Supreme Court, U.S.
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No. 24A 239

In The
Supreme Court of the United States

♦

GAVIN B. DAVIS,

Petitioner,

v.

UNITED STATES,

Respondent.

♦

On Petition for a Writ of Certiorari to the United States Court of Appeals, Fifth Circuit

♦

RULE 22 APPLICATION FOR BAIL

♦

GAVIN B. DAVIS (#00197510), Pro Per
Applicant & Federalist
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INTRODUCTION

1. The Supreme Court has previously treated Rule 22 Applications as a petition for a writ of certiorari.[1] The lead case, *In re Gavin B. Davis,* case no. 24-5088, a Rule 20 Petition for a Writ of Mandamus regarding the existing circuit court split of interlocutory appellate review of 18 U.S.C. § 3164 pretrial release orders was filed nunc pro tunc to Apr. 19, 2024. On Aug. 1, 2024, the Court docketed, *Gavin B. Davis v. United States*, case no. 24-5204, a Petition for a Writ of Certiorari with a filing date of Jul. 18, 2024 and posing the same two (2) questions as 24-5088.[2]

2. On Aug. 9, 2024, Respondent, the Solicitor General, on behalf of the United States, expressly waived its right to respond to the 24-5088 Rule 20 Petition—and, in doing so, consensually relinquished a known right; and, that with which this Court's Rules plainly prescribe at Rule 20.3(b) and Rule 15.2. In effect, the Respondent is de facto estopped[3] as to the matters put forth by the Petitioner in the 24-5204 Petition.

3. **NOW**, Applicant, Mr. Gavin B. Davis, brings this **Rule 22 Application for Bail** to the Circuit Justice[4] for the Fifth Circuit Court of Appeals, the HON. SAMUEL A. ALITO JR., respectfully requesting his pretrial release on the least restrictive and most flexible terms and conditions as Constitutionally guaranteed. There is no differential standard of review and such review is de novo. (also,

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[1] see e.g. *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 44 (2023)

[2] 24-5204 intentionally trails 24-5088

[3] Applicant, in great faith and with aforethought, has Noticed the Solicitor General of its Rule 15.2 and other obligations. See e.g. Applicant's Letters of May 10, 2024 and Aug. 12, 2024 to Solicitor General (attached as Exhibit A). Also, see Applicant's significant, substantial and numerous positive estoppels in the 24-5088 Petition at pg. iii, fn. 1; pg. iii, fn. 2; pg. iv and fn. 3; pg. 1; pg. 2, fn.7; Jurisdiction, pg. 5-9 and fn. 13-24 (not disputed); pg. 6-7, fn. 20; pg. 7-8, fn. 23; pg. 8; pg. 11; pg. 11, fn. 29; and pg. 12, fn. 31.

[4] see e.g. *Harris v. U.S.*, 404 U.S. 1232 (1971); Circuit Justice has a non-delegable responsibility to make an independent determination of the merits of an application for bail; *Levy v. Parker*, 396 U.S. 1204 (1969); compared to standard of review put forth in *McGee v. Alaska*, 463 U.S. 1339 (1983); and, note, in part, that most of the situations involving requests for bail / release before the Supreme Court derive from post-conviction proceedings; compared to this Application, concerning *pretrial* liberty — which remains, novel, before the Court, in such regard. Also, this Court did, in fact, grant bail to applicants in the 1970s.

Applicant respectfully requests the timely appointment of counsel.[5,6]) (Unless the right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is excessive under the Eighth Amendment. (*Pugh v. Rainwater*, 572 F. 2d 1053 (5th Cir. 1978))

4. Applicant, Mr. Gavin B. Davis, is an individual that is presently a citizen of the United States of America. He holds a Bachelor of Science degree from Cornell University. Applicant has been unlawfully detained since May 10, 2022 for allegedly causing three of his fraternity brethren "substantial emotional distress".[7,8] The Supreme Court has said, 'In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." "Congressional intent [of the Bail Reform Act is] to give courts the power to deny release to "a small identifiable group of particularly dangerous defendants" (S. Rep. No. 225, 98th Cong. 1st Sess. (1983))

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[5] Sixth Amendment guarantees a criminal defendant the right to the assistance of counsel. Due Process clause of the Fourteenth Amendment guarantees a criminal defendant certain minimum safeguards necessary to adequately and effectively access the court; 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)) (the right to counsel may be fully retroactive (see e.g. *Michigan v. Payne*, 412 U.S. 47, 52, fn. 6 (1973); *Ashe v. Swenson*, 397 U.S. 436, 437, fn. 1 (1970); *Teague v. Lane*, 489 U.S. 288, 313-314 (1989)).

[6] Court is in receipt of Applicant's Rule 21 Motion to Appoint Counsel as provided with the 24-5088 Petition.

[7] USDC WD TX, 22-219-FB-HJB, Indictment, Dkt. 3, May 2022. The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious crimes (*U.S. v. Salerno*, 481 U.S. 739, 747, 107 S. Ct. 2095 95 L. Ed. 2d 697 (1987)). "The Bail Reform Act's dictate that the presumption of innocence shall not be modified or limited." (*U.S. v. Sanchez*, 2007 U.S. Dist. LEXIS 117088 (USDC ND TX 2007) quoting *U.S. v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987))

[8] Applicant fully retracted statements that the government has taken issue with. See Applicant's November 2022 Affidavit as attached (Exhibit B). Applicant had (has) no criminal intent; and no mens rea knowledge. The government, as well as the alleged victim witnesses, could have taken so many more reasonable and timely intervening steps prior to the steps that have led to the current state of affairs. (also Note, focus should be on whether an alleged threat made is if Applicant should have reasonably foreseen that the statement would be taken as threat by those to whom it was made. *U.S. v. Fulmer*, 108 F. 3d 1486, 46 Fed. R. Evid. Serv. (CBC) 411, 1997 U.S. App LEXIS 5869 (1st Cir. 1997))

5. Subsequent to moving in propia persona (out of vital necessity)[9] on Sep. 5, 2023 in USDC WD TX, 22-219, Applicant took the exact steps related to seeking his pretrial liberty that he timely requested that each of the prior four (4) defense attorneys take and on Dec. 6, 2023, was GRANTED conditional release[10]; though, on terms and conditions that remain as punitive, oppressive, inflexible, highly restrictive and unlawful, prima facie.

6. Such terms and conditions of the Dec. 6, 2023 Release Order[11] collectively constitute, in no uncertain terms, a "virtual prison"[12] and represent the

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[9] Applicant has had to move for the appointment of new counsel given inertness, negligence, incompetence, etc. (see e.g. *Mempa v. Rhay*, 389 U.S. 128, 134, 88 S. Ct. 254, 257, 19 L. Ed. 2d 336 (1967), "although counsel is present, the performance of counsel may be so inadequate that, in effect, no assistance of counsel is provided.")

[10] The Due Process clause of the Fourteenth Amendment includes "the right to be free from continued detention after it was or should have been known that the detainee was entitled to release." (*Campbell v. Johnson*, 586 F. 3d 835, 840 (11th Cir. 2009)) (Due Process limit on the duration of preventive detention 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)). Applicant had a right to be released proximate to the original detention in May 2022.

[11] USDC WD TX, 22-219-FB-HJB, Dkt. 173, 175, attached as Exhibit C. The terms and conditions of the Dec. 6, 2023 Release Order, in no uncertain terms, violate Applicant's Constitutional and other substantive rights. In addition, no condition-by-condition analysis was undertaken (see e.g. prior counsel T. Moore's Jul. 3, 2024, 22-219 Motion for 18 U.S.C. § 3142 (i) Release, Dkt. 250 at pg. 3, Section IV, ¶ 1; attached as Exhibit E). This is vitally important, as there is no "one size fits all" set of terms and conditions; each case requires a condition-by-condition analysis and the careful tailoring of the least restrictive and most flexible terms and conditions of pretrial release.

[12] 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 deminimus costs, respectively. The U.S. Supreme Court has carefully delineated fundamental rights and applies strict scrutiny to those rights. The fundamental liberties protected by the Due Process clause include most of the rights enumerated in the Bill of Rights and certain personal choices central to individual dignity and autonomy. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the Due Process clause protects" (*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) Compared to the terms and conditions off the Dec. 6, 2023 Release Order, which amount to punishment of the Applicant, prima facie. Under the Due Process Clause of the Fourteenth Amendment, a detainee, such as the Applicant, may not be punished prior to an adjudication of guilt in accordance with due process of law (see also, e.g., 18 U.S.C. § 3142 (j)). Such terms and conditions of the Dec. 6, 2023 release order would be more appropriate for: (A) different criminal charges altogether (see e.g. Nature and Seriousness of the danger to any person or the community that would be posed by a person's release (18 U.S.C. § 3142 (g)(4)) and (B) someone

very definition of an unlawful "preventive detention", prima facie. (detention or conditions of release cannot be excessive in relation to purpose (*Bell v. Wolfish*, 441 U.S. 520, 538, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)) (the demands of equal protection of laws and of due process prohibit depriving pretrial detainees of the right of other citizens to a greater extent than necessary to assure appearance at trial and security. (*Id.*)) (also, as the Applicant is in the pretrial stage of the proceeding, onerous, restrictive, inflexible terms and conditions of bail violate the Due Process clause of the Fifth Amendment and the excessive bail clause of the Eighth Amendment (see e.g. *U.S. v. Karper*, 847 F. Supp. 2d 350 (USDC ND NY 2011); also, *Taylor v. Kentucky*, 436 U.S. 478, 483, 98 S. Ct. 1930, 56 L. Ed. 2d 468 (1978); *U.S. v. Polovizzi*, 697 F. Supp. 2d 381, 389 at fn. 10 (USDC E.D.N.Y. 2010).

7. Applicant has now been in custody since May 10, 2022, or over twenty-seven (27) months. ("the maximum length of pretrial detention is limited by the stringent time limitations of the Speedy Trial Act[13]." *U.S. v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 95 L. Ed. 697 (1987)[14] — and this speaks to the heart of the controversy and the questions posed in the 24-5088 Petition)

8. Further, over eight (8) months have passed since the Dec. 6, 2023 proposed Release Order. Over nine (9) months have passed since the Hon. Fred Biery indicated on Oct. 31, 2023, that, "in reviewing the file .. the maximum punishment on these counts is five years. [Applicant] does not have any significant prior [criminal] record.[15] Even if a jury were to convict [the Applicant], my educated guess is that you have already served the time that you would be assessed under

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who has been convicted subject to probation (see e.g. *United States v. Quicksey*, 371 F. Supp. 561 (S.D. W. Va. 1974), modified, 525 F.2d 337 (4th Cir. 1975)) standards for post-trial release are much stricter than standards relating to pre-trial release). The record does not contain any reasonable basis, whatsoever, for concluding in totality, and separately, individually that the terms and conditions of release are necessary or lawful. (see e.g. *U.S. v. McConnell*, 842 F. 2d 105 (5th Cir. 1988) citing to *States v. Maull*, 773 F. 2d 1479 (8th Cir. 1985) and *U.S. v. Jessup*, 757 F. 2d 378 (1st Cir. 1985))

[13] 18 U.S.C. §§ 3161–3174

[14] 23-50812, FRAP 9 Motion at pg. 7, fn. 5

[15] Applicant has one (1) misdemeanor on his prior record; is in the lowest federal category (1); and is also rated by U.S. Pretrial Services National Risk Assessment as a "Low" Risk. Further, none of the 22-219 allegations are 18 U.S.C. § 3142 (e)(3) charges or carry a minimum sentence.

the [sentencing] guidelines. And the Court has no reason to believe that the guidelines would not be followed".[16]

10. On May 16, 2024, the prosecution, via written plea, offered the Applicant TIME SERVED and three (3) years Supervised Release.[17]

CIRCUMSTANCES OF OFFENSE AND SELECT PERTINENT FACTS AND PROCEDURAL BACKGROUND

12. Applicant was detained on **May 10, 2022** and charged with: (a) three (3) counts of 18 U.S.C. §§ 2261 (A)(2)(B) (Cyberstalking) which indicate that the Applicant caused three (3) of his fraternity brothers "substantial emotional distress"; and, (b) one (1) count of 18 U.S.C. § 875 (c) (Interstate communication threat to injure; stemming from one brief phone call on Dec. 24, 2020, or twenty-nine months prior to being charged). The three (3) alleged victim witnesses and the Applicant are graduates of Cornell University; have been employed in Hotel Real Estate (asset brokerage, structured financing, development, private equity) and have maintained professional and personal relationships with each other for over twenty (20) years. Further, the three (3) alleged victim witnesses live thousands of miles away from the Applicant (California, Colorado and Utah). There is no mandatory minimum sentence for the criminal allegations (Counts 1-4); which is indicative that such crimes are not so serious as to deny pretrial liberty.[18] These are not crimes were an accused is normally denied their Constitutional right to pretrial liberty. (("Courts should rarely detain Applicants charged with non-capital offenses; doubts regarding propriety of release should be resolved in favor of the Applicant. (*U.S. v. Townsend*, 897 F. 2d. 989 (9th Cir. 1990))[19]" None of the actions or conduct that the government has taken issue with for which brought the four (4) charges were immediate or proximate to May 10, 2022.

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[16] USDC WD TX, 22-219-FB-HJB, Oct. 31, 2023 Transcript, Dkt. 169, at pg. 5, ln 2-9
[17] Attached as Exhibit D
[18] In *U.S. v. Hinde*, 789 F. 2d 1490 (11th Cir. 1986); adding together maximum sentences is improper for the purposes of bail review.
[19] As cited in 5th Cir., 23-50812, FRAP 9 Motion for Release, pg. 11, ¶ 11

13. On **May 11, 2022**, U.S. Pretrial Services[20] completed a Pretrial Risk Assessment and the Applicant was rated as a "3" on a "0-5" point scale; or "Moderate Risk" (as divulged belatedly on Nov. 7, 2023 upon Applicant's own initiatives). (subsequent to moving in propia persona in September 2023, Applicant, on his own accord[21], engaged with U.S. Pretrial Services who updated each of (i) its Pretrial Services Report, including correcting previously incorrect information regarding the Applicant's criminal history; and (ii) have its national office update its Pretrial Risk Assessment; whereby, after updating, Applicant's Assessment was lowered to 'Low Risk' on Dec. 6, 2023—such errors are unconscionable).

14. On **May 20, 2022**, the Applicant appeared for arraignment and a detention hearing with Ms. Molly Roth (FPD)[22]. On this day, Applicant was unlawfully detained without bail.[23]

15. On **Sep. 5, 2023**, Applicant moved in propia persona in the trial proceeding.

16. On **Nov. 13, 2023**, the Court (HJB) found that Applicant had produced enough evidence to reopen the May 20, 2022 detention hearing[24] and set a hearing for Dec. 6, 2023.

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[20] 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))

[21] With urgency, Applicant had requested that each of the prior four (4) defense attorneys engage with U.S. Pretrial Services in order to update, iterate and correct detrimentally inaccurate information regarding the Applicant's criminal history: the Applicant has one (1) misdemeanor on his record, in totality (i.e. one "point").

[22] Terminated for cause: e.g. inertness, deficient performance, negligence in December 2022. See e.g. USDC WD TX, 22-219-FB-HJB, Dkt. 30, 31; also, see e.g. IAC Summary Table at Dkt. 109. Further, see 22-219, Dkt. 51, 52 for the deplorable work product of prior counsel John Kuntz IV.

[23] USDC WD TX, 22-219-FB-HJB, Dkt. 23. (denial of bail is the most restrictive; in *U.S. v. Presley*, 52 F. 3d 64 (4th Cir. 1995); such persons are usually facing life sentences; and/or are categorized as the most serious of offenses; here, Applicant is the opposite of such) (hearsay evidence is *not* sufficient to satisfy clear and convincing evidence required for denial of bail (see e.g. *U.S. v. Fisher*, 618 F. Supp. 536 (E.D. Pa 1985)) (also, none of the allegations fall under 18 U.S.C. § 3142 (e)(3); and, separately, none of the six (6) conditions of 18 U.S.C. § 3142 (f)(1) and (2) are present. *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))

17. On **<u>Dec. 6, 2023</u>**, Applicant obtained a release order (22-219, Dkt. 173, 175, Exhibit C hereto on his Motion for Release, Dkt. 171), though on terms and conditions that are punitive, oppressive, inflexible, highly restrictive and unlawful, prima facie.

18. On **<u>Dec. 8, 2023</u>**, Applicant filed a FRAP 9 Motion for Release in 5th Cir., 23-50812, from which movement to the Supreme Court in 24-5088 (and 24-5204) is brought. (also, Applicant requested the appointment of counsel in 23-50812)

19. On **<u>Jan. 8, 2024</u>**, Applicant's Motion for Reconsideration (22-219, Dkt. 184) of the Release Order (Dkt. 173, 175) was heard and summarily denied. On this day, Judge Fred Biery does not engage with the Applicant's thoughtful Motion for Reconsideration; but rather, provides a binary ultimatum with respect to the proposed terms and conditions of the Dec. 6, 2023 release order:

> Applicant: [I] would like to go through the motion[25] and talk about the terms and conditions [of the proposed release order] and what my view is ..
>
> Biery: No. You either agree to the conditions or you go back to jail. So your choice.

Biery's binary ultimatum is not a de novo review; but rather, is evidentiary as to the mere adoption of the Dec. 6, 2023 magistrate order without a bona fide opportunity for a hearing [26,27]

20. On **<u>May 15, 2024</u>**, the prosecution filed a superseding indictment[28] adding one (1) 18 U.S.C. § 115 (a)(1)(B), influencing federal official by threat,

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[24] A detention hearing may be reopened where new evidence justifies such action (as Ordered on Nov. 13, 2023 (see USDC WD TX, 22-219-FB-HJB, Dkt. 151-153)). The burden of production resting with the defense is "light" (see e.g. *U.S. v. Dominguez*, 783 F. 2d 702, 707 (7th Cir. 1986)).

[25] i.e. USDC WD TX, 22-219-FB-HJB, Dkt. 184, Defendant's Motion for Reconsideration

[26] USDC WD TX, 22-219-FB-HJB, Dkt. 203, Jan. 8, 2024 Transcript at pg. 18, ln 6-24

[27] See e.g., USDC WD TX, 22-219-FB-HJB, Dkt. 184, pg. 9, ¶ 9, citing to persuasive authority, "District Court in setting bail pending trial should have stated its reasons, *rather than merely adopting*, without even opportunity for hearing, report of magistrate." (*United States v. Edson*, 487 F.2d 370 (1st Cir. 1973)); also, see *Id.* at pg. 6, ¶ 3, citing to District Court's review of the Release Order is to be de novo; and, it may impose different conditions of release (see e.g. 18 U.S.C. § 3142 (c)(3); *U.S. v. Rueben*, 974 F. 3d 580, 585-6 (5th Cir. 1992) citing to *U.S. v. Fortna*, 769 F. 2d 243, 249 (5th Cir. 1985))

[28] USDC WD TX, 22-219-FB-HJB, Dkt. 210

allegation.[29] Applicant alleges, in part, that the prosecution has increased the charges following the exercise of one or more legal rights of the Applicant; where such action is Malicious, Vindictive and otherwise. Further, such action meets the prima facie case and threshold showing of the mere "appearance" of Vindictiveness, a low bar.[30] The prosecution is unable to prove that the increase in charge was justified by any objective change in circumstances or in the state of evidence that influenced the original charging process.[31] Therefore, such is evidentiary – and begs the question as to why.

21. On **May 16, 2024**, the prosecution, via written plea, offered the Applicant TIME SERVED and three (3) years Supervised Release.[32]

22. On **May 28, 2024**, U.S. Asst. Attorney Bettina Richardson sent prior standby counsel and former U.S. Asst. Attorney, Thomas P. Moore, an email, which states, in part, that under the United States Sentencing Guidelines (U.S.S.G.) Calculations: "15-21 months ([e]ach count involves a separate incident and a separate victim; potential for consecutive sentences)"; while also stating, "2A6.1 (a)(1) 12 [,] (b)(2) +2 (>2 threats) [,] 14 / I"; or, approximately *one-half* the time that the Applicant has now been in pretrial custody.

23. On **Jun. 13, 2024**, Applicant withdrew his *Faretta* waiver and Standby Counsel Moore was appointed as counsel. On this day, subsequent to appointment, counsel Moore indicates that the first order of business is moving for Applicant's pretrial release; and, also, that any potential concerns of the prosecutor with respect

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[29] The description of Count 5 in the superseding indictment indicates that on or about Jan. 14, 2021, Applicant, "did threatened to murder any Deputy United States Marshall who approached him, with intent to impede, intimidate, and interfere with the Deputy United States Marshall's performance of official duties." Applicant refutes that previously or currently he has any intention, whatsoever, of (a) murdering; or (b) physically harming; or (c) interfering with performance of official duties of: anyone including but not limited to (i) any authority; (ii) any federal employee; (iii) any state or municipal officer (to be reasonably construed in the broadest sense); or (iv) any other person. Also, see Applicant's sworn Affidavit executed on Nov. 3, 2022, attached as Exhibit B hereto.

[30] Regarding malicious prosecution, statutory overcharging, no bar to cross-action, see e.g. *Chiaverni v. City of Napoleon*, 144 S. Ct. 1745 (2024); also, see e.g. *Thompson v. Clark*, 596 U.S. 36 (2022); *Vierick v. U.S.*, 318 U.S. 236, 247, 63 S. Ct. 561, 87 L. Ed. 734 (1943); FRCrP 12(b)(3)(A);

[31] See e.g., *U.S. v. Leach*, 613 F. 3d 1295, 1980 U.S. App. LEXIS 19588 (5th Cir. 1980) (bad faith on part of government in bringing superseding indictment)

[32] Attached as Exhibit D

to the allegations could be appropriately addressed with a protective order (see e.g. 18 U.S.C. §§ 3142 (c)(1)(B)(v)).

24. On Jul. 3, 2024, prior counsel Moore filed an 18 U.S.C. § 3142 (i) Motion for Release[33] which included a (reasonable) proposed release plan for the Applicant developed by Moore and former FBI Agent Oliveras based on their combined fifty years of experience working for the U.S. Government.

JURISDICTION AND STANDARD OF REVIEW[34]

25. Rule 20 movement is authorized by 28 U.S.C. § 1651(a), The All Writs Act; which, is purposefully broad in scope to allow the Supreme Court to issue a wide variety of types of writ (see e.g. *Adams v. U.S.*, 317 U.S. 269, 63 S. Ct. 236, 87 L. Ed. 268, 1942 U.S. LEXIS 1 (1942), reh'g denied, 317 U.S. 713, 87 L. Ed. 568 (1943); this Court may avail itself of *all* auxiliary writs as aids in performance of its duties when use of such aids is calculated in its sound judgment to achieve the ends of justice entrusted to it.) Also, the word "necessary" in 28 U.S.C. § 1651(a) is not given narrow interpretation (*Whittel v. Roche*, 88 F. 2d 366, 1937 U.S. App. LEXIS 3128 (9th Cir. 1937)) Also, under 28 U.S.C. § 1651(a), Supreme Court has authority to grant interim relief in order to preserve jurisdiction of full court to consider Petitioner's claim(s) on the merits. (*Kimble v. Swackhamer*, 439 U.S. 1385, 99 S. Ct. 51, 58 L. Ed. 2d 225, 1978 U.S. LEXIS 4309 (1978)).[35]

26. Before considering questions raised for certiorari, Supreme Court may raise the question of jurisdiction of court below on which Supreme Court's own jurisdiction depends. (*Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 60 S. Ct. 44, 84 L. ed. 85, 1939 U.S. LEXIS (1939))[36]

27. Under FRAP 9, a criminal defendant, such as the Applicant, may immediately appeal an order continuing pretrial detention or refusing to set bail.

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[33] Attached as Exhibit E

[34] This Section should be read in conjunction with the Jurisdiction section in the 24-5088 Petition; and, itself, is expressed as if incorporated herein.

[35] 24-5088 Rule 20 Petition at pg. 1-2, fn. 7

[36] 24-5088 Rule 20 Petition at pg. 3, fn. 9

The language of the rule is broad, authorizing immediate appeal of orders regarding the release or detention of the defendant (FRAP 9 (a)(1)). An order (i) denying release under 3164 (c); or (ii) denying vacation of a detention order , are each plainly orders regarding a defendant's detention or release. Federal courts of Appeals have jurisdiction to review such orders before final judgment. An appellate court is obligated to independently assess strength of party's FRAP 9 motion for release pending appeal. (*United States v. Clark*, 917 F.2d 177, 18 Fed. R. Serv. 3d (Callaghan) 1051 (5th Cir. 1990))

28. Under FRAP 2, the Circuit Court can exercise its discretion to suspend FRAP 9 (b) requirement that a defendant's motion for release first be made in the District Court (see e.g. *U.S. v. Hochevar*, 214 F. 3d 342, LEXIS 13926 (2nd Cir. 2000))

29. Also, in pre-conviction or post-conviction detention appeal, unlike in ordinary appeal, court of appeals is free in determining appropriateness of order below, to consider materials not presented to district court. (*United States v. Tortora*, 922 F.2d 880 (1st Cir. 1990)) (Court of Appeals had jurisdiction to review District Court's order denying motion for modification of conditions of pretrial release, even though defendant was not detained, since order was final, was collateral to issue of guilt or innocence, involved risk of irreparable injury[37] to constitutional rights, and involved unsettled question of law which, if not reviewed, could evade ordinary appellate review. (*United States v. Spilotro*, 786 F.2d 808 (8th Cir. 1986)

30. The Bail Reform Act provides Guidelines and Conditions of Release of "possibly" dangerous defendants. Under Fed. R. Cr. P. 46, before trial, 18 U.S.C. §§

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[37] With regard to harm, injury, per se prejudice (and compounding thereof); there is a historic body of case law including but not limited to: *U.S. v. Salerno*; *Stack v. Boyle*; *Zadyvdas v. Davis* (2001); *U.S. v. Hare* (5th Cir. 1989); *Barker v. Wingo* (1972); *Smith v. Hooey* (1969); *U.S. v. Ewell* (1972); *U.S. v. Goodson*, 204 F. 3d 508 (4th Cir. 1989); *U.S. v. Spilofro*, 786 F. 2d 808 (8th Cir. 1986); *U.S. v. Byrd*, 31 F. 3d, 1329, 1339 (5th Cir. 1994). It is important to highlight the ill and harm when one's Constitutional right to pretrial liberty (as well as other fundamental rights) are violated via illegal detention—such as has occurred to the Applicant. Also, the Applicant has, in fact, shown actual prejudice (see e.g. *U.S. v. Byrd*, 31 F. 3d 1329, 1339 (5th Cir. 1994) (also, *U.S. v. Lucien*, 61 F. 3d 366 (5th Cir. 1995))

3142 and 3144 govern pre-trial release. Pursuant to (i) a United States citizen's Constitutional rights to pre-trial liberty; (ii) 18 U.S.C. § 3146; (iii) Fed. R. Cr. P. 46; and (iv) other authority; a defendant's right to pre-trial liberty is guaranteed; and, separately, on the most flexible and least restrictive terms and conditions.[38] The issue is determination of the amount of bail; secured or unsecured.[39] Under the Bail Reform Act, an authorized judicial officer may order release or detention of a defendant pending trial (18 U.S.C. § 3142). Release may be authorized: (i) on personal recognizance or an unsecured appearance bond (18 U.S.C. § 3142 (b)); or (ii) release subject to certain conditions (18 U.S.C. § 3142 (c)). In the alternative, a defendant may be detained pending trial (18 U.S.C. § 3142 (e)[40]).

18 U.S.C. § 3142 (c) Factors

31. Applicant, despite believing he need not have any conditions for release, for posterity, discusses relevant 3142 (c)[41] factors below.

32. Release pursuant to 18 U.S.C. §§ 3142 (c):

[38] The Fourth Amendment guarantees a right to pre-liberty. The Eighth Amendment guarantees a right to non-excessive or punitive terms and conditions of bail. The misuse of bail and pretrial custody is a matter of national and state importance. Since *Schlib v. Kuebel*, 404 U.S. 357 (1971), the Eighth Amendment protection against excessive (and punitive) bail has been assumed to apply through the Fourteenth Amendment (due process).

[39] see e.g. *U.S. v. Dohm*, 597 F. 2d 535 (5th Cir. 1979)

[40] Pursuant to 18 U.S.C. § 3142 (e), for a set of criminal allegations, there exists an automatic statutory presumption requiring rebuttal. Applicant's criminal allegations are not crimes falling under such statute; which, is highly evidentiary. Otherwise, pursuant to 18 U.S.C. §§ 3142 (f)(1), after a finding of probable cause for detention, a rebuttal presumption exists for the defense as the burden shifts to the defendant in demonstrating that there are no conditions of release sufficient to assure that the defendant will not engage in deeper criminal activity pending trial and that the defendant will appear for court. The rebuttal presumption merely shifts the burden of producing evidence, the ultimate burden of proof always rests with the government." (*U.S. v. Blauvelt*, LEXIS 87060 (USDC MD 2008) citing to D. Pringle, *Bail and Detention Federal Criminal Proceedings*, 22 Colo. Law 913, 920 (1993)). The defendant need only present some credible evidence indicating that there are conditions that could be imposed that would reasonably assure the safety of the community or another person. Thereafter, the court shall consider the 3142 (g) factors, as it would in a non-presumption case.

[41] Applicant has requested the appointment of counsel and is entitled to the assistance of counsel. Also, for more detail regarding 18 U.S.C. § 3142 (c) Factors, see USDC WD TX, 22-219-FB-HJB, Dkt. 171, Applicant's Motion for Release for the Dec. 6, 2023 Bond Hearing, at pg. 16-19 of 27, ¶¶ 19-20 (a)-(b)(xv).

(a). Pursuant to **18 U.S.C. §§ 3142 (c)(1)(A)**, the mandatory condition to not commit federal, state, or local crimes during release is sufficient deterrent, prima facie, to support a defendant's pretrial release. The onus is on the court, provided a sufficient factual predicate, to find a reasonable set of conditions upon which to provide a defendant his or her Constitutional right to pretrial liberty. On Nov. 13, 2023, in 22-219, the Magistrate reminded the government of the extraordinary weight revocation of bail carries. Applicant has suffered tremendously while detained without bond for the past twenty-seven (27) months. (in *U.S. v. Accetturo*, 783 F. 2d 382 (3d Cir. 1986), in determining the appropriateness of pretrial detention, there is a small but identifiable group of particularly dangerous defendants as to whom imposition of stringent release conditions nor prospect of revocation of release can reasonably assure public safety. (revocation is the most punitive; 18 U.S.C. § 3148 authorizes sanctions for violation of release conditions))

(b). Pursuant to **18 U.S.C. §§ 3142 (c)(1)(B)**, release is subject to the least restrictive condition, or combination of conditions that such judicial officer determines will reasonably assure (but not guarantee)[42] the appearance of the person as required and the safety of any other person or the community. Certain conditions could include:

(b)(i). Pursuant to **18 U.S.C. §§ 3142 (c)(1)(B)(v)**, Applicant stipulates not to contact the alleged victim witnesses during the pendency of the case. Anything broader than such no contact stipulation would be deemed restrictive and in violation of the Applicant's rights. No contact orders are sufficient to deter the conduct in question specifically with respect to the allegations and the persons named in the Indictment. Also, Applicant is unlikely to commit the same alleged offenses again during the course of the proceeding (see e.g. *U.S. v. Demker*, 523 F. Supp. 2d 677 (S.D. Ohio 2007))

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[42] The standard of "reasonable assurance" does not require that the release conditions "guarantee" the appearance of the accused or the safety of the community. (see e.g. *U.S. v. Orta*, 760 F. 2d 887, 891-892 (8th Cir. 1985))

(b)(ii). Pursuant to **18 U.S.C. §§ 3142 (c)(1)(B)(vi)**, a defendant may be required to report on a regular basis to a designated law enforcement agency, pretrial services agent, or other agency. Applicant posits that there is a difference between "reporting" and consent for supervision by the government (e.g. U.S. Pretrial Services [43]) or pretrial GPS Monitoring (intensive supervision; and, separately, a 4th Amendment violation); and that there are many more reasonable alternatives. Since Dec. 3, 2019, outside of overnight travel to Houston, Texas to compete in the Southwest Regional Masters Track & Field Championships, Applicant has not left San Antonio, Texas overnight; and, separately, has resided with his family – it is very simple to contact the Applicant, himself, or his family if his whereabouts are in question.

(b)(iii). Pursuant to **18 U.S.C. §§ 3142 (c)(1)(B)(xi)**, this subsection discusses potential for bond surety. Applicant is requesting Personal Recognizance release. Most recently in April 2018 (Superior Court of California, San Diego County, SCD266332 / 273403) Applicant was released on his Own Recognizance with no other terms and conditions of bail and allowed to freely leave each of the State of California and San Diego County prior to court in June 2018. Thereafter, Applicant successful completed eighteen (18) months of formal probation without incident; and eighteen (18) months of informal summary probation to the Superior Court, also

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[43] 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)). It is vitally important that, in addition to Pretrial Services being an adversary, the Pretrial Services supervision proposed in the Dec. 6, 2023 Release Order constitutes criminal punishment, infringes on the Applicant's substantive rights and may be more appropriate for someone on probation, post-conviction. Applicant should be released with (a) no third party supervision by (i) an adversary, such as Pretrial Services, or (ii) anyone. Also, for any (b)(i) subsequent changes to terms and conditions of release (if any), such should only be done formally through the Court; or (ii) administered (emphasis) through Pretrial Services without substantive ability to opine, infringe, affect or otherwise, Applicant's substantive pretrial rights. Also, post-conviction "supervised release conditions cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the latter three statutory goals of supervised release (18 U.S.C. § 3583(d); 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D) – and importantly, note the differences and distinctions between supervised release (as contested in the instant case) vis-à-vis pretrial release (see e.g. 22-219, Dkt. 171, at pg. 9, ¶¶ 1-2; pg. 11, ¶¶ 2-3; pg. 12, ¶ 4; pg. 13, ¶ 6; pg. 14, ¶ 8; pg. 19-20, ¶¶ 21-25 (flight risk); pg. 21, ¶¶ 26-28 (risk of danger)))

without issue.[44] Applicant made all of his court appearances, did not violate court orders and successfully completed probation. No other actions have been taken by third parties against the Applicant prior to being detained in 22-219 in May 2022. Applicant believes that he is entitled to Personal Recognizance release.

(b)(iv). Pursuant to **18 U.S.C. §§ 3142 (c)(2)**, any amount of bond surety greater than Personal Recognizance / Own Recognizance bonding and release would be an abuse of discretion by the Court (prima facie), when considering e.g. (i) Applicant's Declaration of Assets and Income to U.S. Pretrial Services; (ii) Applicant's appointment of Counsel due to indigence.

Flight Risk

33. Applicant does not pose any *serious* (operative legal qualification) risk of flight. Issue of court appearance is more likely than not, but not a guarantee. (*U.S. v. Westbrook*, 780 F. 2d 1185, 1189 (5th Cir. 1986))[45]

34. Applicant has a significant and substantial history of appearing[46], at liberty, in court to face any and all allegations of state and/or federal crime. Such a fact, weighs heavily in favor of the Applicant continuing to face any and all criminal allegations. As the Applicant requested that the Court take Judicial Notice (Dkt. 31, Request for Relief) of his federal habeas petition[47], *Davis v. Bonta*, USDC SD Cal, 21-2042, Doc. 1; which, the Court GRANTED (see Dkt. 34, Dec. 6, 2022) (also lodged, Dkt. 120), do Note for additional information regarding Applicant's record of court

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[44] Also, due to changes in the California penal code; today, probation would be ordered for approximately one-half the time that the Applicant successfully completed without issue; and, all such charges are also now automatically expunged in California today.

[45] USDC WD TX, 22-219-FB-HJB, Dec. 6, 2023, Motion for Release, Dkt. 171 at pg. 19, ¶ 21; also, Jan. 8, 2024, Motion for Reconsideration, Dkt. 184 at pg. 10, ¶ 12

[46] See *Davis v. Bonta*, USDC SD Cal, 21-2042, Doc. 1, pg. 48-49, ¶ 124 listing Defendant's twenty-seven (27) non-duplicative court appearances. Note: 21-2042, Doc. 1, is attached to 22-219, Dkt. 120

[47] USDC SD Cal denied Defendant's federal habeas petition, finding that it did not have jurisdiction as the Defendant was not in custody. Defendant, generally, disputes such, finding, in part, that: (i) had the charges been more serious (i.e. subject to lengthier sentencing), he would have been in custody at the time of filing the federal petition (21-2042); (ii) had his State of California habeas petition to stay probation pending direct appeal (including that before the Supreme Court of the United States, see e.g. *Davis v. California*, SCOTUS, 20-752, cert. denied) been granted, he would have been in custody at the time of filing the federal petition; and (iii) if he had filed the federal habeas petition any earlier, it would have been denied under *Younger* Abstention doctrine.

appearances see Dkt. 120, 21-2042 at ¶ 124; also, ¶¶ 14-17, 22, 26-27. A defendant can miss court for good cause – with respect to false prior failure to appear allegations, see e.g. Dkt. 120, 21-2042 at ¶ 130; also, at ¶¶ 44-45 (waiving attorney conflict); ¶ 46 (appointment of counsel request); ¶ 47 (notice of availability); ¶ 49 (voice message to Superior Court); ¶ 52 (select detail regarding VT); ¶¶ 53-54 (bail).

35. Proof by preponderance of evidence is the standard of proof necessary to demonstrate flight risk under 18 U.S.C. § 3142 (see e.g. *U.S. v. Logan*, 613 F. Supp. 1227 (D. Mont. 1985)). The government has provided no evidence or proof of flight risk previously or currently. (also, no affirmative evidence that the Applicant was fleeing jurisdiction or taking affirmative steps to do so (see e.g. *U.S. v. Riveria-Cruz*, 363 F. Supp. 2d 40 (D.P.R. 2008)). Applicant has none of the characteristics that might be associated with flight risk: e.g. large sums of available funds; numerous places to conceal himself; use of aliases; etc. (once again, see 18 U.S.C. § 3142 (j))

36. Applicant is the antithesis of a flight risk as clearly demonstrated by his court actions. Applicant is not someone who evades the law; but rather, is better typified as someone ***highly*** engaged with the process of the law.

Risk of Danger

37. The burden of proving by clear and convincing evidence dangerousness to community requires more than a preponderance of the evidence and something less than beyond a reasonable doubt; evidence must support conclusion in regard to danger of a ***high*** degree of certainty (*U.S. v. Chimurenga*, 760 F. 2d 400 (2d Cir. 1985))

38. "Detaining a defendant based on dangerousness due to alleged past conduct, without the required finding of [ ] would amount to punitive incarceration for a charged offense for which the Applicant has not been convicted." *U.S. v. Robertson*, 547 F. Supp. 3d, 560 (USDC ND TX 2021) citing to (*Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)) (see also, 18 U.S.C. § 3142 (j)) (also, *U.S. v. Stanford*, 394 F. App'x 73, 74 (5th Cir. 2010)). Yet, this is precisely what has

happened, thus far; and, subject to the punitive terms and conditions of the Dec. 6, 2023 Release Order, has no end in sight (therefore, perpetuating, Due Process concerns and continued violation of the Defendant-Appellant's rights), absent timely review, modification to the least restrictive and most flexible terms and conditions and redress.

42. Government must present more reliable and convincing evidence that Applicant poses threat to community. The hearsay and other information proffered is part of "criminal framing" for illicit purpose(s) including but not limited to denying the Applicant his Constitutional right to pretrial liberty; or other infringements on his substantive rights. None of the information proferred by the government proves any propensity for criminal activity in the future (or past) or dangerousness (prima facie) (see e.g. *Fassler v. U.S.*, 885 F. 2d 1016 (5th Cir. 1988))

41. Applicant is not a gang member or recidivist offender. Applicant has no history of violence. There is absolutely no proof, whatsoever, that the Applicant is a danger to the alleged victim witnesses or the community.

18 U.S.C. § 3142 (g) Factors

43. Generalizing, it appears that a common reason that persons seeking pretrial release denied by the trial court seeking appeal, are often denied thereafter by the appellate court for failing to engage with the 3142 (g) factors.[48]

44. Pursuant to 18 U.S.C. § 3142 (g)(1), **Nature and Circumstances of the Offense** charged. See prior section herein, Circumstances of Offense.

45. Pursuant to 18 U.S.C. § 3142 (g)(2), **Weight of Evidence.** The government has, in fact, not provided any bona fide evidence. However, Applicant showing great diligence has provided substantial explanation and certain evidence rebutting the government's false, partial and misleading assertions. The weight of the evidence weighs, clearly, in favor of the Applicant.

46. Pursuant to 18 U.S.C. § 3142 (g)(3), **History and Characteristics of the person.**

[48] For more detail regarding 18 U.S.C. § 3142 (g) Factors, see USDC WD TX, 22-219-FB-HJB, Dkt. 171, Applicant's Motion for Release for the Dec. 6, 2023 Bond Hearing at pg. 21-25 of 27, ¶¶ 29-32 (a)-(c)

(a). Pursuant to 18 U.S.C. § 3142 (g)(3)(A), person's character:

(a)(i). *Physical Health.* As reported to U.S. Pretrial Services[49], Applicant is a recent three-time Masters All-American Track & Field athlete at 400m (2020 – 2022)[50]. In order to achieve such level of physical health, Applicant: (i) exercises approximately eight to ten hours per week; (ii) maintains a highly regimented diet; and (iii) leads an extremely holistic lifestyle. In summary, Applicant's lifestyle is exemplary of someone whose character is built of a strong work ethic and extraordinary level of commitment and dedication to goals.

(a)(ii). *Mental Health.* As reported under penalty of perjury, Applicant is unmedicated and has no mental health issues. Certainly, as would be reasonably expected, Applicant has suffered emotionally from a traumatic marriage dissolution in California (a no fault divorce state) but has shown great effort, resolve and progress in restarting his life.

(a)(iii). *Family Ties.* the vast majority of family, economic and social ties are in the instant jurisdiction[51]. Applicant has resided with his family in the greater San Antonio area since Dec. 3, 2019. His family has lived in the greater San Antonio since 2012. The living situation would be aptly described as stable.

(a)(iv). *Employment.* Understanding the Applicant's employment history is of importance.

Beginning in late 2021, the Applicant begin training with the Chicago, IL based Futures and Commodities firm, TopStep. Immediately prior to Applicant's May 10, 2022, Applicant had completed his TopStep training and entered into an independent contractor agreement with TopStep to begin trading their capital. Once an independent contractor agreement is executed, TopStep, trading through the CBOE, establishes a trading subaccount with one of its brokerages. A trader's SSN (and EIN as Applicant utilizes a single-member LLC) is run, which would

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[49] On November 1, 2023, Defendant provided a copy of his Masters Track & Field Rankings to Ms. Brenda Q. of U.S. Pretrial Services.

[50] Defendant was detained on May 10, 2022 and has been unable to compete since this time.

[51] The government failed to show by a preponderance of the evidence that the Defendant posed serious risk of flight.

include various Patriot Act compliance type background checks via the S.E.C. TopStep employs, in an independent contractor capacity, as is the case of most professional traders throughout the United States, a few thousand persons. Nearly all of such individuals trade from their residences; and are colloquially known in the securities industry as "pajama traders". There are no personnel reporting duties when entering into an independent contractor agreement with TopStep. Their decision making processes are entirely rules based and objective. Upon release, Applicant does not anticipate having to retrain with TopStep; however, given the passage of time, he will have to resubmit his independent contractor agreement with TopStep and begin the background check processes again, prior to establishing his trading subaccount. As indicated, Applicant was about to begin trading with TopStep in May 2022, and traders can make substantial sums of money.

Applicant has established a Texas S-Corporation, H-Fin Capital Partners, for the purposes of long-short U.S. equity investment. Such entity is a shell entity with less than $2,000 of capital. Such entity has not begun, and is not anticipated to begin, raising third party capital anytime in the near future. Such entity was current with its State and Federal filings at the time of Applicant's detainment in May 2022. As indicated above, Applicant also has a single-member LLC, also H-Fin Capital Partners, established for the purposes of contracting with TopStep. At the time of Applicant's detainment in May 2022, such entity was current with its State and Federal filings. Each entity is vetted through its bank for regulatory purposes. The LLC is also vetted through TopStep and its own obligations such as those with broker-dealers, securities laws and the S.E.C. The Applicant and each of the two Texas business entities have had no state or federal regulatory issues. Upon release, Applicant will have to file late returns and pay late filing fees. However, as indicated there is no income currently associated with either entity.

Previously, Applicant entered into an Options training program with Salt Lake City, UT based Maverick Capital. However, Applicant did not earn any income with Maverick Capital and traded a $25,000 account (Maverick's accounts go up to $1 million for their top traders).

From 2003 to 2016, Applicant was an intermediary engaged in hotel real estate finance, transacting over $2.6 billion in his career. During this period he was a Managing Director with New York City based Ackman-Ziff; a Senior Vice President with CBRE and part of its original Structured Financing team and also a principal with three boutique hotel capital advisory firms. From 2000 to 2002, Applicant was a Financial Analyst with the Canadian Imperial Bank of Commerce in their Investment Banking division.

(a)(v). *Financial Resources.* As previously indicated, Applicant has little to no income or assets currently; however, that is anticipated to positively change over the next twelve (12) months. At the same time, he is not without financial support in regard to food, shelter and basic necessities.

(a)(vi). *Length of Residence in the Community.* Applicant has resided with his family in the greater San Antonio area since Dec. 3, 2019. His family has lived in the greater San Antonio since 2012. The living situation would be aptly described as stable.

(a)(vii). *History of Drug or Alcohol Abuse.* It is unconsciousable that U.S. Pretrial Services reports any history of drug or alcohol abuse. In fact, in light of the evidence provided and Applicant's All-American Masters Track & Field achievements, this is the antithesis of any form of substance abuse issues, prima facie.

(a)(viii). *Record of Court Appearances.* The Applicant can most aptly be typified as "running at the law" not from it – that is to say, he is highly engaged with the process of the law. As the Court has, in fact, taken Judicial Notice of *Davis v. Bonta*, USDC SD Cal, 21-2042 (see e.g. Dkt. 120, 21-2042, ¶ 124; also, ¶¶ 14-17, 22, 26-27. A Applicant can miss court for good cause – with respect to false prior failure to appear allegations, see e.g. Dkt. 120, 21-2042 at ¶ 130; also, at ¶¶ 44-45 (waiving attorney conflict); ¶ 46 (appointment of counsel request); ¶ 47 (notice of availability); ¶ 49 (voice message to Superior Court); ¶ 52 (select detail regarding VT); ¶¶ 53-54 (bail))

(b). Pursuant to 18 U.S.C. § 3142 (g)(3)(B), **Supervision**. Applicant is not currently on supervision (e.g. probation, parole) and has no other pending charges. Further, Applicant did, in fact, successfully complete three (3) years of probation in the contested Superior of California, San Diego County, SCD266332 / 273403 case and controversy.

(c). Pursuant to 18 U.S.C. § 3142 (g)(4), **Nature and Seriousness of the danger to any person or the community that would be posed by a person's release.** Applicant's charges carry no minimum sentence, a five-year maximum sentence and are almost never run consecutively. While recognizing that any criminal allegations are, of course, serious—in the context of criminal allegations, these are not considered serious. Release of the Applicant poses no threat to any person or the community, prima facie.

REQUEST FOR RELIEF

51. Si plures conditions ascriptae et si division quilbet vel alteri erovum satis est obtemperare; et disjunctivis, sufficit alteram esse veram; et ad veritalem copulative requiritur quad utraque pars sit vera.[52]

Pretrial Release – Scenario One – the United States Expressly Waived its Rights

52. In its Jul. 29, 2024 express waiver of its right to file a response to the 24-5204 Petition, Respondent, United States, has consensually relinquished a known right; and, that with which this Court's Rules plainly prescribe at Rule

[52] Intention is that one combination amongst several alternatives will be taken; a priori, to best effect the purpose of the Applicant, in multiple regards, as it relates to equitable redress and the timely return of his liberty wholly intact, or as near thereto as possible – in the spirit of such Constitutional right – and so as not to violate or place undue restrictions upon any other substantive and/or fundamental rights of the Applicant, such as the ability to work in the manner in which he is accustomed (i.e. with the ever day tools of our modern society such as a computer, telephone, electronics and access to the internet – tools so vitally important to one's livelihood as to have secured a more important position on Maslow's hierarchy as that of food and shelter. (also note that any form of computer monitoring (if any) is to be narrowly tailored (see e.g. *U.S. v. Lifshitz*, 369 F. 3d 173, 190 (2d Cir. 2004))

20.3(b) and Rule 15.2[53]. Therefore, A PRIORI, the Applicant respectfully requests that the Court: render its opinion on the aforementioned via declaration, decree or as otherwise may be appropriate to provide legal force and effect (i.e. in its express waiver, is the Respondent estopped, as alleged? and, if so, does that render Applicant's timely movement for release ever stronger e.g. in light of Rule 15.2?)

53. As a result of the opposition's express waiver of its right to file a response to the 24-5204 Petition, the Applicant requests that the Court:

(a) timely Order his release from federal pretrial custody on personal recognizance[54] or an unsecured appearance bond (18 U.S.C. §§ 3142 (b))[55]; or if denied for any reason; thereafter,

(b) timely Order his release from federal pretrial custody subject to certain conditions (18 U.S.C. § 3142 (c)); where such conditions are fashioned to fit the case and controversy; or, in the alternative,

(c) timely appoint counsel for the purposes of bail review before this Court including but not limited to briefing and/or evidentiary hearing and/or as otherwise may be relevant.

---

[53] As Rule 15.2 prescribes that the Respondent shall address *any* (emphasis added) 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. The Respondent is, in fact, estopped.

[54] In April 2018, Applicant (in Superior Court of California, San Diego County, case no.: SCD266332 / SCD273403) (a case, still contested (see e.g. *Davis v. Bonta*, USDC SD Cal, 21-2042, Doc. 1; lodged at Dkt. 120 (Oct. 30, 2023)) and resulting in totality in one (1) misdemeanor (as discussed at length in court on Nov. 13, 2023)) was released on his Own Recognizance with no other terms and conditions and allowed to freely leave each of the jurisdiction of the County and State of California. Applicant thereafter returned for his court appearances. Applicant also complied with all terms and conditions of probation (despite moving on each of direct appeal, collateral appeal and seeking to stay probation pending appeal) for three (3) years without each issue. These cases included protective orders which were fully abided by without issue. The protective orders did, in fact, expire and were not renewed. Applicant has peacefully contacted such persons subsequent to the expiration of the protective orders. In this case and controversy, all that is necessary, as the Applicant, himself, has stipulated to, is to not contact the alleged victim witnesses during its pendency.

[55] Intentionally omitted

Pretrial Release – Scenario Two – 18 U.S.C. § 3164 Release

54. If the Applicant's release is GRANTED under the prior paragraph above, Applicant requests that the Court render its Opinion on his right to release and on lawful terms and conditions of release under 18 U.S.C. § 3164. In the alternative, if the Applicant's release is not granted under the prior paragraph above, Applicant requests that the Court:

(a) timely Order his release from federal pretrial custody on personal recognizance[56] or an unsecured appearance bond (18 U.S.C. §§ 3142 (b))[57]; or if denied for any reason; thereafter,

(b) timely Order his release from federal pretrial custody subject to certain conditions (18 U.S.C. § 3142 (c)); where such conditions are fashioned to fit the case and controversy; or, in the alternative,

(c) timely appoint counsel for the purposes of bail review before this Court including but not limited to briefing and/or evidentiary hearing and/or as otherwise may be relevant.

55. Applicant has now been detained in violation of his Constitutional and other fundamental rights for over twenty-seven (27) months. Even if such delay were not of constitutional magnitude, Fed. R. Crim. P. 48 (b), and other authority, allow the Court to dismiss the indictment.[58] Applicant has demonstrated strong grounds for the dismissal of the Indictment (Dkt. 3) and case (22-219) with prejudice as respectfully requested for by the Court. (see e.g. *United States v. Blackwell*, 12 F.3d 44, 48 (5th Cir. 1994); dismissal with prejudice where maximum sentence was three years, and defendant had already served two years)

[56] See fn. 55

[57] See fn. 56

[58] "The prohibition in the criminal justice systems against unnecessary delay is designed (1) to protect against undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern public accusation and (3) to protect the ability of an accused to defend himself" (*U.S. v. Goodson*, 204 F. 3d 508 (4th Cir. 1999) citing to *Smith v. Hooey*, 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 627, 86 S. Ct. 773 (1966)).

56. The Applicant requests any other relief that the Court deems appropriate.

CERTIFICATION AND CLOSING

By signing below, I certify to the best of my knowledge, information and belief that this Filing and accompaniments: (a) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (b) is supported by existing law; (c) the factual contentions have evidentiary support, or if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (d) the filing otherwise complies with the requirements of Fed. R. Cr. P.

DATE: 8/28/24

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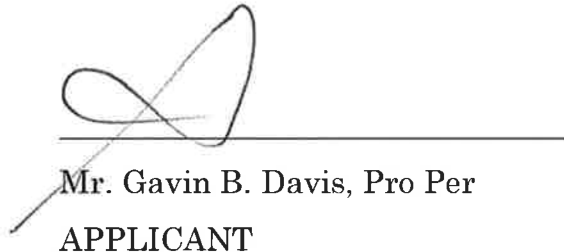


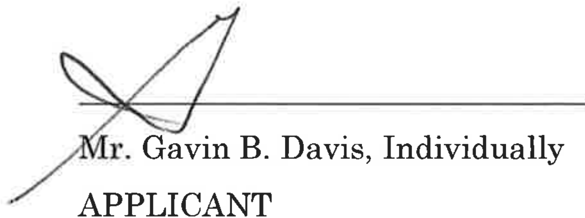
Mr. Gavin B. Davis, Pro Per
APPLICANT

DECLARATIONS MADE UNDER PENALTY OF PERJURY

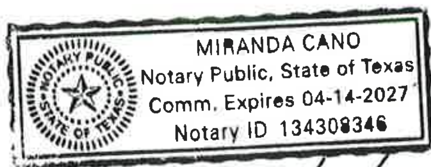
All matters herein by the Applicant are so declared under penalty of perjury as true and correct to the best of my knowledge and so declared as true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746.

DATE: 8/28/24

NUNC PRO TUNC



Mr. Gavin B. Davis, Individually
APPLICANT



MC 8/28/24

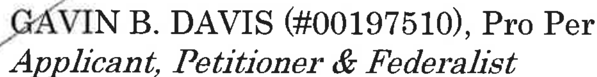
No.____________

In The
Supreme Court of the United States

GAVIN B. DAVIS,
Petitioner,
v.
UNITED STATES,
Respondent.

CERTIFICATE OF SERVICE

As required by Supreme Court Rules 39.2, 29.5 (c), Proof of Service, I certify that one (1) copy Rule 22 Application for Bail was completed via U.S. Mail to Respondent, United States of America, Solicitor General of the United States at Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington D.C. 20530-0001 and Assistant U.S. Attorney, Bettina J. Richardson, 601 NW Loop 410, Suite 600, San Antonio, TX 78206. The aforementioned is declared under penalty of perjury as true and correct pursuant to 28 U.S.C. § 1746. Executed on 8/28/24.



GAVIN B. DAVIS (#00197510), Pro Per
Applicant, Petitioner & Federalist

8/28/24

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 deminimus 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. Hooey*, 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))"

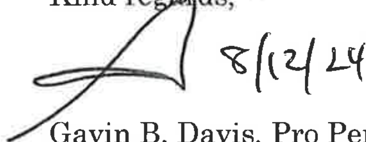
(7) pg. 11-12. "Defendant has been unlawfully detained in violation of his Constitutional and substantive rights since May 10, 2022 , despite: (a) the allegations carrying no minimum sentence and a five (5) year maximum; (b) such allegations are not 18 U.S.C. § 3142 (e) charges; and, (c) Petitioner being 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 propia 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,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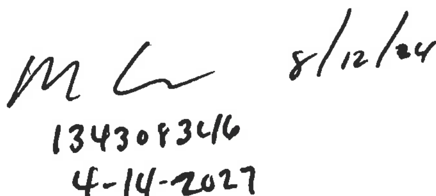
Gavin B. Davis, Pro Per
APPLICANT / PETITIONER / DEFENDANT
Federalist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May 10, 2024

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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[1] of a rule conformed[2] Petition for a Writ of Certiorari;

[1] Statement of Case; Jurisdiction; Reasons for Granting Relief; etc. are included.
[2] 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[3] 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.

---

[3] 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)[4]:

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

[4] 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.).

<u>TIME IS OF THE ESSENCE</u>

Kind regards, 5/10/24

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

5/10/24

EXHIBIT (B)

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.));

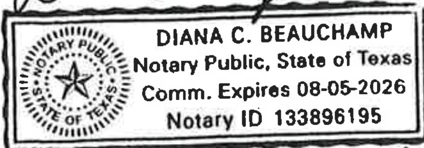
7. In regard to the government's (Davidson) commentary on May 20, 2022 in #22-219, in part and expressly reserving the right to expand and/or clarify commentary thereon, herein or otherwise; as well as in defense thereto, in whole or in part (as herein), to correct the record given substantial materially 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

11/3/22

DATE: November 3, 2022 Gavin B. Davis



#133896195

Exhibit C

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:

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

Type of Bond

☐ (1) This is a personal recognizance bond.

[X] (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)*:

If this bond is secured by real property, documents to protect the secured interest may be filed of record.

☐ (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

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. Howerver, 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 connectted 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.

AO 199C (Rev. 09/08) Advice of Penalties

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

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

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

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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, 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

Defendant's Initials

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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

Defendant's Initials

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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.

Defendant's Initials

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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.

Defendant's Initials

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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

____

EXHIBIT (E)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**CRIM. NO: SA-22-CR-219-FB**
GAVIN DAVIS,	)	
	)	
Defendant.	)	

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[1] 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[2] 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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1 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.

2 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/__________
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd 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