. 2016)

The Court of Appeals agreed with the district court’s determination that a crime participant’s testimony that he and he alone was the triggerman – which was consistent with the physical evidence, with his prior testimony at his own trial, and with the testimony of some eyewitnesses – was sufficient to meet the demanding *Schlup* standard. The district court evaluated the underlying *Strickland* claim on the merits and found that the failure to call this participant to testify at defendant’s trial amounted to ineffective assistance of counsel. The district court granted the defendant’s habeas petition. The Court of Appeals affirmed.

Arnold v. Dittmann,
901 F.3d 830 (7th Cir. 2018)

The Court of Appeals determined that the defendant, convicted of repeatedly sexually assaulting his son, was entitled to an evidentiary hearing after his son recanted his testimony accusing his father of abusing him. While the court was hesitant to credit a recantation as much as they would a DNA sample or other “objective scientific evidence,” considering that the son’s testimony was the crux of the prosecution’s and this recantation was never before the jury, the court was “not prepared to say that [defendant’s] claim cannot possibly meet the *Schlup* gateway standard.”

Vacated and remanded to determine the credibility of the recantation along with the probable impact the recantation would have on reasonable jurors.

Eighth Circuit

Weeks v. Bowersox,

106 F.3d 248 (8th Cir.), vacated (Mar. 6, 1997), on reh'g en banc, 119 F.3d 1342 (8th Cir. 1997)
The Court of Appeals found that defendant (who had pled guilty) met the *Schlup* standard when he asserted he could produce evidence of actual innocence that if credited would lift the procedural bar. Defendant made “specific assertions” of coercion, such as beating and verbal threats, that were enough to allow the federal courts to consider that his guilty plea may have been coerced. He further listed several witnesses who he claimed could exonerate him; claimed the existence of medical tests that show he did not commit the crimes; and claimed that the victim made inconsistent statements suggesting that the defendant was the not the rapist. The district court erred in denying defendant’s petition because this evidence, “if produced and credited,” would lift the procedural bar to his underlying claims. Because “consideration of the underlying claim of coercion would not be futile,” the Court of Appeals remanded for a hearing to determine if the defendant “can prove what he asserts.”

Amrine v. Bowersox,

128 F.3d 1222 (8th Cir. 1997)

The Court of Appeals held that the recantation of all three of the trial witnesses that implicated defendant in the murder makes for a stronger showing of actual innocence than there was in *Schlup*, thus entitling him to the gateway exception. Reversed and remanded for an evidentiary hearing to determine if the evidence is new and reliable under the meaning of *Schlup*, ensuring that defendant exercised due diligence and making credibility determinations when necessary. If no reasonable juror would vote to convict, the district court should consider the procedurally barred claims on the merits.

Ninth Circuit

Carriger v. Stewart,

132 F.3d 463 (9th Cir. 1997) (capital)

The Court of Appeals held that although defendant could not prevail on his freestanding innocence claim, he was able to pass through the less-stringent actual innocence gateway with evidence that the prosecution’s main witness confessed to the murder himself, providing details only the perpetrator would have known and explaining why the defendant’s fingerprint was on the tape even though he was not at the scene. He further provided witnesses that would testify that this man boasted to them he had set the defendant up; that he had disposed of the evidence in the manner and place it was found; that he frequently blamed others for his crimes; that he thought it gruesome to see someone killed in the manner the victim was; and that he had a long history of lying to the police and blaming others for his crimes, and the police were aware of this. The Court of Appeals found that no reasonable juror would have voted to convict, and

considered his *Brady* claim on the merits. There was more than a reasonable probability that the outcome would have been different had this witness' records been disclosed to the defense, so the Court of Appeals reversed and remanded with instructions to grant the writ.

Paradis v. Arave,

130 F.3d 385 (9th Cir. 1997)

The Court of Appeals found that the district court applied an erroneous legal standard in evaluating defendant's *Schlup* claim and abused its discretion in finding that the new medical findings and testimony would not affect the prior evaluations of the evidence as a whole. The circumstantial evidence relied upon at trial was "conclusively contradicted" by the medical evidence now available; the Court of Appeals found this to mean it was more likely than not no reasonable juror could find defendant guilty. The Court of Appeals affirmed the denial of the writ with respect to defendant's other claims but reversed and remanded with respect to defendant's actual innocence gateway claim and the underlying *Brady* claim.

Silva v. Wood,

14 F. App'x 803 (9th Cir. 2001) The Court of Appeals held that the defendant was entitled to relief under *Schlup* when police reports and eyewitness accounts not presented at trial demonstrated that the victim was not yet dead when defendant allegedly confessed to killing him to the three witnesses who testified. It was more likely than not that no reasonable juror would have convicted the defendant had they heard "all the evidence," including the fact that the witnesses who claimed defendant confessed to them were related. Therefore, the district court abused its discretion in not considering the "old and new" evidence relied upon by the defendant and the petition was not procedurally barred. The Court of Appeals found that the defendant's ineffective assistance of counsel claim for failure to file a timely appeal had merit, reversed the district court's denial of the writ of habeas corpus, and remanded with instructions to grant release unless defendant was permitted to file a notice of timely appeal in state court.

Majoy v. Roe,

296 F.3d 770 (9th Cir. 2002)

The Court of Appeals found that the many post-trial revelations that served to undermine the testimony implicating defendant in a conspiracy to commit murder for financial gain could serve as the basis for an actual innocence claim. While defendant was "no angel," the recanted testimony by the key witness, the confusion surrounding the identity of the lookout at a co-defendant's trial, and the other witnesses refusing to testify at defendant's trial all served to bolster the Court of Appeals' conclusion that this was a case that "might fall within the narrow class of cases implicating a fundamental miscarriage of justice." Reversed and remanded for an evidentiary hearing to determine if no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.

Jaramillo v. Stewart,

340 F.3d 877 (9th Cir. 2003)

The Court of Appeals held that recently discovered witness testimony establishing that the killing was done in self-defense was sufficient to pass through the *Schlup* actual innocence gateway. Under Arizona law in effect at the time of the offense, justification was an affirmative defense rendering the conduct non-criminal; therefore, it is more likely than not that no

reasonable juror would have convicted the defendant of the offense. Reversed and remanded for a hearing to determine whether this evidence is sufficient to excuse the procedural default and reach the merits of the *Brady* claim for withholding said witness testimony.

Cooper v. Woodford,

358 F.3d 1117 (9th Cir. 2004) (capital)

The Court of Appeals held that defendant's presentation of 1) affidavits from prison officials that he could not have owned the shoes that left bloody prints at the crime scene; 2) a sworn declaration from a woman that her boyfriend came home the night of the murders wearing blood-soaked overalls that she turned into the police (who never tested them), and that the bloody hatchet and shirt recovered from the side of the road were likely her boyfriend's; and 3) two declarations from women who observed three men, all spattered in blood and one in bloody overalls, come into a bar and "behave bizarrely" on the night of the murders was enough to authorize a successive petition under either *Schlup* or 2244(b)(2)(B). While DNA tests showed that the defendant's blood was on the bloody shirt and at the scene, the defendant maintains it was his drawn blood that was placed there. He requests a test for blood preservative as well as a test for mitochondrial DNA on the blonde hairs found in the victim's hand to demonstrate his innocence. Since "no person should be executed if there is doubt about his or her guilt" and the district court "may be in a position to resolve this case very quickly," the Court of Appeals directed it to promptly order the two DNA tests to evaluate defendant's innocence claim. The execution was stayed pending resolution of the successive habeas application in the district court.

Smith v. Baldwin,

466 F.3d 805, 807 (9th Cir. 2006)

The Court of Appeals found that the defendant convicted of burglary and murder presented new evidence that, if credible, would allow him to pass through the *Schlup* gateway. "Under other circumstances" the court would remand for an evidentiary hearing; however, in light of the prosecutorial misconduct that "substantially interfered with [defendant's] efforts to establish his *Schlup* claim," the Court of Appeals presumed the evidence credible. While two men were involved in the burglary, it was undisputed that only one man did the killing. The prosecution's threats to seek the death penalty against the co-defendant that recanted his testimony implicating the defendant in the murder (and thus implicating himself, although he never actually confessed) "severely tainted" the co-defendants testimony and was "coercive" enough to potentially prevent him from testifying at a *Schlup* hearing at all. Additionally, the defendant's innocence was supported by physical evidence and the testimony of the victim's wife. Reversed and remanded to the district court for a hearing on the merits of the underlying constitutional claims as well as a determination of whether a hearing on the factual basis of those claims should be held.

Walker v. McDaniel,

495 F. App'x 796, 798 (9th Cir. 2012)

The Court of Appeals held that the district court abused its discretion by rejecting defendant's actual innocence claim without holding an evidentiary hearing to determine if the newly presented evidence was enough to open the *Schlup* gateway. Defendant was charged with attempted murder. His evidence was in the form of an affidavit from his cousin – the actual shooter – taking sole responsibility for the murder, and while it was sent to defendant's attorney before trial, it was not introduced into evidence and the cousin did not testify. Therefore the

affidavit was determined to be newly presented evidence for the purposes of *Schlup*. Remanded for an evidentiary hearing to determine whether this evidence makes it more likely than not that no reasonable juror would convict defendant.

Larsen v. Soto,

742 F.3d 1083 (9th Cir. 2013)

The Court of Appeals held that defendant met the demanding *Schlup* standard when he presented new and reliable witnesses to the fact that he “stood by and did nothing at all” while others committed the crimes for which he was convicted and sentenced. While the Warden offered several arguments against the credibility of these witnesses, including their prior convictions and the remote possibility that the testimony was still consistent with the defendant’s guilt, the Court of Appeals held that no reasonable juror would be likely to convict the defendant in the light of this new evidence. Even if defendant’s evidence does not “affirmatively prove innocence,” it was enough to “cast doubt on the conviction by undercutting the reliability of the proof of guilt,” which can be “enough to pass through the *Schlup* gateway.” The district court’s grant of the writ of habeas was affirmed.

Cain v. Oregon,

546 F. App'x 641 (9th Cir. 2013)

The Court of Appeals highlighted that the *Schlup* standard does not require “absolute certainty about guilt or innocence,” but simply requires the defendant demonstrate that it is “more likely than not, in light of new evidence, no reasonable juror would find him guilty beyond a reasonable doubt.” Because the district court did not properly apply this “predictive standard” and instead “inappropriately made an independent factual determination about what likely occurred,” the Court of Appeals vacated the lower court’s order denying habeas relief. The defendant was found to have made the necessary showing to pass through the *Schlup* gateway and the case was remanded to consider the underlying claims on the merits.

Vosgien v. Persson,

742 F.3d 1131 (9th Cir. 2014)

The Court of Appeals held that defendant presented a compelling case of actual innocence for the three counts of compelling prostitution and was entitled to be heard on the merits of claims related to those convictions. However, this demonstration did not excuse the procedural default for the more serious convictions of rape, sodomy, and sexual abuse, for which he had not presented any evidence of actual innocence. The Court of Appeals reversed the district court’s dismissal of defendant’s habeas petition on the three counts of compelling prostitution and remanded to consider the underlying constitutional claims with respect to those claims only. The Court of Appeals otherwise affirmed.

Clark v. Cate,

581 F. App'x 654, 657 (9th Cir. 2014) (“not for publication in fed reporter?”)

The Court of Appeals held that although defendant had surpassed the AEDPA time limit for filing a habeas claim, his presentation of two declarations from the sole eye witness recanting his trial testimony warranted an evidentiary hearing to determine whether or not this evidence was credible. Vacated and remanded to establish whether defendant’s claim of actual innocence was supported by the declarations.

Ceras v. Frauenheim,

732 F. App'x 508 (9th Cir. 2018) (not selected for publication?)

The Court of Appeals remanded to the district court so it could “revisit its *Schlup* ruling based on the total record” and consider “all the evidence, old and new.” The district court was free to determine whether or not to hold an evidentiary hearing to assess the affiant’s credibility.

Tenth Circuit

[None found under current search parameters]

Eleventh Circuit

[None found under current search parameters]

D.C. Circuit

United States v. Stewart,

246 F.3d 728, 733 (D.C. Cir. 2001)

The Court of Appeals held that a defendant did not “use” a gun during and in relation to a drug trafficking offense when he received the gun in exchange for illegal drugs. If the defendant could show his actual innocence of this charge, it would establish “cause” for his procedural default. Accordingly the Court of Appeals remanded for a hearing on this issue.

United States v. Caso,

723 F.3d 215, 227 (D.C. Cir. 2013)

The Court of Appeals held that defendant was only required to make a showing that he was actually innocent of the offense he was charged with; he was not required to demonstrate he was also innocent of a separate and uncharged offense with a lower sentencing range under the United States Sentencing Guidelines. If no “more serious” charges were available to the Government during plea bargaining, then the defendant only need to proffer evidence of innocence of the charge of conviction. Because the defendant met that burden, and the government did not forgo any more serious charges, the district court’s denial was reversed.