

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

25 FEB 24 AM 8:03

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

UNITED STATES OF AMERICA

§
§
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§
§

v.

CR. NO. 1:20-CR-289(3)-RP

BENNY DANESHJOU

EMERGENCY APPLICATION FOR A STAY OF PROCEEDINGS PENDING APPELLATE REVIEW

To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

1. Introduction

Petitioner, Benny Daneshjou respectfully requests an **emergency stay of trial proceedings/Writ of Mandamus** in United States District Court, Western District of Texas, Austin Division, scheduled to begin on 2/24/2025, due to a **violation of the Sixth Amendment right to counsel, as the court is forcing Petitioner to defend himself Pro se, knowing petitioner is not an attorney and has no knowledge of law, Criminal Law, Court procedures, and Case Laws.**

The district court **wrongfully denied Petitioner's request for an emergency Stay, Writ of Mandamus** before the Fifth Circuit Court of Appeals had the opportunity to review it. Petitioner has been denied the right to an attorney and is now being forced to trial without legal representation. Immediate relief is necessary to prevent irreparable harm and a fundamental violation of constitutional rights.

This Court has repeatedly ruled that the **denial of legal representation is a structural error requiring automatic reversal and immediate intervention.** Petitioner's case meets all requirements for a stay.

2. Procedural Background

1. Petitioner was charged in United States District Court, Western District of Texas, Austin Division and repeatedly has requested **legal counsel**, for the upcoming trial invoking his **Sixth Amendment rights.**

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2. **The trial court refused to appoint an attorney, despite clear constitutional protections.**
3. **Petitioner filed a Writ of Mandamus seeking appellate review, but the district court improperly dismissed it, preventing the Fifth Circuit from ruling on the matter.**
4. **Petitioner now seeks an emergency stay of trial proceedings pending full appellate review by the Fifth Circuit or this Court.**

3. Legal Basis for a Stay

A. Denial of Counsel is a Fundamental Violation of the Sixth Amendment

Under *Gideon v. Wainwright*, 372 U.S. 335 (1963), the denial of legal representation is a structural error requiring automatic reversal.

The Supreme Court reaffirmed this in *Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000), stating that a denial of counsel fundamentally undermines a fair trial.

A trial without legal counsel violates *United States v. Cronin*, 466 U.S. 648 (1984), which held that if the right to counsel is completely denied, prejudice is presumed, and the conviction is unconstitutional.

B. The Supreme Court Has the Power to Grant a Stay Under Rule 23

A stay is warranted under Supreme Court Rule 23 and the four-factor test in *Nken v. Holder*, 556 U.S. 418 (2009):

A stay is warranted under Supreme Court Rule 23 because:

- **(a) Petitioner has a strong likelihood of success on the merits – The denial of counsel violates the Sixth Amendment and well-established Supreme Court precedent.**
- **(b) Irreparable harm will result – If trial proceeds, Petitioner will be unlawfully convicted without an attorney, constituting a fundamental miscarriage of justice.**
- **(c) No harm to the government – The Government has no legitimate interest in proceeding with an unconstitutional trial.**
- **(d) The public interest supports a stay – The right to counsel is a fundamental constitutional protection.**

C. Structural Errors Require Automatic Reversal and Immediate Relief

- In **Schriro v. Summerlin, 542 U.S. 348 (2004)**, the Court held that **structural errors require automatic reversal**.
- The lack of counsel here is not a **harmless error**; it is a **structural defect** requiring immediate intervention before the trial begins.

D. The Denial of Mandamus Review Violates Due Process

- The Supreme Court has ruled that appellate courts must review **constitutional violations before trial (Ex parte Young, 209 U.S. 123 (1908))**.
- By denying mandamus, the lower court has effectively **blocked review of a serious constitutional violation, violating due process** under the **Fifth and Fourteenth Amendments**.

4. Relief Requested

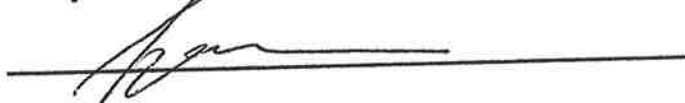
Petitioner respectfully requests that Justice Alito:

1. **Issue an immediate stay** of trial court proceedings pending full appellate review.
2. **Grant a Writ of Mandamus** ordering the lower court to provide Petitioner with legal counsel.
3. **Grant any further relief** this Court deems just and proper.

5. Conclusion

Petitioner is facing imminent trial **without legal counsel**, in clear violation of the Sixth Amendment. This Court's intervention is urgently needed. Petitioner respectfully asks for a stay of proceedings to allow appellate review..

Respectfully submitted, By:



Benny Daneshjou,

Address: 2300 Portofino Ridge Drive, Austin, Texas, 78735,

Phone # 512 347 8900

Email address ; bdaneshjoulegal@gmail.com

Attachments:

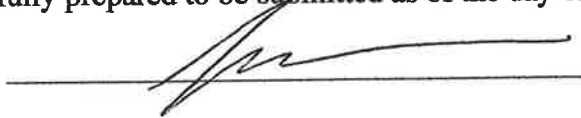
Exhibit I : UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION's ruling after the motion filed with the United States Court of Appeals for the Fifth Circuit, prior to any rulings by United States Court of Appeals for the Fifth Circuit, is attached.

Exhibit II ; Petitioner filed with United States Court of Appeals for the Fifth Circuit, that was denied by the UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was transmitted to the Court, Honorable Judge of this Court, and the Prosecutors.

Respectfully prepared to be submitted as of the day of February 24th , 2025:

A handwritten signature in black ink, appearing to read 'Benny Daneshjou', is written over a horizontal line.

By : Benny Daneshjou, Pro Se, Address : 2300 Portofino Ridge Drive, Austin, Texas 78735,
Phone ; 512 347 8900, Email: bdaneshjoulegal@gmail.com

Exhibit. I



Activity in Case 1:20-cr-00289-RP USA v. Zenker et al. Order on Motion to Stay

TXW_USDC_Notice@txwd.uscourts.gov <TXW_USDC_Notice@txwd.uscourts.gov>

Sat, Feb 22, 2025 at 4:25 PM

To: cmecf_notices@txwd.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court [LIVE]**Western District of Texas****Notice of Electronic Filing**

The following transaction was entered on 2/22/2025 at 4:25 PM CST and filed on 2/22/2025

Case Name: USA v. Zenker et al.**Case Number:** 1:20-cr-00289-RP**Filer:****Document Number:** 1099**Docket Text:****ORDER DENYING Motion to Stay as to Benny Daneshjou (3). Signed by Judge Robert Pitman. (jg3)****1:20-cr-00289-RP-3 Notice has been electronically mailed to:**

Benny Daneshjou &nbsp; &nbsp; bdaneshjoulegal@gmail.com

Daniel W. Dworin &nbsp; &nbsp; dan@dworinlaw.com, morgan@dworinlaw.com

David B. Frank &nbsp; &nbsp; David@DavidFrankLaw.com

Douglas W. Gardner douglas.gardner@usdoj.gov, CaseView.ECF@usdoj.gov,
luis.martinez4@usdoj.gov, usatxw.ecfau@usdoj.gov

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1:20-cr-00289-RP-3 Notice has been delivered by other means to:

Sally Daneshjou
2300 Portfolio Ridge Dr.
Austin, TX 78735

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1080075687 [Date=2/22/2025] [FileNumber=31763241-0] [7baad5ad5cda30c5b8217b2eebd90fcedc2e9c9c266be37cdf3eafcf3e3bb0add7a4657c71090dff39725566dc0589f01d6857d6935cf61404ed95b47888be3]]

Exhibit. II



U.S. District Court

Texas Western - Austin

Receipt Date: Feb 21, 2025 1:43PM

Benny Daneshou
2300 Portofino Ridge Drive
Austin, TX 78735

Rcpt. No: 2259

Trans. Date: Feb 21, 2025 1:43PM

Cashier ID: #SC (6842)

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
203	Notice of Appeal/Docketing Fee		1	605.00	605.00

CD	Tender			Amt
MO	Money Order	#9230800889	02/21/2025	\$605.00
Total Due Prior to Payment:				\$605.00
Total Tendered:				\$605.00

Comments: 1:20CR00289-003

Clerk, U.S. District Court - Austin Division - 501 West Fifth Street, Suite 1100, Austin, TX 78701 - (512) 916-5896 - www.txwd.uscourts.gov

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA

§
§
§
§
§

v.

CR. NO. 1:20-CR-289(3)-RP

BENNY DANESHJOU

**NOTICE OF APPEAL AND REQUEST FOR AN EMERGENCY STAY
FROM BEING FORCED TO ATTEND TRIAL OR HANDLING THE CASE
PRO SE, WITHOUT LEGAL REPRESENTATION**

Defendant-Appellant Benny Daneshjou hereby files this Notice of Appeal and Request for an Emergency Stay to the United States Court of Appeals for the Fifth Circuit Pending Appeal from the patently unjust and unconstitutional order of the United States District Court for the Western District of Texas, Austin Division “ Court “, denying his repeated and unequivocal requests for court-appointed counsel and compelling him to proceed to a complex criminal trial pro se, to defend himself in a criminal trial without legal counsel, based on the Court’s allegations and un-substantiated excuse, Defendant-Appellant “forfeited his right to a counsel” (which Daneshjou never waived) and as a result the **Court is Violating Daneshjou’s 6th Amendment Constitutional Right**, to be entitled to be represented by legal counsel and his **Civil Rights**. A Hearing is requested, from this court, if and when required and scheduled by the United States Court of Appeals for the Fifth Circuit, while the court continues denial of legal defense. Defendant-Appellant respectfully and urgently requests an **Emergency Stay** of the trial proceedings scheduled to commence on (February 24th 2025) in the United States District Court for the Western District of Texas, Austin Division. Given the gravity of the constitutional violations at issue, immediate intervention by this Honorable Court is essential to prevent a grave miscarriage of justice.

Statement of Facts

Defendant-Appellant requested from the Court for a Court Appointed Attorney by multiple fillings and has been denied each one, and is being forced to go to a trial without any knowledge of Law, Criminal Law Procedures of the Court, Evidentiary Rules of Evidence, Case Laws, etc., that would be related to the accusations made, which would harm Daneshjou greatly. Action by the Court is an infringement upon defendant’s

fundamental right to a fair trial, due process, and Defendant-Appellant has been forced in a position that be an impossibility to perform. Most recent extensive request was submitted on February 18th, 2025, raising justifications to need an attorney. Court denied the request on February 19th, 2025, per attached (**Exhibit A**) and denied the request without any documents associated with the Order, and Court used unsubstantiated and statements made by the Judge in the hearing held on 2/10/25 that defendant was instructed to attend without any legal representations to argue on his behalf. Defendant did not opt to represent himself. Defendant has not been in any position to argue, or object to the Judge in hearing from fear of being held in contempt, punished, and even knowing what be appropriate to state, and has made his requests in writing, addressing that **Court is Violating Daneshjou's 6th Amendment Constitutional right**, to be entitled to be represented by legal counsel, and not be left defenseless.

- I) In two orders by this Court, issued on 1/17/25, Court stated that Court will appoint a **Standby Counsel** in order to attempt to "mitigate some of the prejudice Defendant otherwise may suffer by representing himself in this case". Fact is that the Court selected and appointed a Standby Counsel who admittedly has had no success to assist any other Defendants in the past on other cases, and the scope of his service would only be on responding to questions that Daneshjou would ask. Daneshjou has not opted, or requested to represent himself, and has objected to the order by multiple fillings and has been denied. Daneshjou is being forced by the Court to be left Defenseless, Harmed, Compromised and Prejudiced and be denied his Constitutional and even Civil Rights to be represented by a competent attorney. Defendant-Appellant is not an Attorney, and has no knowledge of criminal law, has never tried a case in any Courts, and he is unaware of how to manage a trial or effectively prepare and argue any hearings in this Court. The fact is that Defendant did not opt or request to represent himself, and in all instances he has requested representation by Counsel as this is a complex case where Daneshjou without any experience or knowledge has to argue the case against professional and experienced prosecutors who have spent decades of practice in the criminal courts.
- II) The scope of advice by the **Standby Counsel** was for Defendant-Appellant to study the extremely large file, go on line, and then later advised to go to the University of Texas Library and learn law (to learn only in the matter of few days). These instruction for Daneshjou how to learn that law and defend himself in a criminal case with no law expertise, would be considered "Extraordinary" and was brought to the attention of the Court and was ignored. **Standby Counsel** has made no attempts to prepare Defendant for the trial, or any hearing, fillings, prepare evidence to be represented in a trial, or any work as competent defense attorney would do. Finally on 1/19/2025 **Standby Counsel** advised Daneshjou that he should consider to file an Notice of Appeal and Request for an Emergency Stay to not have to attend and manage the trial scheduled in

just a few days. **Standby Counsel** would not help or make any attempts to prepare this Notice of Appeal and Request for an Emergency Stay, and when he was asked for some instructions, or assistance for preparation of this filing, or even show some standard form to follow, **Standby Counsel** has continued to ignore Defendant-Appellant's request for this needed assistance. The appointment of the **Standby Counsel** has not been requested, or be in anyways, the replacement of competent defense counsel needed for the defense and justice for the Defendant-Appellant, and Defendant -Appellant has not waved his right to a counsel for his defense.

- III) Court has dismissed **Six Motions of Substance** without any hearings to be argued by an attorney. Motions were filed by prior attorney(s) when Defendant-Appellant had resources to pay, but lost their services due to not having funds to pay and Court granted their withdrawal, knowing the predicament Defendant-Appellant would be put in. Court even dismissed the **Seventh Motion** that was filed against The government for **Breach** of the Client/ Attorney privileged information titled “ **Motion to Dismiss Indictment with Prejudice for Outrageous Government Conduct.**” due to Government's **Breach**, and holding on to the information for many months and not disclose the **Breach** to the Court and the attorney that was on the case for several months. That Motion also did not have any hearing by an attorney. Government used the **Breach** to bring extreme harm to Defendant-Appellant to the point he would not have financial resources to employ an attorney of his choice to represent him in the case or in the upcoming trial.
- IV) Defendant-Appellant as instructed by the Court timely filed a declaration of his finances on 2/18/25 that would qualify him for a competent court appointed attorney.
- V) This same Court on 4/9/24 when Defendant-Appellant ran out of resources and Court allowed his attorney to withdraw, and forced Daneshjou to attend a hearing Pro se, stated : “**I must advise you that in my opinion, a trained lawyer would defend you far better than you could defend yourself. I think it unwise of you to try to represent yourself. You are not familiar with the law. You are not familiar with court procedure. You are not familiar with the Rules of Evidence and I strongly urge you not to represent yourself**”, Despite this prior and prescient acknowledgment of Defendant-Appellant's manifest inability to represent himself, the District Court now callously compels Defendant-Appellant to proceed to trial without counsel, thereby ensuring a fundamentally unfair and unjust outcome.
- VI) Defendant-Appellant is not only indigent and legally untrained but also a 73-year-old man suffering from serious and debilitating health conditions that significantly impair his cognitive abilities and physical stamina. He is, at times, overmedicated and

demonstrably unable to effectively focus on the complex and demanding requirements of legal proceedings. The District Court is fully aware of Defendant-Appellant's precarious health condition.

VII) When a judge allows a Defendant's lawyer to withdraw, potentially leaving the Defendant unrepresented at trial. "Critical Stages" and Timing of Withdrawal. The judge failed to adequately inquire into substantiated reasons for the withdrawal and the impact on the Defendant. The judge should have explored alternatives to keep the attorney on board or granted a continuance to avoid the Defendant be forced to go to trial in little over one month when he gave the prior counsel with decades of being a Prosecutor and Criminal Trial experience, over 8 months to get familiar with that case and prepare for a trial.

VIII) Denial of a Fair Opportunity to Secure Counsel: The timing of the withdrawal, combined with the judge's actions (or inaction), has denied Defendant-Appellant a fair opportunity to obtain new representation.

* *Mempa v. Rhay* (1967): This case defines "critical stages" where the right to counsel applies. Trial is unquestionably a critical stage. Emphasizes that the withdrawal occurred at a point where representation was most crucial,

* *Unreasonable Withdrawal*: Lawyer's withdrawal was unjustified and untimely, especially it was close to the trial date and left the defendant no reasonable chance to secure new counsel.

* *Wheat v. United States* (1988): This case deals with conflicts of interest and a court's discretion regarding attorney representation. However, it also underscores the court's duty to protect the defendant's right to counsel. A judge can't simply rubber-stamp a withdrawal without considering its impact on the defendant. The judge must inquire into the reasons for the withdrawal.

* *Morris v. Slappy* (1983): While this case is about substitution of counsel, it touches upon the idea that the Sixth Amendment guarantees not just a lawyer, but a reasonable opportunity to establish an attorney-client relationship. A sudden withdrawal, especially close to trial, can hinder this.

* *United States v. Wade* (1967): While focused on lineups, this case reinforces the concept of critical stages and the need for counsel at those junctures.

* *Argersinger V. Hamlin* (1972) - The potential for incarceration, not the severity of charge, triggers the right to attorney.

Argument and Authorities

I) Denial of the Right to Counsel: Defendant-Appellant's Sixth Amendment right to counsel, a cornerstone of our criminal justice system, is being blatantly and continuously violated by the District Court's actions. He has now being denied court-appointed counsel despite his documented indigence and has never knowingly, intelligently, and voluntarily waived this fundamental constitutional right. The District Court's actions effectively force him to proceed pro se, a situation he has consistently and forcefully objected to.

II) Presumption of Prejudice: The denial of counsel at a critical stage of the proceedings, such as trial, presumptively prejudices the defendant, obviating the need to demonstrate specific instances of prejudice. *United States v. Cronin*, 466 U.S. 648 (1984). This presumption applies with particular force in this case, given Defendant-Appellant's advanced age, debilitating health conditions, and complete lack of legal training.

III) Likelihood of Success on Appeal: Defendant-Appellant has a substantial likelihood of success on appeal given the clear, egregious, and continuous violation of his Sixth Amendment right to counsel. (Cite relevant case law, including *Gideon v. Wainwright*, *United States v. Cronin*, *Mempa v. Rhay*, *Wheat v. United States*, *Johnson v. Zerbst*, *Faretta v. California*, and other applicable Fifth Circuit precedent). The District Court's own prior statements acknowledging Defendant-Appellant's inability to represent himself further underscore the likelihood of success on appeal.

IV) Irreparable Harm: Defendant-Appellant will suffer immediate and irreparable harm if forced to proceed to trial without counsel. A wrongful conviction due to the denial of counsel constitutes a quintessential and irreparable harm, particularly given the potential consequences he faces. The harm is all the more acute given Defendant's advanced age, deteriorating health, and the irreversible nature of a criminal conviction.

V) Balance of Hardships: The balance of hardships overwhelmingly favors granting the stay. The government will not be unduly prejudiced by a brief and reasonable delay to allow Defendant-Appellant to secure competent legal representation. The severe and irreparable harm to Defendant-Appellant from being denied counsel, a harm that strikes at the very core of his constitutional rights, far outweighs any potential inconvenience to the government. Indeed, the government has a vested interest in ensuring that criminal trials are conducted fairly and in accordance with the Constitution.

VI) Public Interest: It is demonstrably in the public interest to uphold the Sixth Amendment right to counsel and ensure that all criminal trials are conducted fairly and in accordance with due process principles. Allowing a trial to proceed where a Defendant has been denied counsel, especially after the court itself acknowledged the Defendant's inability to represent himself, would severely undermine the integrity of the judicial system and erode public confidence in the fairness of criminal proceedings.

VII) Denial of Due Process: Forcing a defendant to trial without counsel when they are entitled to it can be a denial of due process under the Fourteenth Amendment. Violation of Due Process applies when a defendant is being forced to proceed to trial without counsel that violates the defendant's due process rights. Defendant-Appellant is denied his Due process by this Court.

Additionally a judge forcing a defendant to proceed to trial without a lawyer when the defendant has a right to counsel is a serious constitutional violation. A petition to recuse (remove) the judge would likely focus on demonstrating bias, prejudice, or a failure to uphold the defendant's fundamental rights. A Judge may not engage in :

I) Fundamental Fairness: Due process requires fundamental fairness in legal proceedings. Depriving a Defendant of their right to counsel can undermine the fairness of the entire trial.

II) Judicial Bias: If the judge's actions suggest bias against the Defendant or prejudice regarding the right to counsel, this could be grounds for recusal.

III) Failure to Properly Assess Waiver: If the defendant previously waived their right to counsel, the judge must ensure that the waiver was knowing, intelligent, and voluntary. If the judge did not properly assess the validity of the waiver, this can be grounds for recusal. In this case Defendant-Appellant has never waived his rights to Counsel.

* *Lavoie v. Superintendent, Correctional Institution at Norfolk* (1st Cir. 2000): This First Circuit case (while not Supreme Court precedent) is persuasive authority. It discusses factors courts should consider regarding waivers of counsel, emphasizing the judge's role in ensuring the defendant understands the complexities of trial and the disadvantages of self-representation. This is relevant even if the defendant didn't explicitly waive counsel, as the withdrawal effectively forces them to proceed pro se.

IV) Appearance of Impropriety: Even if actual bias cannot be proven, the appearance of impropriety can be grounds for recusal in some jurisdictions. If the judge's actions create a reasonable doubt about their impartiality, this could be sufficient.

Alternative Request for Writ of Mandamus

To the extent that any issue raised in this appeal is more appropriately addressed through a Petition for Writ of Mandamus, Defendant-Appellant hereby requests, in the alternative, that this Honorable Court construe this filing as such a petition and grant appropriate relief.

To the extent an issue or subject matter of the appeal is instead properly the subject of a petition for Writ of Mandamus, Defendant-Appellant request the Court alternatively consider the appeal as to that issue or subject matter a petition for Writ of Mandamus as may be further addressed in an Appellants' Brief.

The Sixth Amendment of the Constitutions

That is being denied by this Court has been upheld by other Courts where Defendant's right to an attorney and prevents them from being forced to defend themselves without one. Sixth Amendment Right to Counsel: The Sixth Amendment to the U.S. Constitution guarantees the right to counsel in criminal prosecutions. This right is fundamental and applies to both federal and state courts.

* Johnson v. Zerbst (1938): This case established the standard for a valid waiver of a constitutional right, which must be knowing, intelligent, and voluntary. Daneshjou has not waived his constitutional rights and in all instances he has objected to be forced to defend himself, and constantly has requested the court to appoint him a counsel, or have the Government wave the conflicts that is not a concern with some counsel to pursue possibilities to secure a counsel on payment arrangements, if acceptable by counsel.

* Gideon V. Wainwright (1963) - Supreme Court case declaring that the Sixth amendment's guarantee of a right to an attorney applies to state & federal courts. If defendant is charged with crime where imprisonment is a possibility they have right to lawyer, if they can't afford one, the court must appoint one for them.

* Faretta V. California (1975) - defendants have the right to represent themselves (pro se), this right is not absolute. A Judge must ensure the defendant's decision to waive their right to counsel is made knowingly, intelligently and voluntarily. The defendant must

understand the consequences of self-representation. In this case Daneshjou has never waved his rights, and has continuously object to be forced to defend himself, pro se.

Defendant-Appellant is not an attorney and unfamiliar to any specific format that is required for the Notice of Appeal and Request of an Emergency Stay to the United States Court of Appeals for the Fifth Circuit and in absence of legal representation, advice, or assistance, he has prepared this document and submitted on this day.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Defendant-Appellant respectfully and urgently prays that this Honorable Court of Appeals for the Fifth Circuit:

- * Grant this Emergency Motion for Stay Pending Appeal and immediately stay the trial proceedings scheduled to commence on (February 24th 2025).
- * Direct the District Court to appoint competent and qualified counsel to represent Defendant-Appellant in all further proceedings in this matter.
- * Grant such other and further relief as this Honorable Court deems just and equitable.

Respectfully prepared to be submitted as of the day of February 21st , 2025:

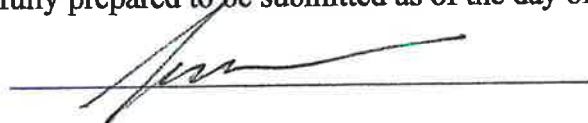


By : Benny Daneshjou, Pro Se, Address : 2300 Portofino Ridge Drive, Austin, Texas 78735,
Phone ; 512 347 8900, Email: bdaneshjoulegal@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2025, a true and correct copy of the foregoing instrument was filed in person with the Clerk of the Court, and respectfully request that notification of such filing and the filling itself be transmitted to the Court , Honorable Judge of this Court, Standby Counsel, Prosecutors and all Counsel of records.

Respectfully prepared to be submitted as of the day of February 21st , 2025:



By : Benny Daneshjou, Pro Se, Address : 2300 Portofino Ridge Drive, Austin, Texas 78735,
Phone ; 512 347 8900, Email: bdaneshjoulegal@gmail.com

Exhibit. A



Activity in Case 1:20-cr-00289-RP USA v. Zenker et al. Order on Motion to Appoint Counsel

TXW_USDC_Notice@txwd.uscourts.gov <TXW_USDC_Notice@txwd.uscourts.gov> Wed, Feb 19, 2025 at 11:35 AM
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U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 2/19/2025 at 11:35 AM CST and filed on 2/19/2025

Case Name: USA v. Zenker et al.

Case Number: 1:20-cr-00289-RP

Filer:

Document Number: No document attached

Docket Text:

Text Order DENYING [1090] Motion to Appoint Counsel as to Benny Daneshjou (3) entered by Judge Robert Pitman. For reasons stated on the record on February 10, 2025, and failure to raise new justifications, IT IS ORDERED that the motion is DENIED. (This is a text-only entry generated by the court. There is no document associated with this entry.) (qtlc)

1:20-cr-00289-RP-3 Notice has been electronically mailed to:

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1:20-cr-00289-RP-3 Notice has been delivered by other means to:

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United States Court of Appeals
for the Fifth Circuit

No. 25-50128

United States Court of Appeals
Fifth Circuit

FILED

February 26, 2025

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

BENNY DANESHJOU,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CR-289-3

UNPUBLISHED ORDER

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellant's motion for stay of trial proceedings pending appeal is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to have District Court appoint full time counsel for all further proceedings is DENIED.

FILED

February 22, 2025

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BY: Julie Golden
DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENNY DANESHJOU,

Defendant.

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1:20-CR-289-RP-3

ORDER

Before the Court is Defendant Benny Daneshjou’s (“Defendant”) notice of appeal and request for a stay of his February 24, 2025, trial. (Dkt. 1097).

The United States alleges that from 2019 to 2020, Defendant was a member of a drug trafficking and money laundering conspiracy. (Dkt. 1083, at 1–2). Specifically, the government alleges that Defendant, who is a real estate developer, helped purchase properties to launder the proceeds gained from selling large quantities of controlled substances. (*Id.*). On September 5, 2023, the United States filed a superseding indictment, charging Defendant with one count of Conspiracy to Manufacture and Distribute Psilocybin Mushrooms and other Controlled Substances in violation of 21 U.S.C. §§ 846 and 841, one count of Aiding and Abetting the Manufacture and Distribution of Psilocybin Mushrooms and other Controlled Substances in violation of 21 U.S.C. §§ 841(a)(1) and 18 U.S.C. § 2, and one count of Conspiracy to Launder Monetary Instruments in violation of 18 U.S.C. § 1956(h). (Dkt. 694).

For more than a year, trial has been delayed due to Defendant’s inability to work with counsel. Since 2023, two retained and one appointed counsel have sought to withdraw on the grounds that they could not continue representing Defendant without violating their ethical and professional obligations. (Dkts. 606, 863, 1057). When the Court granted Defendant’s most recent

counsel's motion to withdraw, it appointed standby counsel to help Defendant to prepare for trial. (Dkt. 1074). The Court explained to Defendant the limited role of standby counsel. (Minute Entry, Dkt. 1072). In Defendant's notice of appeal, he argues that standby counsel has not done enough to assist him. (Dkt. 1097, at 2–3).

This case is currently set for trial on February 24, 2025. On February 21, 2025, Defendant filed a notice of appeal and request for an emergency stay of trial. (Dkt. 1097). Defendant bases his notice and request on this Court's orders requiring that he proceed to trial *pro se* with standby counsel. (*Id.*). Having considered the parties' briefing and the relevant law, the Court finds that Defendant fails to state a valid basis for interlocutory appeal; therefore, his notice of appeal does not deprive the Court of jurisdiction.

Interlocutory appeal of issues before trial in a criminal case are disfavored and rare:

The general principle of federal appellate jurisdiction, derived from the common law and enacted by the First Congress, requires that review of *nisi prius* proceedings await their termination by final judgment. . . . This insistence on finality and prohibition of piecemeal review discourage undue litigiousness and leaden-footed administration of justice, particularly damaging to the conduct of criminal cases.

DiBella v. United States, 369 U.S. 121, 124 (1962) (citing *Cobbledick v. United States*, 309 U.S. 323, 324–326 (1982)).

“[The] Court has interpreted the jurisdictional statute to permit departures from the rule of finality in only a limited category of cases falling within the “collateral order” exception delineated in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 545–547 (1949). Such orders “must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.” *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978).

In criminal cases, Courts adhere to the collateral order exception to the rule of finality in three types of pretrial orders in criminal prosecutions. See *United States v. Hollywood Motor Car*

Company, Inc., et al, 458 U.S. 463, 465 (1984). Each type involves “an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.” *Id.* at 266 (citation omitted). First, an order denying a motion to reduce bail may be reviewed before trial. The issue is finally resolved and is independent of the issues to be tried, and the order becomes moot if review awaits conviction and sentence. *Stack v. Boyle*, 342 U.S. 1 (1951). Second, orders denying motions to dismiss an indictment on double jeopardy, or third, orders that address Speech or Debate grounds are immediately appealable. Such orders finally resolve issues that are separate from guilt or innocence. Therefore, appellate review must occur before trial to be fully effective.

The right guaranteed by the Double Jeopardy Clause is more than the right not to be convicted in a second prosecution for an offense: it is the right not to be “placed in jeopardy”—that is, not to be tried at all. *Abney v. United States*, 431 U.S. 651, 97 (1977). Likewise, the right guaranteed by the Speech or Debate Clause is more than the right not to be convicted for certain legislative activities: it is the right not to “be questioned” about them—that is, not to be tried for them. *Helstoski v. Meanor*, 442 U.S. 500 (1979). Refusals to dismiss an indictment for violation of the Double Jeopardy Clause or of the Speech or Debate Clause, like denials of bail reduction, are truly final and collateral, and the asserted rights in all three cases would be irrevocably lost if review were postponed. *Flanagan v. United States*, 465 U.S. 259, 265–66 (1984). None of these rights are asserted in Defendant’s notice and request.

Other courts have denied interlocutory appeals related to appointment of counsel. In *United States v. Culbertson*, 598 F.3d 40, 48 (2d Cir. 2010), the court was faced with remarkably similar conduct to that of Defendant in this case. After having the services of a public defender and three other attorneys appointed by the district court from the CJA panel, the defendant once again moved for appointment of new counsel in the district court. His dissatisfaction with the last three attorneys apparently stemmed from their failure to conduct his defense in a manner that he thought proper.

Id. The court denied the motion and the defendant sought an interlocutory appeal, which the court denied. *Id.*; see also *United States v. Kane*, 955 F.2d 110 (1st Cir. 1992). Here, allowing immediate interlocutory appeal based on grounds asserted by Defendant would severely undermine the policies behind the final judgment rule. This is especially true when Defendant has engaged in behavior that has repeatedly delayed the trial of this case.

The mere filing of a notice of appeal from an unappealable order does not deprive the Court of jurisdiction to try this case. The Fifth Circuit held in *United States v. Hitchmon*, 602 F.2d 689, 691 (5th Cir. 1979) (en banc), that “the notice of appeal from a non-appealable order does not render void for lack of jurisdiction acts of the trial court taken in the interval between the filing of the notice and the dismissal of the appeal” In *Hitchmon*, the Court declined to reverse convictions rendered in a trial conducted during the pendency of the appeal. As the Fifth Circuit noted, “[t]he contrary rule leaves the court powerless to prevent intentional dilatory tactics, forecloses without remedy the nonappealing party’s right to continuing trial court jurisdiction, and inhibits the smooth and efficient functioning of the judicial process.” *United States v. Hitchmon*, 602 F.2d 689, 694 (5th Cir. 1979). That reasoning is particularly apt here, as a stay would reward Defendant for his dilatory tactics, which have delayed trial for more than a year.

Defendant has failed to allege proper grounds for an interlocutory appeal. Accordingly, **IT IS ORDERED** that Defendant’s request for a stay, (Dkt. 1097) is **DENIED**.

SIGNED on February 22, 2025.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE