

# EXHIBIT (A)

August 12, 2024

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## Via U.S. Mail and Email

Re: *In Re Gavin B. Davis*, SCOTUS, 24-5088, Rule 20 Petition for a Writ of Mandamus;  
and,  
*Davis v. U.S.*, SCOTUS, 24-5204, Petition for a Writ of Certiorari; each from  
Fifth Circuit Court, No. 23-50812; from  
*U.S. v. Davis*, USDC WD TX, 22-219-FB-HJB

**NOT AN OFFER OR SETTLEMENT. TIME IS OF THE ESSENCE. ALL MATTERS  
HEREIN SHALL BE CONSTRUED JOINTLY, AND, SEPARATELY, SEVERALLY. YOU  
SHOULD TIMELY AND CAREFULLY ADDRESS EACH NOTION HEREIN  
INDEPENDENTLY AS A RESULT. ALSO, THE COMMENTS AND INFORMATION  
INCLUDED HEREIN IS MADE, IN PART, WITH PREJUDICE TO SUCH NOT BEING IN  
TOTALITY GRANTED TIME AND RESOURCE CONSTRAINTS.**

To U.S. Government et. al.:

In its Jul. 29, 2024 express waiver of its right to file a response to the 24-5088  
Petition, Respondent, United States, has consensually relinquished a known right. As Rule  
15.2 prescribes, the Respondent shall address any perceived misstatement of fact or law in  
the 24-5088 Petition that bears on what issues properly would be before the Court if  
certiorari were granted; and, also that the Respondent has an obligation to the Court to  
point out in the Brief in Opposition and not later any perceived misstatement made in the  
Petition. **WITH SUCH WAIVER THE GOVERNMENT IS ESTOPPED.**

(1) at pg. iii-iv, fn.2, [the] terms and conditions [of the Dec. 6, 2023 22-219-FB-HJB release order are, “punitive, oppressive, inflexible, highly restrictive and unlawful, prima facie. Such terms and conditions of the Dec. 6, 2023 Release Order (Dkt. 173, 175) collectively constitute, in no uncertain terms, a “virtual prison” (None of the proposed terms and conditions on form AO199B of the Dec. 6, 2023 Release Order: are (i) related to a (a) legitimate government interest; or, separately (b) justified as such; (ii) if potentially having legitimate purpose, are the least restrictive and most flexible respective term or condition as there are, in each instance, a multitude of less restrictive more flexible alternatives; and, (iii) such ready alternatives have de minimus costs, respectively).”

(2) at pg. iii-iv, “Petitioner has been unlawfully detained from May 10, 2022, to Dec. 6, 2023 for allegedly causing three of his fraternity brethren “substantial emotional distress””

(3) at pg. 1, “in the absence of utilizing a case and controversy, such as that brought forth by the Petitioner, to resolve the circuit court split, an unconscionable number of persons, such as the Petitioner, will continue to suffer undue and oppressive pretrial incarceration through the de facto misappropriation of their due process right to interlocutory appellate review of 18 U.S.C. § 3164 pretrial release decisions.”

(4) at pg. 7, fn. 7. “These are not crimes were an accused is normally denied their Constitutional right to pretrial liberty. (“Courts should rarely detain defendants charged with non-capital offenses; doubts regarding propriety of release should be resolved in favor of the defendant. (*U.S. v. Townsend*, 897 F. 2d. 989 (9th Cir. 1990))” as cited in 23-50812, FRAP 9 Motion for Release, pg. 11 of 27, ¶ 11))”

(4) at pg. 7, fn. 7. “These are not crimes were an accused is normally denied their Constitutional right to pretrial liberty. (“Courts should rarely detain defendants charged with non-capital offenses; doubts regarding propriety of release should be resolved in favor of the defendant. (*U.S. v. Townsend*, 897 F. 2d. 989 (9th Cir. 1990))” as cited in 23-50812, FRAP 9 Motion for Release, pg. 11 of 27, ¶ 11))”

(5) at pg. 7-8, fn. 23. “Relief in this type of case must be speedy if it is to be effective. (*Stack v. Boyle*, 342 U.S. 1 (1951)) See also, due process and other concerns stemming from unlawful pretrial detention; e.g. *U.S. v. Goodson*, 204 F. 3d 508 (4th Cir. 1999) citing *Smith v. Hoey*, 393 U.S. 374, 378, 21 L. Ed. 607, 89 S. Ct. 575 (1969), quoting *U.S. v. Ewell*, 383 U.S. 116, 120, 15 L. Ed. 2d 667, 86 S. Ct. 773 (1966)) Also, in *U.S. v. Salerno*, the Supreme Court found that “the maximum length of pretrial detention is limited by the stringent time limitations of the Speedy Trial Act.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); there exists a Constitutionally protected interest in avoiding physical (and other) restraints of liberty) Fundamental liberties protected by the Due Process clause include most of the rights enumerated in the Bill of Rights and certain personal choices to individual dignity and autonomy. (citation omitted) Also, unlike in ordinary appeal, in detention appeals, [a] court of appeals is free in determining appropriateness of order below as well as to consider materials not presented. (*U.S. v. Tortora*, 922 F. 2d 880 (1st Cir. 1990))



(6) pg. 11, fn. 29. “Denial of bail should not be used as an individual way of making a man shoulder a sentence. (*Carbo v. U.S.*, 82 S. Ct. 662 (1962)) As Petitioner alleges has and is occurring in this case and controversy. Also, none of the four (4) 22-219 criminal allegations in the Indictment (Dkt. 3) fall under 18 U.S.C. § 3142 (e)(3) – and therefore, the Defendant cannot be legally detained; and, (ii) none of the requisite six (6) conditions of 18 U.S.C. §§ 3142 (f)(1) or (2) are present; and, therefore, the original Detention Order of May 20, 2022 must be timely Vacated (see e.g. *U.S. v. LaLonde*, 246 F. Supp. 2d 873 (S.D. Ohio 2003); “the magistrate’s detention order was vacated, as the statute did not permit the detention of the defendant who did not satisfy any of the conditions of a subsection of the statute regardless of his dangerousness to the community or to specific others” (LEXIS case overview))”

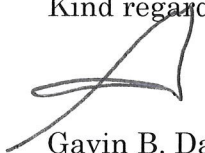
(7) pg. 11-12. “Defendant has been unlawfully detained in violation of his Constitutional and substantive rights since May 10, 2022 , despite: (a) the allegations carrying no minimum sentence and a five (5) year maximum; (b) such allegations are not 18 U.S.C. § 3142 (e) charges; and, (c) Petitioner being rated by U.S. Pretrial Services as a “Low” risk. Petitioner has had to terminate four (4) defense attorneys for cause: e.g. inertness, deficient performance, lack of competence reasonably expected of professional defense counsel – thereafter, moving in propria persona on Sep. 5, 2023 – in order to, a priori, regain his pretrial release, a Constitutional right.”

(8) pg. 12, fn. 31. “U.S. Pretrial Services, is an arm of the U.S. Government – the adversarial party in the proceeding. Such adversary cooperates with the U.S. Attorney (see e.g. 18 U.S.C. § 3154 (8), (10)) and works under the auspices of the Administrative Office of the U.S. Courts (see 18 U.S.C. § 3152 (a))” (emphasis added)

(9) pg. 18, “there exists a due process limit on the duration of preventive detention, which requires assessment on a case-by-case basis – in determining whether due process has been violated, court considers not only factors relevant in the initial detention decision ... but also additional factors such as the length of detention that has in fact occurred or may occur in the future, the non-speculative nature of future detention ..” (*U.S. v. Hare*, 873 F. 2d. 796 (5th Cir. 1989))”


PLEASE DO NOTE: TIME IS OF THE ESSENCE

Kind regards,



8/12/24

Gavin B. Davis, Pro Per  
APPLICANT / PETITIONER / DEFENDANT  
Federalist



8/12/24  
134308346  
4-14-2027

May 10, 2024

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Via U.S. Mail and Email

Re: *Davis v. U.S.*, SCOTUS, 23A299, from  
CA5 No. 23-50812 (as related to 23-50917, pending) from  
USDC WD TX, 22-219-FB-HJB

**NOT AN OFFER OR SETTLEMENT  
TIME IS OF THE ESSENCE**

To Ms. Elizabeth B. Prelogar:

Please NOTE the following, in part:

(1) On May 9, 2024, the Supreme Court of the United States GRANTED Applicant, Mr. Gavin B. Davis, Application for an Extension of Time to file a Petition for a Writ of Certiorari in no. 23A299, *Davis v. U.S.*, until July 22, 2024;

(2) Within the Application (Main Document), only the Index is substantively missing from required sections<sup>1</sup> of a rule conformed<sup>2</sup> Petition for a Writ of Certiorari;

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<sup>1</sup> Statement of Case; Jurisdiction; Reasons for Granting Relief; etc. are included.

<sup>2</sup> Applicant has previously successfully filed Rule Conformed *Davis v. California*, see e.g. 19A726 and also No. 20-752 (cert. denied; reh'g denied) with the Court.



(3) Per the Proof of Service (see pg. 29 of 29 of 23A993 Main Document) each of the Solicitor General and local Department of Justice counsel have been properly served with such Application;

(4) In addition, you were provided via U.S. Mail a Rule 20 Petition for Mandamus and/or other Relief from the same underlying proceedings. As the Rule 20 Petition has not been docketed as of midday, May 10, 2024, Applicant (as petitioner therein) anticipates a Letter of Deficiency of some sort from the Court. Applicant anticipates timely correcting deficiencies, if any, with the Rule 20 Petition, for submission to the Court.

(5) In CA5 23-50812, declining jurisdiction, the Fifth Circuit did not reach the merits of the Applicant's (as appellant therein) FRAP 9 Motion for Release; or, Motion to Appoint Counsel (separately counsel of choice; as well as, separate appellate counsel from trial counsel, with prejudice thereto). Thereafter, Applicant (as appellant) filed a FRAP 9 Motion for Release into pending interlocutory appeal CA5 23-50917. Applicant has also filed a Notice of Errata in 23-50917. The government has not responded to the 23-50917 FRAP 9 Motion; which, the Applicant holds as evidentiary in multiple regards. FRAP provides a period of time for which to respond; and, the government is, in fact, estopped. Further, Applicant alleges that the government is attempting to prevent the Applicant from self-representation<sup>3</sup> rather than, in good faith, engage with the Applicant.

(6) With movement from CA5-23-50812 to the Supreme Court (e.g. 23A993), Applicant is in the process of preparing a Rule 22 Motion for Bail;

(7) The following is hereby DEMANDED, in part:

(a) When a Rule conformed Petition for a Writ of Certiorari by the Applicant and/or a Rule 20 Petition for a Writ of Mandamus is docketed with the Court, under no circumstances:

(i) File a Waiver of Right of Respondent United States to respond to either of such documents; or

(ii) Engage in continued delay tactics such as requesting via motion practice one or more extensions of time to Respond if so Ordered by the Court;

ANY SUCH ACTION BY RESPONDENT, UNITED STATES, WILL BE HELD AS EVIDENTIARY AND MOST LIKELY ALSO LEAD TO IMMEDIATE CROSS-ACTION.

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<sup>3</sup> Held to be Vindictive, a violation of Applicant's First Amendment right to access the courts, and otherwise.

(b) As Applicant has provided certain Discovery DEMANDS to the Respondent via underlying counsel (Richardson / Parsons), the following Discovery DEMANDS are hereby made upon the Office of the Solicitor General; and, are unable to be delegated to any other office of the Department of Justice, or other third parties. **THE OFFICE OF THE SOLICITOR GENERAL CANNOT DELEGATE ITS RESPONSIBILITY TO RESPOND TO A REQUEST FOR *BRADY* OR OTHER DISCOVERY MATERIALS / REQUESTS**

Please NOTE, even though the District Court has summarily denied (Apr. 12, 2024) Defendant's Discovery Motion (Dkt. 194, Jan. 10, 2024)<sup>4</sup>:

A. With purpose and prejudice, Defendant's Discovery Motion was preceded by the government's receipt of Defendant's Discovery Demand Letter (as cited in the Discovery Motion). **ALL DEMANDS OF SUCH LETTER REMAIN IN FULL FORCE AND EFFECT. TIME IS OF THE ESSENCE.**

B. Within the Demand Letter, as well as the Discovery Motion, are references to the government's obligation of its **CONTINUING DUTY TO DISCLOSE**) (see e.g. Discovery Motion, Dkt. 194 at pg. 19, ¶ 27(b)).

Further this Notice and Demand Letter serves, in good faith, as a reminder of a continuing Demand with respect to all Discovery matters.

You have also been charged with Constructive Possession or Knowledge of Discoverable Material. In regard to such, your duty of disclosure includes any discoverable item or information, as listed in the DEMAND Letter, that is possessed by and known to

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<sup>4</sup> On Apr. 12, 2024, the District Court issued a summary Order denying Defendant's Motion for Early Sentencing Guidelines (Dkt. 193, Jan. 10, 2024); Defendant's Discovery Motion (Dkt. 194, Jan. 10, 2024) and two (2) pending Motions to Dismiss. (note: Defendant is: (a) without access to the docket; (b) is, at present, unaware if the government has, in fact, Responded to any of the four (4) Motions that were summarily disposed of in the District Court's Order of Apr. 12, 2024); Subsequent to the Court's Apr. 12, 2024 Order, as there remain discovery issues with the case and proceeding, Defendant submitted (via U.S. Mail) a Calendar Request for, generally two (2) items: (i) 18 U.S.C. § 3500 Jencks Hearing. Defendant reasonably requests a hearing as soon as practical to continue to directly examine Agent Charles Davidson, who appeared on examination and cross-examination on each of May 20, 2022 (see e.g. Dkt. 30); and Nov. 1, 2023 (see e.g. Dkt. 148) (also, in each instance, Agent Davidson, has, in fact, provided false, partial and/or misleading information) (the open-ended cross-examination is designed to cause Agent Davidson to reveal as much information as possible (see also e.g., U.S. v. Coppa, 267 F. 3d 132 (2d Cir. 2001); U.S. v. Cazares, 465 F. 3d 327 (8th Cir. 2006)); and (ii) Discovery. Citing to: Dkt. 194, at ¶¶ 3(a) – (c), itself citing to Sep. 5, 2023 Hearing, Transcript, Dkt. 131 at pg. 22, ln 2-5; pg. 22, ln 11-14; pg. 24-5, ln 21-5; pg. 25, ln 15-17; pg. 28, ln 14-17; also, Dkt. 194, at ¶¶ 4(d), (f), (g), citing to Oct. 24, 2023 Hearing, Transcript, Dkt. 168 at pg. 30, ln 12-17; pg. 31, ln 23-25; pg. 35, ln 3-5);


the Office of the Solicitor General, Department of Justice, U.S. Attorney's Office, or as otherwise relevant (to be reasonably inferred and construed); any law enforcement agency that has investigated or prepared the case against the Defendant, or any person, or agency hired to assist your office or the investigating agency in this case. You are charged with constructive knowledge of any discoverable item or information possessed by and known to the investigating law enforcement agency. You are charged with the duty to access reasonably accessible databases, such as CII and FBI records, that are available to your office.

Also, please continue to Note, in part: (a) the government has, in fact, been put on Notice; and, as the Applicant alleges, as a victim, such federal and state violations of him and his substantive rights are ongoing, the government has no Discretionary Exemption (it is also charged with conducting an objective and balanced investigation of the matter(s)); and, (b) Ex Post Facto law is strictly prohibited under the U.S. Constitution.

Please NOTE, that, jointly and separately, this Notice, the prior DEMAND Letters to Richardson / Parsons, and Demand Motion (Dkt. 194) does not compromise Defendant's requests in totality (see e.g. see Fed. R. Evid. 801, 803, etc.).

TIME IS OF THE ESSENCE

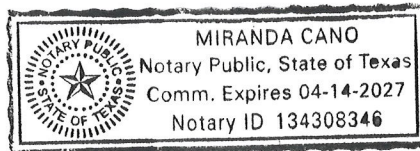
Kind regards,

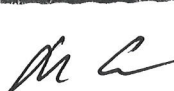
 5/10/24

Gavin B. Davis, Pro Per

APPLICANT / PETITIONER / APPELLANT / DEFENDANT

Federalist



 5/10/24



## DEFENDANT'S AFFIDAVIT

I, Gavin B. Davis, attest to the following as true and correct to the best of my knowledge; and, do so, under penalty of perjury (28 U.S.C. § 1746).

A priori, as of November 3, 2022, (i) having been provided no discovery in regard to case # 22-219-FB-1; and (ii) having entered a Plea of Not Guilty (via counsel) in these matters -- and therefore, having (a) a general understanding (i.e. as a layperson, and, separately and distinctly, a layperson with sub-standard access to resources (e.g. legal materials, legal assistance, limited attorney correspondence / interfacing, law library access while detained, word processing equipment, etc.) and (b) making a general Declaration via Affidavit herein (to which full Due Process is still availed and expressly reserved), do hereby:

1. Fully retract all statements deemed "threatening" alleged to be held in violation of criminal law by the government;

2. With prejudice, do hereby declare, that any such statements (per #1 above, in the broadest sense, as to be reasonably inferred), have been wholly taken out of context by the government in each of its investigation and initiation of case #22-219, prima facie -- and also without considering the totality of the circumstances (e.g. the Defendant is in civil litigation (see e.g. USDC SD Cal, 19-834, dismissed forum non-convenes, and having unnamed defendants therein and in pursuit thereof, including in the future once claims of Deceit, Fraud, and Fraudulent Deceit are more fully, in good faith, and legally addressed by the named and unnamed defendants);

3. That any such statements (per #1 above, and as cited in #2, and as may be relevant throughout this Affidavit), were more than likely: (i) not unequivocal; (ii) not immediate; (iii) directed at parties that the Defendant has had a close personal relationship with including significant dry and/or dark humor (do note as the correspondence in question in 22-219, deemed threatening in violation of criminal law (as disputed and contested), is electronic: that there is no "tone" to email correspondence, as was wrongly inferred and or used in retaliation against the Defendant -- the actual victim); (iv) hyperbolic; (v) hypothetical; (vi) posed as years in the future (note, hundreds if not thousands of discrete actions would have to actually occur prior to the controversy reaching a criminal level by the Defendant; whereas by contrast, Defendant, is the actual victim, a victim of considerable cyberstalking / cyberhazing by the alleged victim witnesses and/or other related witnesses or associated parties);

4. Defendant does not wish any physical harm or non-legal harm on the alleged victim witnesses, their families or others;

5. Defendant is not a flight risk (let alone a *serious* flight risk) and has no intentions of fleeing the instant jurisdiction while addressing the allegations of 22-219 including but not limited evaluating and/or initiating cross-action against one or more of the parties and/or pursuant to 42 U.S.C. § 1983 or its federal equivalent (i.e. *Bivens*);

6. Defendant has never been in a physical conflict, absent in self-defense while detained in October 2016 in San Diego, California (see e.g. USDC SD Cal, 21-2042, *Davis v. Bonta*, Doc. 1, pg. 29-30, ¶¶ 23-26; dismissed for lack of jurisdiction (i.e. defendant not “in custody”; further, while detained in #22-219, Defendant has been unable to move via FRCP 60, compounding the prejudice already occurring to-date.));

7. In regard to the government’s (Davidson) commentary on May 20, 2022 in #22-219, in part and expressly reserving the right to expand and/or clarify commentary thereon, herein or otherwise; as well as in defense thereto, in whole or in part (as herein), to correct the record given substantial materially prejudicial false, partial and/or misleading comments (Davidson): (i) Defendant does harbor some manageable anxiety in regard to each of (a) corruption (even however small such probability and/or actuality may be when taken in light of the whole) and (b) general fear of local authorities -- however, what is significant and more relevant in regard to such, is the Defendant’s course of conduct with regard to abiding by all local laws in each of California and Texas since April 2018 and never being in violation of law when interacting with any party of municipal or state authority. Therefore, surmising anything to the contrary in regard to the Defendant’s intentions, is each of false, is conflated and Defendant holds as patently false;

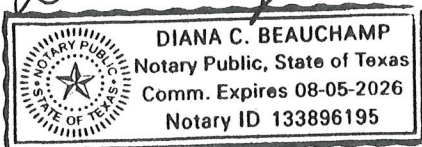
8. Defendant intends to continue leading a peaceful life. Defendant’s actions, in the local jurisdiction, since moving here in December 2019, are extraordinarily “square” (e.g. Defendant does not go out at night, Defendant hasn’t gone to a single drinking establishment; Defendant continues to work and exercise, and little else, while working to rebuild is life, after being victimized in multiple capacities);

Defendant is excited to begin working and be released on reasonable and flexible terms and conditions

DATE:

11/3/22  
November 3, 2022

  
Gavin B. Davis



#133896195

August 12, 2024

John F. Carroll  
Attorney-at-law  
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T: 210.223.2627  
F: 210.223.5052  
E: jcarrollsatx@gmail.com

Re: #22-219, *U.S. v. Davis*  
5<sup>th</sup> Cir., 23-50917, 23-50812  
SCOTUS, 24-5088; 24-5204  
Meeting of Aug. 8, 2024 and Follow-up

PRIVILEGED AND CONFIDENTIAL

To Mr. John F. Carroll:

Subsequent to our Zoom videoconference on Thurs., Aug. 8, 2024, please Note the following, in part:

As previously Noticed:

**FAILURE TO PROSECUTE NOTICE**

Circuit Courts have consistently found that an attorney's conduct was 'unbecoming' if the attorney failed to prosecute an appeal (which, would include, at present, 5th Cir. 23-50917; and, separately, movement before the Supreme Court of the United States (e.g. 24-5088, 24-5204)) with due diligence.

While pursuing frivolous appeals is primarily a wrong to the court, failure to pursue an appeal with due diligence is primarily a wrong to the client. Most of the cases involving failure to prosecute involve criminal defendants, a class of particularly vulnerable clients. A failure to prosecute is usually easy to identify: the lawyer has failed to meet the requisite deadlines for perfecting the appeal and pursuing the case.

Failure to prosecute with due diligence if: the attorney failed to file a notice of appeal; an appeal (such as 5th Cir. 23-50917; as well, as SCOTUS 24-5088, 24-5204) has been filed, but the attorney took no action to perfect or prosecute such appeal; the attorney failed to respond to specific instructions of the respective court regarding the prosecution of the appeal.

Failure to prosecute can be a Negligent or Fraudulent act.

Tardiness with respect to due diligence in perfecting an appeal can be evidentiary in a direct, circumstantial, and/or constructive manner.



Further, you were also previously Noticed:

### ATTORNEY-CLIENT RELATIONSHIP AND APPELLATE COUNSEL

ABA Rule 1.2 (a), provides that a lawyer shall abide by a client's decisions concerning the objectives of the representation. Defendant (22-219, Davis) will continue to manage the attorney-client relationship much as he would in a corporate setting. (*McQueen v. Blackburn*, 755 F. 2d 1174 (5th Cir. 1985); a defendant is entitled to an attorney who considers the defendant's views and seeks to accommodate all reasonable requests with respect to trial preparation and trial tactics.) (also, see *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) and *Faretta v. California*, 422 U.S. 806, 819-820, 95 S. Ct. 2525, 45 L. Ed. 2d 562) (see also, Hashimoto, *Resurrecting Autonomy: The Criminal Defendant's Right to Control the Case*, 90 B. U.L. Rev, 1147, 1178 (2010); also, *U.S. v. Cronin*, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)) (also, the *Faretta* court noted that the right to counsel is really the right to the assistance of counsel, "and an assistant, however expert, is still an assistant" (422 U.S. at 820) (emphasis added). The rights accorded by the Sixth Amendment include not having counsel present a defense that is not his defense. (*Id.*, 422 U.S. at 821))

Also, please Note:


Sixth Amendment guarantees a criminal Applicant the right to counsel; which would include interlocutory appeals or matters pursued before the Supreme Court. Fourteenth Amendment guarantees a criminal appellant pursuing certain minimum safeguards necessary to make an appeal adequate and effective; among the safeguards is the right to counsel. The services of a lawyer will for virtually every layman be necessary to present an appeal in a form suitable for appellate consideration on the merits (*Evitts v. Lucey*, 469 U.S. 387 (1985)) ; (also, obvious deficiencies in representation may be addressed by an appellate court sua sponte (*Massaro v. U.S.*, 538 U.S. 500 (2003))) (Fed. R. Crim. P. 44 makes clear that a defendant's Sixth Amendment right to (the effective assistance) of counsel includes "every stage of the proceedings" including appeals (*Doherty v. U.S.*, 404 U.S. 28 (1971))

On Aug. 8, 2024, I did, expressly requests your assistance with each of SCOTUS 24-5088 and 24-5402. Further, I specifically requested that you timely assist with the preparation of a SCOTUS Rule 22 Application for Bail in 24-5088; and, you declined to assist. At such time, I indicated that I would have to send you a formal Notice regarding such—as herein provided as soon as practical—as this is an Urgent matter.

There is no disputing that 23-50812 is controlling; and is controlling over 23-50917, which you have, in fact entered. As a result, a Rule 22 Application from 23-50812 in SCOTUS 24-5088 is also controlling from a procedural priority perspective. As with prior 22-219 defense attorneys, you have not disputed that a circuit court split does in fact exist with respect to interlocutory appellate review of 18 U.S.C. § 3164 pretrial release decisions.

TIME IS OF THE ESSENCE

Kind regards,

  
8/12/24  
Gavin B. Davis


  
me  
~~+433195~~ → 134308346  
4-14-2022

EXHIBIT (C)

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

USA

§  
§  
§  
§  
§

vs.

NO: SA:22-CR-00219(1)-FB

(1) Gavin Blake Davis

**ORDER SETTING CONDITIONS OF RELEASE**

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate federal, state, or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if it is authorized by 34 U.S.C. § 40702.
- (3) The defendant must advise the court or the pretrial services office or supervising officer in writing before making any change of residence or telephone number.
- (4) The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.

The defendant must appear at: \_\_\_\_\_  
*Place*

on the 2nd Floor of the United States Federal Courthouse, 262 W. Nueva Street, San Antonio, TX  
*Place*

on \_\_\_\_\_  
*Date and Time*

If blank, defendant will be notified of next appearance.

- (5) The defendant must sign an Appearance Bond, if ordered. \$50,000.00 Unsecured Bond



**ADDITIONAL CONDITIONS OF RELEASE**

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

- ( X ) (6) The defendant is placed in the custody of:  
 Person or organization  
 Address (only if above is an organization)  
 City and state

Tel. No.

who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed:

Custodian

Date

- ( X ) (7) The defendant must:

- ( X ) (a) submit to supervision by and report for supervision to the PRETRIAL SERVICES, AS DIRECTED  
 telephone number , no later than
- ( X ) (b) continue or actively seek employment.
- ( ) (c) continue or start an education program.
- ( X ) (d) surrender any passport to: Pretrial Services as directed
- ( X ) (e) not obtain a passport or other international travel document.
- ( X ) (f) abide by the following restrictions on personal association, residence, or travel: Reside at an address approved by Pretrial Services. No travel outside of Bexar and seven surrounding counties without first obtaining permission from Pretrial Services. Travel outside of the United States with court approval only.
- ( X ) (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution.
- ( X ) (h) get medical or psychiatric treatment as directed by the Pretrial Service Office.
- ( ) (i) return to custody each at o'clock after being released at o'clock for employment, schooling, or the following purposes:
- ( X ) (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.
- ( X ) (k) not possess a firearm, destructive device, or other weapon.
- ( X ) (l) not use alcohol ( X ) at all ( ) excessively.
- ( X ) (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.
- ( X ) (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.
- ( ) (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer, as directed.
- ( X ) (p) participate in one of the following location restriction programs and comply with its requirements as directed.
- ( ) (i) Curfew. You are restricted to your residence every day ( ) from to , or ( ) as directed by the pretrial services office or supervising officer; or
- ( ) (ii) Home Detention. You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or
- ( ) (iii) Home Incarceration. You are restricted to 24-hour-a-day lock-down at your residence except for medical necessities and court appearances or other activities specifically approved by the court.
- ( X ) (iv) Stand Alone Monitoring. You have no residential curfew, home detention, or home incarceration restrictions. However, you must comply with the location or travel restrictions as imposed by the court.  
 Note: Stand Alone Monitoring should be used in conjunction with global positioning system (GPS) technology.
- ( X ) (q) submit to the following location monitoring technology and comply with its requirements as directed:
- ( ) (i) Location monitoring technology as directed by the pretrial services officer; or
- ( ) (ii) Voice Recognition; or
- ( ) (iii) Radio Frequency; or
- ( X ) (iv) GPS.
- ( X ) (r) pay all or part of the cost of location monitoring based upon your ability to pay as determined by the pretrial services or supervising officer.
- ( X ) (s) report as soon as possible, to the pretrial services or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.
- ( X ) (t) No Computers: The defendant is prohibited from possession and/or use of computers or connected devices.
- ( X ) (u) the defendant will remain in U.S. Marshal's custody pending clearance prior to transfer to halfway house.
- ( X ) (v) Make the halfway house subsistence payments based upon your ability to pay as determined by the pretrial services or supervising officer.

officer.

**ADVICE OF PENALTIES AND SANCTIONS**

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (i.e., in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of the Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.

X

*Defendant's Signature*

*City and State*

**Directions to the United States Marshal**

- ( ) The defendant is ORDERED released after processing.
- ( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date: 12/06/2023

*Henry J. Bemporad*  
*Judicial Officer's Signature*

HENRY J. BEMPORAD, UNITED STATES MAGISTRATE JUDGE  
*Printed name and title*

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

USA

vs.

(1) Gavin Blake Davis  
*Defendant*

§  
§  
§  
§  
§

Case Number: SA:22-CR-00219(1)-FB

**APPEARANCE BOND**

**Defendant's Agreement**

I **(1) Gavin Blake Davis** (defendant), agree to follow every order of this court, or any court that considers this case, and I further agree that this bond may be forfeited if I fail:

- 
- 
- 

to appear for court proceedings;  
 if convicted, to surrender to serve a sentence that the court may impose; or;  
 to comply with all conditions set forth in the Order Setting Conditions of Release.

**Type of Bond**

- (1) This is a personal recognizance bond.
- (2) This is an unsecured bond of \$ 50,000.00
- (3) This is a secured bond of \$ \_\_\_\_\_, secured by:
  - (a) \$ \_\_\_\_\_, in cash deposited with the court.
  - (b) the agreement of the defendant and each surety to forfeit the following cash or other property (describe the cash or other property, including claims on it - such as a lien, mortgage, or loan - and attach proof of ownership and value):  
 \_\_\_\_\_  
 \_\_\_\_\_
- (c) a bail bond with a solvent surety (attach a copy of the bail bond, or describe it and identify the surety):  
 \_\_\_\_\_  
 \_\_\_\_\_

**Forfeiture or Release of the Bond**

*Forfeiture of the Bond.* This appearance bond may be forfeited if the defendant does not comply with the above agreement. The court may immediately order the amount of the bond surrendered to the United States, including the security for the bond, if the defendant does not comply with the agreement. At the request of the United States, the court may order a judgment of forfeiture against the defendant and each surety for the entire amount of the bond, including interest and costs.



*Release of the Bond.* The court may order this appearance bond ended at any time. This bond will be satisfied and the security will be released when either: (1) the defendant is found not guilty on all charges, or (2) the defendant reports to serve a sentence.

**Declarations**

*Ownership of the Property.* I, the defendant – and each surety – declare under penalty of perjury that:

- (1) all owners of the property securing this appearance bond are included on the bond;
- (2) the property is not subject to claims, except as described above; and
- (3) I will not sell the property, allow further claims to be made against it, or do anything to reduce its value while this appearance bond is in effect.

*Acceptance.* I, the defendant – and each surety – have read this appearance bond and have either read all the conditions of release set by the court or had them explained to me. I agree to this Appearance Bond.

I, the defendant – and each surety – declare under penalty of perjury that this information is true. (See 28 U.S.C. § 1746.)

Date: \_\_\_\_\_  \_\_\_\_\_  
*Defendant's signature*

YVONNE DAVIS  \_\_\_\_\_  
*Surety/property owner – printed name* *Surety/property owner – signature and date*

\_\_\_\_\_  
*Surety/property owner – printed name* *Surety/property owner – signature and date*

\_\_\_\_\_  
*Surety/property owner – printed name* *Surety/property owner – signature and date*

**CLERK OF COURT**

Date: \_\_\_\_\_ \_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Approved.

Date: \_\_\_\_\_ \_\_\_\_\_  
*Judge's signature*

EXHIBIT (D)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,

§  
§  
§  
§  
§  
§  
§  
§

No. SA-22-CR-219-FB

GAVIN BLAKE DAVIS,  
  
Defendant.

**PLEA AGREEMENT**  
**[RULE 11(c)(1)]**

The United States Attorney for the Western District of Texas, and Defendant, GAVIN BLAKE DAVIS, enter into the following plea agreement in this cause, pursuant to Federal Rule of Criminal Procedure 11(c)(1):

**Defendant's Waiver of Counsel:**

Defendant, exercising his right to self-representation, has knowingly, intelligently, and voluntarily waived his right to counsel, including stand-by counsel. Defendant acknowledges that the Court has warned him of the dangers and disadvantages of self-representation, and knowing this, Defendant still wants to represent himself in this case.

**Defendant's Agreement to Plead Guilty:**

Defendant agrees to plead guilty to **COUNT FOUR** of the **SUPERSEDING INDICTMENT** in this cause, which charges Defendant with **Interstate Communication – Threat to Injure**, in violation of 18 U.S.C. § 875(c).

Defendant's Initials  
\_\_\_\_\_

**Government’s Agreement Concerning Other Charges:**

As part of this plea agreement, in exchange for the Defendant pleading guilty to **COUNT FOUR** of the **SUPERSEDING INDICTMENT**, provided Defendant complies with all the terms of this Plea Agreement and clearly and continuously demonstrates acceptance of responsibility from the time Defendant enters the plea of guilty pursuant to this Agreement, through the sentencing hearing, the Government will not charge Defendant for additional crimes arising out of the same pattern of conduct occurring during the time period and represented by the facts contained within the factual basis of this plea agreement, and will, upon sentencing, move to dismiss all pending charges.

**Penalty:**

The offense to which Defendant is pleading guilty carries the following penalties:

Count Four: 18 U.S.C. § 875(c) – **Interstate Communications – Threaten to Injure**

Maximum possible prison term:	5 years
Mandatory minimum prison term:	none
Maximum term of supervised release:	3 years
Mandatory minimum term supervised release:	none
Maximum fine:	\$250,000
Mandatory monetary assessment:	\$100
Amount of Restitution:	none
Forfeiture	none

Any term of imprisonment imposed does not provide for parole. Defendant acknowledges that Defendant has been fully admonished by the Court as to this statutory range of punishment, and knowing this, Defendant still wants to plead guilty in this case.

Defendant understands that in determining Defendant’s sentence, the Court will consider the factors set forth in 18 U.S.C. § 3553(a) and the U.S. Sentencing Guidelines and accompanying

Defendant’s Initials

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policy statements, which are advisory. Because the Sentencing Guidelines are advisory only, Defendant's sentence may lie within, below, or above the Sentencing Guideline range after the Court has considered the § 3553(a) factors. Any estimate of the advisory sentencing range or probable sentence from any source including any of Defendant's prior attorneys, the attorney for the Government, or the Probation Officer, is merely an estimate and not a prediction or a promise.

Defendant stipulates that no person has promised what sentence Defendant will receive. Defendant knows the Court has authority to impose any sentence up to the maximum statutory penalty. Defendant acknowledges and understands that Defendant will not be permitted to withdraw the plea of guilty if the Court declines to follow any sentencing recommendations made by any party to this agreement or imposes a sentence greater than Defendant expected. The Government reserves the right to advocate in support of the Court's judgment should this case be presented to an appellate court.

**Factual Basis for Plea:**

Defendant acknowledges that he is aware of the elements of the offense to which Defendant is pleading guilty. Defendant understands that if Defendant pleads not guilty, the United States would be required to prove each of these elements to the unanimous satisfaction of a jury beyond a reasonable doubt. By signing this Plea Agreement, Defendant admits that the facts set out in the factual basis below are true and correct.

Further, as part of this plea agreement, Defendant admits that on December 24, 2020, in the Western District of Texas, and elsewhere, he, knowingly transmitted in interstate commerce, a communication, specifically, an email, to H.P., and the communication contained a threat to

Defendant's Initials

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injure C.K., in violation of 18 U.S.C. § 875(c). Specifically,

On December 24, 2020, Defendant, using email account [gavin\\*\\*\\*\\*\\*96@gmail.com](mailto:gavin*****96@gmail.com), transmitted a communication to H.P. and others, stating

“I am not afraid to fight a single one of you...THERE IS NOT A SINGLE ONE OF YOU THAT IS MORE PHYSICALLY FIT OR STRONG (sic) THAN ME-NOT ONE...And if somehow Psi Upsilon Cornell deceitfully, fraudulently and unlawfully prevails in doing so, then I am going to kill one of you, or more; OR one of your family in response...IT IS BINARY IN THE ABSOLUTE....Let’s say 10 years from now, I will kill C\*\*\*\*\* K\*\*\*\*\* (as but one example of dozens) – will it be worth it to you?... That is the decision you should make...I am strong (sic) than EVERY last one of you (and that is an actual fact, and not an exaggeration in the least)-and angrier than all of you. So you should choose wisely.”

This hostile communication being one of hundreds similar in nature transmitted by Defendant to former Psi Upsilon Cornell fraternity brothers, including H.P., caused the recipients, including H.P., alarm and substantial emotional distress, particularly, given that C.K. is the minor son of one of the recipients.

The facts contained within this factual basis occurred within the Western District of Texas, and elsewhere.

**Defendant's Waiver of Statutory and Constitutional Rights:**

Defendant understands and acknowledges that by pleading guilty, Defendant is waiving the following constitutional and statutory rights:

- (1) The right to plead not guilty and persist in that plea.
- (2) The right to a speedy and public jury trial.
- (3) The right to assistance of counsel at that trial and in any subsequent appeal of that trial.
- (4) The right to remain silent at trial.

Defendant’s Initials

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- (5) The right to testify at trial.
- (6) The right to confront and cross-examine government witnesses.
- (7) The right to present evidence and witnesses on his or her own behalf.
- (8) The right to compulsory process of the court.
- (9) The right to be presumed innocent.
- (10) The right to a unanimous guilty verdict.
- (11) The right to appeal a guilty verdict.

In addition to giving up the rights described above, Defendant agrees to give up and waive the following:

Pretrial Motions: Defendant understands that Defendant could raise issues and challenges by pretrial motion, including motions to suppress evidence and to dismiss the charges. By entering into this agreement and pleading guilty, Defendant agrees to give up all claims Defendant has made or might have made by pretrial motion and to the dismissal of any currently pending motions.

Discovery: Defendant agrees to waive any claims Defendant may have now or may acquire later to any information possessed by the prosecution team that might be subject to disclosure under discovery rules, including but not limited to the Federal Rules of Criminal Procedure; the *Jencks* Act; local court rules and court orders. Defendant waives any continuing discovery request and any additional discovery. Defendant also waives all rights to request from any federal department or agency any records pertaining to the investigation or prosecution of this case, including but not limited to any records that may be sought under the Freedom of Information Act (5 U.S.C. § 552) or the Privacy Act (5 U.S.C. § 552a).

Defendant's Initials

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Legal Fees and Expenses: Defendant stipulates that Defendant is not entitled to and shall not seek from the United States any attorney fees or other litigation expenses Defendant has incurred or will incur in connection with this prosecution.

Defendant further stipulates and agrees that by reason of the dismissal of, or the Government's agreement to forbear filing or pursuing, certain criminal charges as part of this plea agreement, Defendant is not a "prevailing party" for the purpose of seeking attorney's fees and other litigation expenses under the Hyde Amendment, Pub. L. 105-1119, § 617, 111 Stat. 2440, 2519 (1997), reprinted in 18 U.S.C. app. § 3006A (Supp. III 1997). Defendant further agrees that as a term of this plea agreement, Defendant hereby waives any and all claims against the United States for attorney's fees and other litigation expenses under said law.

**Defendant's Waiver of Right to Appeal or Challenge Sentence:**

In exchange for the concessions made by the United States in this agreement, Defendant voluntarily and knowingly waives the right to appeal the conviction or sentence on any ground, including any challenge to the constitutionality of the statutes of conviction; any claim that Defendant's conduct did not fall within the scope of the statutes of conviction; any challenges to the determination of any period of confinement, monetary penalty or obligation, restitution order or amount, term of supervision and conditions; and any other claim based on rights conferred by 18 U.S.C. § 3742 or 28 U.S.C. § 1291.

Defendant, knowing that the sentence has not yet been determined by the Court, waives the right to challenge the sentence imposed, including restitution. Defendant cannot challenge the sentence imposed by the District Court even if it differs substantially from any sentencing range estimated by any of Defendant's previous attorneys, the attorney for the Government, or the

Probation Officer.

Defendant also voluntarily and knowingly waives any right to contest the conviction or sentence (or the manner in which the sentence was determined) in any post-conviction proceeding, including any proceeding under 28 U.S.C. § 2255, 28 U.S.C. § 2241, or any other provision of law. Consistent with principles of professional responsibility imposed on counsel for the Government, nothing in this agreement precludes Defendant from raising a claim of ineffective assistance of counsel or prosecutorial misconduct of constitutional dimension in an appropriate forum.

Defendant agrees that the United States preserves all rights set forth in 18 U.S.C. § 3742(b).

If Congress or the U.S. Sentencing Commission amends the Sentencing Guidelines to lower the guideline range that applies to Defendant's offenses and explicitly makes that amendment retroactive, the government agrees not to assert this waiver as a bar to Defendant filing a motion under 18 U.S.C. § 3582(c)(2) in district court. However, if Defendant files such a motion, the government reserves the right to oppose that motion and to assert this waiver as a bar to Defendant appealing the district court's decision on that motion.

**Waiver of Counsel:**

Having waived his right to counsel, including stand-by counsel, Defendant acknowledges that he has reviewed the merits of the charges and possible defenses Defendant may have; the advantages and disadvantages of pleading guilty; the terms and meaning of the plea agreement; and the consequences of pleading guilty. Defendant feels confident he understands the punishments and consequences of pleading guilty, understands that not all of the consequences

Defendant's Initials

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can be predicted or foreseen, and still wants to plead guilty in this case.

**Sentencing Agreement RULE 11(c)(1)(B) NON-BINDING:**

In exchange for the Defendant's agreement to plead guilty as set forth above, the United States Attorney for the Western District of Texas agrees to the following:

A. Non-binding Recommendation:

The Government recommends a sentence of **TIME SERVED**, followed by a 3-year term of supervised release.

B. Acceptance of Responsibility

If the Defendant complies with all the terms of this Plea Agreement and clearly and continuously demonstrates acceptance of responsibility from the time the Defendant enters the plea of guilty pursuant to this Agreement, through the sentencing hearing and otherwise qualifies for a downward adjustment under U.S.S.G. § 3E1.1(a), and the offense level determined prior to the operation of § 3E1.1(a) is 16 or greater, the United States will not oppose the award of a two level adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1(a) and will move for an additional one level decrease pursuant to § 3E1.1(b).

The parties agree that the Defendant will not qualify for a decrease of the offense level under U.S.S.G. § 3E1.1(a) or (b) if the Defendant: (1) engages in any conduct which may support an upward adjustment under U.S.S.G. § 3C1.1, Obstruction of Justice; (2) violates any terms or conditions of pretrial release or of any cooperation agreement with law enforcement; (3) provides false or misleading statements to the Court, the Probation Office, the Pretrial Services Office, the U.S. Attorney's Office or any law enforcement entity; and/or (4) does not voluntarily assist the



United States in the recovery of the fruits and instrumentalities of the offense(s), the forfeiture of assets, and/or the identification of and recovery of assets to pay restitution as contemplated by the terms of this Plea Agreement.

C. Additional Sentencing Agreements

The Defendant understands that the Court will determine and assess punishment to be imposed on the Defendant. Defendant's sentence has not yet been determined by the Court. Any estimate of the probable sentence or advisory sentencing range provided to Defendant is not a promise, whether provided by any prior counsel, the government, or the United States Probation Officer, and is not binding on the Court, and the Defendant will not be permitted to withdraw the Defendant's plea of guilty or to withdraw from this agreement if the Court declines to follow any sentencing recommendations made by any party to this agreement or if the Court imposes a sentence greater than the Defendant expected. Moreover, the Government reserves the right to advocate in support of the Court's judgment should this case be presented to an appellate court.

**Reservation of Rights:**

The Government and Defendant each reserve the right to: (1) bring its version of the facts of this case to the attention of the probation office in connection with that office's preparation of a pre-sentence report; (2) dispute sentencing factors or facts material to sentencing in the pre-sentence report; and (3) seek resolution of such factors or facts in conference with opposing counsel and the United States Probation Office. All parties reserve full rights of allocution as to the appropriate sentence Defendant should receive, unless otherwise provided above.

**Breach of Agreement:**

If Defendant violates any term of this Plea Agreement, the Government will be released from its obligations under this Plea Agreement and may, in its sole discretion:

- (1) move to set aside Defendant's guilty plea and proceed on charges previously filed and any additional charges;
- (2) at sentencing or in any prosecution, use against Defendant any statements or information Defendant provided as part of the guilty plea,
- (3) seek to revoke or modify conditions of release;
- (4) advocate for any sentence up to and including the statutory maximum; and/or
- (5) decline to seek a reduced sentence.

Defendant understands and agrees that Defendant's breach of this Plea Agreement will not entitle Defendant to withdraw a guilty plea already entered. However, if Defendant withdraws from this agreement, Defendant agrees and understands that the factual basis set out in this Plea Agreement (1) may be used against Defendant in the Government's direct case and (2) sets forth facts that are true, accurate, admissible at any trial or hearing, and not subject to challenge under Federal Rule of Evidence 410(a) or Federal Rule of Criminal Procedure 11(f).

**Totality of Agreement:**

The Defendant further understands that this Agreement is binding only upon the United States Attorney for the Western District of Texas. This Plea Agreement sets forth the entirety of the agreement between the United States Attorney for the Western District of Texas, the Defendant, and Defendant's counsel.

This agreement cannot be modified except in writing and any modification or addendum must be signed by all parties.

JAIME ESPARZA  
UNITED STATES ATTORNEY

DATE: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
**BETTINA J. RICHARDSON**  
Assistant U.S. Attorney

**I, GAVIN BLAKE DAVIS have carefully read and reviewed the entirety of foregoing plea agreement. After careful consideration, and fully understanding my rights with respect to the pending criminal charges, I freely and voluntarily agree to the specific terms and conditions of the plea agreement.**

DATE: \_\_\_\_\_, 2024

\_\_\_\_\_  
**GAVIN BLAKE DAVIS**  
Defendant

Defendant's Initials  
\_\_\_\_\_



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
GAVIN DAVIS, )  
)  
Defendant. )

CRIM. NO: SA-22-CR-219-FB

**DEFENDANT’S MOTION FOR HEARING TO CONSIDER TEMPORARY RELEASE  
PURSUANT TO TITLE 18 U.S.C. SECTION 3142(i)**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE FRED BIERY:

COMES NOW defendant Gavin Davis by and through his undersigned counsel, filing this motion for hearing to consider temporary release pursuant to Title 18 U.S.C. Section 3142(i) and would respectfully show the Court:

I.

Title 18 U.S.C. Section 3142(i) provides in pertinent part: “[t]he judicial officer may, by subsequent order, permit the temporary release of the person...to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or another compelling reason.” See Title 18 U.S.C. Section 3142(i)(final paragraph). Guiding factors regarding a person’s defense include whether defendant had been afforded ample time and opportunity for to prepare for trial and participate in his defense, the complexity of the case, the volume of information, the expense, and the inconvenience. See United States v. Neice, 2022 WL78631 (N.D. Texas 2022), Exh. A. The defendant bears the burden to show that temporary release is necessary. Id. (citations omitted).

Defendant Davis first qualifies for temporary release as necessary for preparation of his complicated defense for his upcoming trial on September 23, 2024. Defendant Davis also qualifies for temporary release for the compelling reason that he has nearly served all his time projected by the advisory sentencing Guidelines, a fact evidenced by the Government's May 16, 2024 plea offer of Time Served and 3 years of supervised release. Indeed, the Honorable Judge Biery previously indicated in open court that "[e]ven if a jury were to convict you, my educated guess is that you have already served the time that you would be assessed under the guidelines. And the Court has no reason to believe that the guidelines would not be followed." See October 31, 2023 Transcript, (docket no.169), at p. 5.

### III.

Temporary release is absolutely necessary for the preparation of Mr. Davis' complicated defense at trial on September 23, 2024. The undersigned requested only a 70 day continuance when appointed on June 13, 2024 for the specific reason that defendant was close to serving more imprisonment time than his projected guideline range warranted. To prepare for a trial in 70 days from appointment is no easy task. It requires numerous in person meetings between Mr. Davis and his counsel, which at Karnes would be time consuming and expensive under the Criminal Justice Act. Temporary release is necessary, not merely for convenience.

Additionally, defendant has previously indicated to the Court on multiple occasions that he had no criminal intent, no mens rea, and no notice that his actions may be construed as violative of federal law. This is, of course, the most difficult and complicated type of defense to plan: for example, each email of the approximately 1634 emails turned over in discovery must be analyzed and categorized in such a manner to convey to the jury exactly what the defendant's intent was

with each stroke of the keyboard. Only Mr. Davis can truly efficiently organize his own e-mails in this manner, and it will take time. Temporary release and the constant use of a computer<sup>1</sup> to organize the e-mail exhibits would therefore be absolutely necessary, not merely for convenience, for timely preparation of Mr. Davis's complex defense for the September 23, 2024<sup>2</sup> trial.

#### IV.

Additionally, the Court has already found that defendant Davis is not such a significant risk of flight or danger to the community that must remain behind bars. On December 6, 2023, a release order was issued for defendant Davis, signifying that the Magistrate Judge had appropriately determined that he could be released. Defendant Davis represented himself at that time, and had insisted on the most flexible and least restrictive conditions. A condition by condition analysis was not undertaken by the Court at that time.

In light of the urgency for temporary release for necessary trial preparation, undersigned counsel respectfully requests that defendant be permitted according to the following proposed release plan:

- 1) Defendant shall be released on a \$30,000 unsecured bond;
- 2) Defendant shall reside with custodian Yvonne Davis in San Antonio, Texas;
- 3) Defendant shall not violate any federal, state or local laws;
- 4) Defendant shall not contact the witnesses during the pendency of this case;

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<sup>1</sup> Karnes County Detention Facility restricts access to a computer and restricts access to electronic discovery. The efficient categorization and organization of 1634 emails would not be possible by the trial date of September 23, 2024.

<sup>2</sup> Since Mr. Davis has been incarcerated for a time period close to his anticipated guideline range, it would not be appropriate for the undersigned to move for another continuance while Mr. Davis remains incarcerated.



- 5) Defendant shall not contact law enforcement during the pendency of this case unless required by emergency to do so;
- 6) Defendant shall be permitted to use a computer to: a) do his work as a futures and commodities trader and private investor and b) specifically assist in his defense.
- 7) Defendant shall surrender any passport;
- 8) Defendant shall not possess a firearm, destructive device or other weapon;
- 9) Defendant shall not use alcohol excessively;
- 10) Defendant shall report any contact with law enforcement to his counsel and counsel will immediately notify Pre-trial.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
THOMAS P. MOORE  
Attorney at Law  
Texas State Bar No. 14378320  
800 Dolorosa, Suite 206  
San Antonio, Texas 78207  
Tel: (210) 290-0661

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of July, 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will notify the following CM/ECF participants:

Bettina Richardson and Zachary Parsons, Assistant U.S. Attorneys at the U.S. Attorney's Office

\_\_\_\_\_/s/ Thomas P. Moore\_\_\_\_\_  
Attorney at Law