No. __A_____

In the Supreme Court of the United States

STEPHEN E. STOCKMAN,
Applicant,

v.

UNITED STATES 0F AMERICA.
Respondent.

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

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APPENDIX TO EMERGENCY APPLICATION FOR HOME CONFINEMENT DURING THE COVID-19 PANDEMIC AND THIS COURT'S RESOLUTION OF A TIMELY FILED PETITION FOR A WRIT OF *CERTIORARI* TO THE FIFTH CIRCUIT

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APPENDIX

AO 245B (Rev. 09/08) Judgment in a Criminal Case Sheet 1

UNITED STATES DISTRICT COURT

Southern District of Texas

Holding Session in Houston

UNITED STATES OF AMERICA
V.
STEPHEN E. STOCKMAN

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: **4:17CR00116-002**

USM NUMBER: 23502-479

☐ See Additional Aliases.

Marlo Pfister Cadeddu
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count(s) 1-5, 7-12, 14-22, 24, 27 and 28 on April 12, 2018 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1341, and 2	Mail fraud	01/24/2013	1
18 U.S.C. §§ 1341, and 2	Mail fraud	04/11/2012	2
18 U.S.C. §§ 1341, and 2	Mail fraud	02/17/2014	3
18 U.S.C. §§ 1341, and 2	Mail fraud	02/18/2014	4

☒ See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 6.

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the .

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 7, 2018
Date of Imposition of Judgment

Signature of Judge

LEE H. ROSENTHAL
CHIEF U. S. DISTRICT JUDGE
Name and Title of Judge

November 14, 2018
Date

DEFENDANT: **STEPHEN E. STOCKMAN**
CASE NUMBER: **4:17CR00116-002**

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1343, and 2	Wire fraud	03/28/2012	5
18 U.S.C. §§ 1343, and 2	Wire fraud	07/02/2012	7
18 U.S.C. §§ 1343, and 2	Wire fraud	05/13/2014	8
18 U.S.C. § 371, 52 U.S.C. §§ 30122 and 30109(d)(1)(D), and 18 U.S.C. § 1001(a)(2)	Conspiracy to make conduit contributions and false statements	04/30/2014	9
18 U.S.C. §§ 1001(a)(2), and 2	Making false statements	10/16/2013	10
18 U.S.C. §§ 1001(a)(2), and 2	Making false statements	10/19/2013	11
52 U.S.C. §§ 30116(a)(1)(A), 30116(a)(7)(B)(i) and 30109(d)(1)(A)(i), and 18 U.S.C. § 2	Making excessive contributions	02/28/2014	12
18 U.S.C. §§ 1957, and 2	Money laundering	07/03/2012	14
18 U.S.C. §§ 1957, and 2	Money laundering	07/24/2012	15
18 U.S.C. §§ 1957, and 2	Money laundering	02/12/2013	16
18 U.S.C. §§ 1957, and 2	Money laundering	02/12/2013	17
18 U.S.C. §§ 1957, and 2	Money laundering	02/19/2013	18
18 U.S.C. §§ 1957, and 2	Money laundering	10/16/2013	19
18 U.S.C. §§ 1957, and 2	Money laundering	01/31/2014	20
18 U.S.C. §§ 1957, and 2	Money laundering	01/31/2014	21
18 U.S.C. §§ 1957, and 2	Money laundering	03/14/2014	22

☒ See Additional Counts of Conviction.

DEFENDANT: **STEPHEN E. STOCKMAN**
CASE NUMBER: **4:17CR00116-002**

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1957, and 2	Money laundering	03/24/2014	24
18 U.S.C. §§ 1956(a)(1)(B)(i) and 2	Money laundering	03/24/2014	27
26 U.S.C. § 7206(1)	Filing false tax return	04/14/2014	28

☐ See Additional Counts of Conviction.

DEFENDANT: **STEPHEN E. STOCKMAN**
CASE NUMBER: **4:17CR00116-002**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months.
ONE HUNDRED TWENTY (120) MONTHS as to each of Counts 1-5, 7, 8, 14-22, 24, and 27, SIXTY (60) MONTHS as to each of Counts 9-12, and THIRTY-SIX (36) MONTHS as to Count 28, all counts to run concurrently, for a total of ONE HUNDRED TWENTY (120) MONTHS.

☐ See Additional Imprisonment Terms.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a facility that can accomodate the defendant's physical and mental needs, preferrably FMC Fort Worth or FMC Butner, and that the defendant be transferred to such facility as quickly as possible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on _____ .
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **STEPHEN E. STOCKMAN**
CASE NUMBER: **4:17CR00116-002**

SUPERVISED RELEASE

Upon release from imprisonment you will be on supervised release for a term of: 3 years.
THREE (3) YEARS as to each of Counts 1-5, 7, 8, 14-22, 24, and 27, and ONE (1) YEAR as to Count 28, all to run concurrently, for a total of THREE (3) YEARS.

☐ See Additional Supervised Release Terms.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

☒ See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 3C -- Supervised Release

DEFENDANT: **STEPHEN E. STOCKMAN**
CASE NUMBER: **4:17CR00116-002**

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a mental-health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the cost of the program, if financially able.

You must take all mental-health medications that are prescribed by your treating physician. You must pay the costs of the medication, if financially able.

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

☐ See Additional Special Conditions of Supervision.

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 5 -- Criminal Monetary Penalties

DEFENDANT: **STEPHEN E. STOCKMAN**
CASE NUMBER: **4:17CR00116-002**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$2,300.00		$1,014,718.51

A $100 special assessment is ordered as to each of Counts 1-5, 7, 8, 14-22, 24, 27 and 28, for a total of $2,300.

☐ See Additional Terms for Criminal Monetary Penalties.

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
The Rothschild Art Foundation		$385,000.00	
The Rothschild Charitable Foundation Inc.		65,000.00	
Ed Uihlein Family Foundation		350,000.00	
Ed Uihlein		214,718.51	

☐ See Additional Restitution Payees.

TOTALS	$0.00	$1,014,718.51

☐ Restitution amount ordered pursuant to plea agreement $ _____

☒ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 6 -- Schedule of Payments

DEFENDANT: **STEPHEN E. STOCKMAN**
CASE NUMBER: **4:17CR00116-002**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $2,300.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ installments of _____ over a period of _____ , to commence _____ days after the date of this judgment; or

D ☐ Payment in equal _____ installments of _____ over a period of _____ , to commence _____ days after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court, Attn: Finance, P.O. Box 61010, Houston, TX 77208

Balance due in 50% of any wages earned while in prison in accordance with the Bureau of Prisons' Inmate Financial Responsibility Program. Any balance remaining after release from imprisonment shall be due in monthly installments of no less than $500 to commence 60 days after release from imprisonment to a term of supervision.

* In reference to the amount below, the Court-ordered restitution shall be joint and several with any co-defendant who has been or will be ordered to pay restitution under this docket number.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Case Number **Defendant and Co-Defendant Names** **(including defendant number)**	**Total Amount**	**Joint and Several Amount**	**Corresponding Payee, if appropriate**
SEE COURT'S ORDER ABOVE *			

☐ See Additional Defendants and Co-Defendants Held Joint and Several.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
As set forth in the order of forfeiture executed by this Court on July 3, 2018, and as amended following the sentencing hearing on November 7, 2018.

☐ See Additional Forfeited Property.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
January 10, 2020

Lyle W. Cayce
Clerk

No. 18-20780

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

STEPHEN E. STOCKMAN,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas

Before JOLLY, GRAVES, and HIGGINSON, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:

Stephen E. Stockman served four years in Congress and now faces ten years in prison. He seeks to avoid this career detour. He must admit that a jury convicted him on twenty-three felony counts after the government accused him, *inter alia*, of defrauding philanthropists and using their money to finance his personal life and political career. Acknowledging the convictions, Stockman argues, nevertheless, that prison should not be the next item on his résumé because the convictions were tainted by improper jury instructions and unsupported by the evidence. We affirm.

I.

Stockman served two nonconsecutive terms in the United States House of Representatives, first from 1995 to 1997 and then from 2013 to 2015. During his first term, Stockman began working with an organization called the "Leadership Institute," where he became acquainted with Jason Posey and Thomas Dodd, two members of its staff. His relationships with these two men would grow and then wither. Stockman employed Posey and Dodd as campaign staffers, congressional aides, and business consultants. Their most recent roles were as witnesses against Stockman.

Posey and Dodd worked with Stockman to raise money for various "nonprofit" entities between 2010 and 2014, the period in which Stockman is alleged to have orchestrated a criminal scheme to obtain charitable donations under false pretenses and to then enrich himself with the proceeds. Though initially named as codefendants, Posey and Dodd abandoned Stockman, pleaded guilty, and testified against him. Their testimony helped reveal the details of the scheme, which unfolded in four parts, targeted two donors, and ultimately netted over a million dollars for Stockman and his aides.

The 2010 Rothschild Donations

Stockman's scheme began in May 2010, when Stockman and Dodd started soliciting Stanford Z. Rothschild, Jr., an elderly donor acting through his foundation. Over the next five months, Stockman and Dodd managed to persuade Rothschild to donate $285,000 to the Ross Center, a Section 501(c)(3)[1] nonprofit organization under Stockman's control. Rothschild was told that his money would fund "voter education material" for Jewish voters in Florida. Dodd testified that "voter education material[s]" are print publications that

[1] This case involves so-called "501(c)(3)" and "501(c)(4)" organizations. Those designations refer to provisions of the Internal Revenue Code that give tax-exempt status to qualifying nonprofit entities. *See* 26 U.S.C. §§ 501(c)(3)–(4).

"educate voters in the general public about public policy positions and public policy issues." Specifically, Rothschild was pitched on a book about radical Islam that would be mailed to voters in the lead-up to the 2010 midterm elections.

The deal was finalized only after Stockman assured Rothschild that his money "was to be spent for public policy [and] voter education that was 100 percent compliant with 501(c)(3) rules." With this reference to the "501(c)(3) rules," Stockman appears to have promised that he would spend Rothschild's money primarily (if not exclusively) in furtherance of the educational goals laid out in the pitch. *See* 26 U.S.C. § 501(c)(3) (tax-exempt organizations must be operated "exclusively for . . . charitable . . . or educational purposes").

But this promise soon vanished. Instead of "voter education materials," Stockman spent the 2010 Rothschild funds charitably on himself, educating himself at Disneyland and other amusement parks, at spas, and riding in hot air balloons. Stockman's charity to himself was generous; it further included paying his business expenses, including an abortive venture in South Sudan on which Stockman spent about $13,000 of the 2010 Rothschild funds. Stockman made the trip to South Sudan hoping to win a lucrative lobbying contract with a "performance bonus" that would allow him to take a percentage of any foreign aid appropriated by Congress.

Stockman failed to mail any "voter education material" as promised.

The 2011–2012 Rothschild Donations

Stockman and Dodd were not finished with Rothschild. In 2011, Stockman decided to run for a second term in Congress. This time, rather than pitch a "voter education" project aimed at indirectly influencing elections, Stockman and Dodd requested a loan for Stockman's campaign. Rothschild refused. Instead, he agreed to give in the same manner as before, *i.e.*, to "mak[e] donations from his foundation . . . to be used for voter education in

accordance with the 501(c)(3) rules." Stockman again promised to honor Rothschild's wishes, so Rothschild made another series of large donations, this time totaling $165,000, to the Ross Center and Life Without Limits (another Stockman-controlled nonprofit entity).

As before, Stockman repurposed the funds. He spent thousands on personal goods, including airline tickets, fast food, and gasoline. He also diverted 80% of a $100,000 donation to his congressional campaign account. It was later reported to the Federal Election Commission (FEC) that this deposit was a personal loan from Stockman to his own campaign.

Stockman agrees that most of the 2011–2012 Rothschild funds were, in the words of his brief, "transferred to other accounts controlled by Stockman, including the account for his campaign committee." Stockman nevertheless reported in a letter to Rothschild that the funds had "helped [Life Without Limits] educate many people last year in traditional American values." The nature of those "values" was not described.

The 2013 Uihlein Donation

In January 2013, Stockman, now a member of Congress, shifted his attention to Richard Uihlein, a Wisconsin businessman whose foundation has donated millions of dollars to nonprofit organizations that share his conservative values. Stockman and Dodd pitched Uihlein on "Freedom House," a prospective residential facility in Washington, D.C. that would house interns and provide a home base for a non-existent nonprofit called the "Congressional Freedom Foundation." Uihlein agreed to endow the project with $350,000 in seed money. The seed was not planted as promised, and the project died in silence. But the seed money survived to promote a new development in Stockman's political career: he had decided to run for the United States Senate in 2014.

Thus, as with the Rothschild donations, Stockman used the 2013 Uihlein funds to meet his personal and (especially) his political needs. For example, Stockman spent over $40,000 on a plan to surveil a conservative Texas politician whom Stockman believed to be a likely opponent in a future primary. Stockman also gave thousands of dollars to his cohorts, Dodd and Posey, so that they, in turn, could "donate" the money to Stockman's Senate campaign; the donations were falsely attributed to Dodd's mother and Posey's father in FEC filings. In sum, the 2013 Uihlein donation was spent in a long sequence of varying expenditures, including $5,000 to pay the rent on Stockman's campaign office, more than $30,000 to pay off Dodd's credit card debt, and over $20,000 to patronize a publishing business owned by Stockman's brother.

Posey testified that no money was actually spent on the project pitched to Uihlein. Even Stockman agrees that no property was ever acquired for such a project. Nonetheless, Stockman's team reported to Uihlein that his generosity had allowed Life Without Limits to support Freedom House. The 2014 letter that makes this claim also goes on to advise Uihlein that his "continued support is crucial to our mission."

The 2014 Uihlein Donation

By early 2014, Stockman was in the midst of his primary challenge to incumbent United States Senator John Cornyn. Stockman met with Kurt Wagner, the president of a direct mail company, and the two men discussed Stockman's plan to mail Texas voters a faux newspaper called *The Conservative News* on the eve of the Republican primary. *The Conservative News* accuses Senator Cornyn of "falsifying ethics reports to hide income," "lying to voters," and filing "false donor reports at least 121 times." By contrast, *The Conservative News* takes care to highlight Stockman's policy positions and legislative actions with bold headlines like "Stockman Kills

Cornyn-Backed Senate Amnesty Bill" and "Stockman's Sanctity of Life Act Overturns *Roe v. Wade*."

To finance this direct mail campaign, Stockman instructed Wagner to seek a new donation from Uihlein. Posey also called Uihlein to help induce a donation. Stockman dictated some of the contents of a solicitation letter but told Wagner that the letter would "need[] to come from somebody else, not [Stockman] directly." The letter, which purported to seek financing for an independent expenditure by the "Center for the American Future," induced Uihlein to give $450,571.65. Uihlein testified that he would not have donated the money if he had known of Stockman's involvement. Posey testified that the Center for the American Future was under Stockman's control.

The 2014 Uihlein funds were used to print and distribute hundreds of thousands of copies of *The Conservative News*. Stockman called off the direct mail campaign shortly before the primary, at which point only $214,718.51 remained of Uihlein's 2014 donation. At Stockman's direction, Posey proceeded to use these remaining funds to pay bills related to Stockman's Senate campaigns, including both his Texas campaign and a prospective campaign in Alaska. Posey also testified that Stockman instructed him to flee to Egypt with some of the remaining funds, using them to pay for flights and other travel expenses.[2]

II.

In March 2017, Stockman was indicted on four counts of mail fraud, four counts of wire fraud, two counts of making false statements in FEC filings, eleven counts of money laundering, one count of conspiracy to make conduit

[2] By this time, Stockman had wind that he was the target of an FBI investigation. He thought that, by sending Posey to Cairo with the 2014 Uihlein funds, he could evade a potential asset freeze or forfeiture.

campaign contributions and false statements, one count of causing an excessive campaign contribution, and one count of filing a false tax return.

The district court denied Stockman's motions to dismiss the indictment and to strike surplusage. The case proceeded to a three-week jury trial, after which Stockman was convicted on all counts but one.[3] The district court denied Stockman's motions for judgment of acquittal, and later sentenced Stockman to ten years in prison and three years of supervised release. Stockman was also ordered to pay restitution in the amount of $1,014,718.51. He timely has appealed.

III.

Stockman now argues that the district court erred by issuing problematic jury instructions, by denying Stockman's motions for judgment of acquittal under Federal Rule of Criminal Procedure 29, and by denying his motion to dismiss the indictment. With respect to the jury instructions, Stockman contends that the district court erred by defining 501(c)(3) and 501(c)(4) organizations in the charge and by failing to instruct the jury on Stockman's "good faith" defense to the tax and campaign finance counts. With respect to the denial of his Rule 29 motions, Stockman argues that the government failed to prove the existence of a fraudulent "scheme" devised with the requisite intent to defraud. Stockman also makes three arguments challenging his conviction for causing an excessive campaign contribution under Count 12 of the indictment, all of which essentially assert that the district court erred by failing to recognize that "express advocacy" is a necessary element of the

[3] Stockman was acquitted on Count 6, a wire fraud charge related to the Rothschild donations.

offense. In total, Stockman's brief presents six alleged errors infecting one or more of his convictions.[4] We find that each claim lacks merit.

A.

Stockman argues that his convictions for mail and wire fraud cannot stand because the district court issued "improper and unnecessary" instructions that confused the jury. Specifically, Stockman draws our attention to a section of the jury charge that defines 501(c)(3) and 501(c)(4) organizations in the following manner:

> A 501(c)(3) organization is a nonprofit corporation, fund, or foundation organized and operated exclusively for religious, charitable, scientific, or educational purposes.
>
> Section 501(c)(3) organizations are generally exempt from federal taxation, and donations to [] these entities may be tax deductible. If an organization is classified as a 501(c)(3) organization, none of its net earnings may benefit any private shareholder or individual. A Section 501(c)(3) organization may not participate or intervene in any political campaign on behalf of or [in] opposition to any candidate for public office.
>
> A Section 501(c)(4) organization is a nonprofit organization operated exclusively for the promotion of social welfare. . . . Section 501(c)(4) organizations are also generally exempt from federal taxation. A Section 501(c)(4) organization may compensate employees for work actually performed, but the net earnings of a Section 501(c)(4) organization must be devoted exclusively to charitable, educational, or recreational purposes. The net earnings of a Section 501(c)(4) organization may not benefit any private shareholder or individual.

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[4] Arguably, Stockman has also preserved a complaint about the district court's disjunctive Count 12 jury instructions. Stockman appears to argue that the district court erred by allowing the jury to convict Stockman for inducing Uihlein's 2014 expenditure on advertisements "advocating Mr. Stockman's election *or* attacking Mr. Stockman's opponent" because the indictment alleged a conjunction. But the government does not heighten its burden of proof by pleading criminal acts conjunctively. *See United States v. Holley*, 831 F.3d 322, 328 n.14 (5th Cir. 2016). Here, the government was not required to prove that Uihlein's money was spent on advertising "advocating for Stockman's election *and* attacking Stockman's opponent." We thus decline to find error in the district court's disjunctive language.

At oral argument, defense counsel represented that Stockman principally objects that this language of the instructions was "irrelevant" and "unnecessary." Stockman concedes, however, that no contemporaneous objection was made at trial; instead, he now argues that the district court should have excluded the 501(c)(3) and 501(c)(4) definitions from the charge *sua sponte*.

Given Stockman's failure to object at trial, our review is for plain error. *United States v. Saldana*, 427 F.3d 298, 303–04 (5th Cir. 2005). Stockman must demonstrate "(1) that an error occurred; (2) that the error was plain, which means clear or obvious; (3) [that] the plain error [would] affect [his] substantial rights; and (4) [that] not correcting the error would seriously affect the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 304 (quotation omitted).

We are not convinced that the district court erred by defining 501(c)(3) and 501(c)(4) organizations in the charge, but, in any event, no such error was sufficiently "clear or obvious" to survive plain error review. Many of the witnesses discussed 501(c)(3) and 501(c)(4) organizations in their testimony, and some of that testimony even went directly to the elements of mail and wire fraud. Stockman has not cited a truly analogous case, and we are not aware of one. We have said that an "error cannot be plain where there is no controlling authority on point and where the most closely analogous precedent leads to conflicting results." *United States v. Gomez*, 706 F. App'x 172, 177 (5th Cir. 2017) (quoting *United States v. De La Fuente*, 353 F.3d 766, 769 (9th Cir. 2003)). Similarly, when any analogy to existing authority would be strained, the district court's actions cannot amount to plain error.

Apart from his objection that the 501(c)(3) and 501(c)(4) definitions were "unnecessary," Stockman also argues that the definitions, though undisputedly drawn from the text of the Internal Revenue Code, misled the

jury by framing the obligations of 501(c)(3) and 501(c)(4) organizations in absolute terms. *See*, *e.g.*, *St. David's Health Care Sys. v. United States*, 349 F.3d 232, 235 (5th Cir. 2003) (suggesting that tax-exempt organizations must be operated primarily, rather than exclusively, for an exempt purpose). But, again, we cannot agree that the district court's statutory instructions merit reversal under the plain error standard. An instruction that mirrors relevant statutory text "will almost always convey the statute's requirements," *United States v. Lebowitz*, 676 F.3d 1000, 1014 (11th Cir. 2012), and Stockman has not identified any authority rendering it "clear or obvious" that a district court's jury instructions must go beyond the language of the statute in this context.

B.

Stockman next seeks to reverse his conviction for causing an excessive campaign contribution in the form of a coordinated expenditure, an offense covered by Count 12 of the indictment. Count 12 alleges that Stockman, acting through various agents, induced Uihlein to spend over $450,000 on *The Conservative News*, a political communication promoting the Stockman campaign. The government argues that, because Stockman was involved in requesting and spending the money for this project, Uihlein's $450,000 payment was a "coordinated expenditure" under the Federal Election Campaign Act, 52 U.S.C. § 30101 *et seq.* (FECA).[5]

[5] FECA treats "coordinated" expenditures like "campaign contributions," placing an upper limit on the amount of money that donors may spend on them. The government's position is that Stockman, having willfully caused Uihlein to spend more than $25,000 on a coordinated communication, is subject to the especially severe criminal penalties applicable to those who make campaign contributions in excess of $25,000. *See* 52 U.S.C. §§ 30116(a)(1)(A) (establishing upper limit on campaign contributions), 30109(d)(1)(A)(i) (authorizing extra punishment for campaign contributions in excess of $25,000), 30116(a)(7)(B)(i) (equating coordinated expenditures with campaign contributions); 18 U.S.C. § 2(b) (authorizing punishment "as a principal" for those who "willfully cause[] an act to be done which if directly performed by [them] or [others] would be an offense").

Stockman does not deny that, if the Uihlein donation were an "expenditure," it would be a "coordinated" expenditure of over $450,000, the equivalent of a campaign contribution well beyond statutory limits. Indeed, he could not argue otherwise: the evidence shows that Stockman at the very least "cooperat[ed]" with Uihlein and Wagner's distribution of *The Conservative News*. *See* 52 U.S.C. § 30116(a)(7)(B)(i) (coordinated expenditures are those made in "cooperation, consultation, or concert with" a candidate or his campaign committee). For example, Wagner testified that mailing *The Conservative News* was Stockman's idea, that Stockman supervised him once distribution was underway, and that Stockman dictated some of the letter that secured funding from Uihlein.

Instead, Stockman's appellate challenges to the conviction turn on the word "expenditure." Stockman argues that, in *Buckley v. Valeo*, 424 U.S. 1 (1976), the "Supreme Court cabined FECA's definition of 'expenditure' to encompass only 'funds used for communications that expressly advocate for the election or defeat of a clearly identified candidate.'" Such "express advocacy" entails the use of "words [like] 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [and] 'reject.'" *Buckley*, 424 U.S. at 44 & n.52. Stockman maintains that to effect a regulated "expenditure," donors must spend their money on communications containing these "magic words." It is clear and uncontested that *The Conservative News* does not contain direct instructions to "vote for" or "defeat" any candidate. It would follow, Stockman argues, that Uihlein did not effect an "expenditure" when he funded *The Conservative News*.

But the Supreme Court rejected this reading of FECA in *McConnell v. FEC,* 540 U.S. 93 (2003), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010)). In *McConnell*, the Supreme Court considered precisely the statutory language at issue here, namely the rule (now codified at 52 U.S.C.

§ 30116(a)(7)(B)(i)) that "expenditures . . . in cooperation, consultation, or concert with" a candidate are to be considered the equivalent of campaign contributions and restricted accordingly. *See McConnell*, 540 U.S. at 202. The *McConnell* Court explained that a post-*Buckley* statutory enactment had "clarifie[d] the scope" of this language, "pre-empt[ing]" a possible claim that "coordinated expenditures for communications that avoid express advocacy cannot be counted as contributions." 540 U.S. at 202. In other words, the Court held that the presence of express advocacy is not a prerequisite of the "settled" rule that when expenditures are "controlled by or coordinated with the candidate and his campaign[,] [they] may be treated as indirect contributions subject to FECA's . . . amount limitations." *Id.* at 219 (cleaned up).

Stockman seeks to distinguish *McConnell* on the ground that "*McConnell* held . . . the express advocacy requirement for expenditures . . . preempted only with respect to . . . narrowly defined 'electioneering communication[s].'"[6] Not so. The relevant portion of *McConnell* deals separately with two distinct subsections of FECA, one pertaining to electioneering communications and the other to expenditures "more generally." 540 U.S. at 202. The latter subsection, not the former, was the focus of the Court's "preemption" comment. *Id.* We reject Stockman's construction of the statute.[7]

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[6] An "electioneering communication" is "any broadcast, cable, or satellite communication that refers to a clearly identified candidate for federal office and is made within 30 days of a primary or 60 days of a general election." *Citizens United*, 558 U.S. at 321 (cleaned up). The *McConnell* decision is largely, but not exclusively, concerned with Congress's regulation of these communications. *See* 540 U.S. at 189–02.

[7] Stockman also attempts to escape *McConnell* by invoking *Center for Individual Freedom v. Carmouche*, 449 F.3d 655 (5th Cir. 2006), and *Chamber of Commerce of the United States v. Moore*, 288 F.3d 187 (5th Cir. 2002). But neither case analyzed whether *Buckley*'s limiting construction should apply to coordinated expenditures. *Carmouche* interpreted a Louisiana statue that "link[ed] disclosure requirements for expenditures made by *independent* individuals" to language that the Supreme Court narrowed in *Buckley*. *Carmouche*, 449 F.3d at 664 (emphasis added). *Moore* found that the relevance of express advocacy was clear because the Mississippi statute under scrutiny had "essentially adopted

C.

We next consider Stockman's argument that his tax and campaign finance convictions under Counts 10, 11, 12, and 28 of the indictment were tainted by the district court's refusal to instruct on "good faith." Stockman points to evidence that he relied on an accountant who "wrongly advised him that having aides contribute money to his congressional campaign in the name of their parents was permissible." He also points to evidence that Stockman and Posey intentionally omitted words of express advocacy from *The Conservative News* in order to comply with FECA. He asserts that "[i]n this context and where willfulness is required, a good faith instruction should have been given."

Again, we disagree. Although the parties dispute the standard of review applicable to the district court's refusal to instruct on good faith, decisions of this court and the Supreme Court show that the refusal was not erroneous, whether reviewed *de novo* or for plain error. *See United States v. Pomponio*, 429 U.S. 10, 11–12 (1976); *United States v. Simkanin*, 420 F.3d 397, 409–11 (5th Cir. 2005). Stockman argues that a good faith instruction should have been issued because the tax and campaign finance offenses in question all require a showing of "willfulness."

But it is precisely that requirement that renders any such instruction unnecessary. The Supreme Court held in *Pomponio* that an additional good faith instruction is not required when the charge already requires proof of "willfulness," properly cabined to cover only "voluntary, intentional violation[s] of . . . known legal dut[ies]." 429 U.S. at 12 (quotation omitted). In so holding, the Court gave its approval to a charge that did not instruct on good faith but

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the language" of the *Buckley* limiting construction. *Moore*, 288 F.3d at 196. These cases are distinguishable and neither one casts doubt on the conclusions we draw from *McConnell*.

did instruct on the need for proof of a "willful" act, meaning an act "done voluntarily and intentionally and with the specific intent to do something which the law forbids, that is to say with [the] bad purpose either to disobey or disregard the law." *Id.* at 11–12 (quotation omitted). Drawing from *Pomponio*, we held in *Simkanin* that a "specific instruction" on good faith is not required when the concept is sufficiently subsumed by a general instruction on "willfulness." 420 F.3d at 409–11. *Simkanin*, like *Pomponio*, approved of instructions alerting the jury to the fact that a "willful" act is done "voluntarily and deliberately," with the intention of "violat[ing] a known legal duty." *Id.* at 409–10.

Here, the district court's instructions mirrored those in *Pomponio* and *Simkanin*. With respect to Counts 10, 11, and 12, the district court instructed the jury that to act "willfully," the defendant must act "voluntarily and purposely, with the specific intent to do something the law forbids, that is, with the bad purpose either to disobey or disregard the law." With respect to Count 28, the district court instructed the jury that it could not convict unless it found that Stockman acted "with intent to violate a known legal duty." We find no merit in Stockman's "good faith" argument.

D.

Finally, we address Stockman's challenge to the evidence supporting his convictions for mail fraud, wire fraud, and money laundering.[8] Stockman argues that the district court erred when it denied his motions for judgment of acquittal under Rule 29, contending that the government failed to prove a fraudulent "scheme" that Stockman devised with the necessary intent to

[8] As to the money laundering convictions, Stockman argues only that the government cannot meet its burden to prove a predicate offense if the fraud convictions lack evidentiary support. *See* 18 U.S.C. §§ 1956–57. Because we reject Stockman's challenge to the fraud convictions, we necessarily reject his challenge to the money laundering convictions as well.

defraud. *See* 18 U.S.C. §§ 1341, 1343. We review the denial of a Rule 29 motion *de novo*, asking whether "any rational trier of fact could have found the essential elements of the crime[s] beyond a reasonable doubt." *United States v. Xu*, 599 F.3d 452, 453 (5th Cir. 2010) (quotations omitted).

The elements of mail fraud are "(1) a scheme to defraud; (2) use of the mails to execute the scheme; and (3) the specific intent to defraud." *United States v. Simpson*, 741 F.3d 539, 547–48 (5th Cir. 2014) (quotation omitted). The elements of wire fraud are "(1) a scheme to defraud; (2) the use of, or causing the use of, wire communications in furtherance of the scheme; and (3) a specific intent to defraud." *United States v. Harris*, 821 F.3d 589, 598 (5th Cir. 2016). In evaluating its sufficiency, we view the evidence in the light most favorable to the government. *United States v. Rodgers*, 624 F.2d 1303, 1306 (5th Cir. 1980). Stockman challenges the evidence supporting his convictions with respect to both the "scheme" and "intent" elements of mail and wire fraud.

1.

Challenging the denial of his Rule 29 motions, Stockman argues that the government's evidence does not establish a fraudulent "scheme." His reasoning is somewhat tortuous. Stockman argues that, although purporting to allege a single scheme, the indictment actually alleges "no fewer than four separate 'schemes.'" He further asserts that at least one of these four separate schemes, the 2014 Uihlein "scheme," is not supported by sufficient evidence because the government failed to prove that in the 2014 scheme Uihlein was deprived of money or property. Then, expressly reverting to a single-scheme argument, he contends that, because the jury returned a general verdict without specifying which "scheme within a scheme" it was relying on to satisfy the "scheme" element of mail and wire fraud, all seven mail and wire fraud convictions must be set aside for failure to prove a scheme. *See Yates v. United States*, 354 U.S. 298, 311 (1957) ("[A] verdict [must] be set aside in cases where

the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected."), *overruled on other grounds by Burks v. United States*, 437 U.S. 1 (1978).

Stockman's arguments are confected on a foundation of sand. The evidence shows that there was only one scheme, a scheme to separate wealthy donors from their money and to spend that money at Stockman's pleasure and direction. Furthermore, there is no merit in Stockman's argument that the 2014 Uihlein solicitations did not threaten to deprive Uihlein of money or property. Each donation from each donor, Uihlein included, was given under the false pretense that the donor's money would be used for specific purposes, including "voter education" and independent political advocacy. The money was not used for those purposes. Instead, it was, at all times, under Stockman's control. He used it to finance his political career and sustain his self-indulgent lifestyle. It is thus clear that all of Stockman's solicitations were designed to effectuate a traditional "money or property" fraud.

In short, we hold that there was no failure of proof regarding the "scheme" element of mail and wire fraud. On the contrary, viewing the evidence in the light most favorable to the conviction, we find ample support for the government's position that Stockman orchestrated a single scheme to appeal to the charity of politically-interested donors for fraudulent purposes.

2.

Stockman further challenges the denial of his Rule 29 motions on the ground that the government produced insufficient evidence of Stockman's fraudulent intent. In this context, he argues that the government's evidence does not suggest a "contemporaneous" intent to defraud because evidence of Stockman's illicit spending cannot establish bad faith simultaneous with the solicitation and receipt of donor funds. From this premise, Stockman concludes that the government's case is based on nothing more than "evidentiary time

travel." Stockman's time-and-space argument is weakened by the absence of evidence supporting it, but even more by the very strong evidence from which the jury could reasonably infer that Stockman had the intent to defraud from the time the money was donated until it was fully spent.

Stockman does not deny that, shortly *after* receiving donations from Rothschild and Uihlein, he misappropriated the funds by disregarding the purposes for which they were donated. Indeed, Stockman does little to dispute the overwhelming evidence that, shortly after receiving it, he quickly diverted donor money to personal and political projects having nothing to do with philanthropy or education. Notwithstanding Stockman's self-serving view that later misappropriations cannot evidence earlier bad faith, the jury could rationally have inferred Stockman's fraudulent intent from this largely undisputed evidence. We thus find that the government has also met its burden with respect to the "intent" element of mail and wire fraud.

IV.

In this appeal, we have held that the district court's instructions were not erroneous. It was not plain error for the district court to define 501(c)(3) and 501(c)(4) organizations in the charge, and Stockman was not entitled to an instruction on good faith. We have also held that the district court did not err by denying Stockman's motions for judgment of acquittal under Rule 29. The government provided ample evidence that Stockman fraudulently devised, and implemented, a scheme to deprive two donors of their money and property, thus allowing the jury to rationally find Stockman guilty of mail fraud, wire fraud, and money laundering. And, we have further held that FECA's contribution limits apply to coordinated spending on political communications,

irrespective of whether those communications contain magic words of express advocacy. We thus have affirmed Stockman's campaign finance conviction.

In sum, the judgment of the district court is, in all respects,

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20780

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

STEPHEN E. STOCKMAN,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING EN BANC

(Opinion January 10, 2020, 5 Cir., _____, _____ F.3d _____)

Before JOLLY, GRAVES, and HIGGINSON, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court

having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
January 10, 2020

Lyle W. Cayce
Clerk

No. 18-20780

D.C. Docket No. 4:17-CR-116-2

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

STEPHEN E. STOCKMAN,

Defendant - Appellant

Appeal from the United States District Court for the
Southern District of Texas

Before JOLLY, GRAVES, and HIGGINSON, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is affirmed.

Certified as a true copy and issued as the mandate on Mar 10, 2020

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

Office of the Attorney General
Washington, D. C. 20530

March 26, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU PRISONS

FROM: THE ATTORNEY GENERAL

SUBJECT: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic

Thank you for your tremendous service to our nation during the present crisis. The current situation is challenging for us all, but I have great confidence in the ability of the Bureau of Prisons (BOP) to perform its critical mission during these difficult times. We have some of the best-run prisons in the world and I am confident in our ability to keep inmates in our prisons as safe as possible from the pandemic currently sweeping across the globe. At the same time, there are some at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement rather than in BOP facilities. I am issuing this Memorandum to ensure that we utilize home confinement, where appropriate, to protect the health and safety of BOP personnel and the people in our custody.

I. TRANSFER OF INMATES TO HOME CONFINEMENT WHERE APPROPRIATE TO DECREASE THE RISKS TO THEIR HEALTH

One of BOP's tools to manage the prison population and keep inmates safe is the ability to grant certain eligible prisoners home confinement in certain circumstances. I am hereby directing you to prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic. Many inmates will be safer in BOP facilities where the population is controlled and there is ready access to doctors and medical care. But for some eligible inmates, home confinement might be more effective in protecting their health.

In assessing which inmates should be granted home confinement pursuant to this Memorandum, you are to consider the totality of circumstances for each individual inmate, the statutory requirements for home confinement, and the following non-exhaustive list of discretionary factors:

- The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines;

- The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities;

- The inmate's conduct in prison, with inmates who have engaged in violent or gang-related activity in prison or who have incurred a BOP violation within the last year not receiving priority treatment under this Memorandum;

- The inmate's score under PATTERN, with inmates who have anything above a minimum score not receiving priority treatment under this Memorandum;

- Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;

- The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home detention. Other serious offenses should weigh more heavily against consideration for home detention.

In addition to considering these factors, before granting any inmate discretionary release, the BOP Medical Director, or someone he designates, will, based on CDC guidance, make an assessment of the inmate's risk factors for severe COVID-19 illness, risks of COVID-19 at the inmate's prison facility, as well as the risks of COVID-19 at the location in which the inmate seeks home confinement. We should not grant home confinement to inmates when doing so is likely to increase their risk of contracting COVID-19. You should grant home confinement only when BOP has determined—based on the totality of the circumstances for each individual inmate—that transfer to home confinement is likely not to increase the inmate's risk of contracting COVID-19.

II. PROTECTING THE PUBLIC

While we have an obligation to protect BOP personnel and the people in BOP custody, we also have an obligation to protect the public. That means we cannot take any risk of transferring inmates to home confinement that will contribute to the spread of COVID-19, or put the public at risk in other ways. I am therefore directing you to place any inmate to whom you grant home confinement in a mandatory 14-day quarantine period before that inmate is discharged from a BOP facility to home confinement. Inmates transferred to home confinement under this prioritized process should also be subject to location monitoring services and, where a court order is entered, be subject to supervised release.

We must do the best we can to minimize the risk of COVID-19 to those in our custody, while also minimizing the risk to the public. I thank you for your service to the country and assistance in implementing this Memorandum.

Office of the Attorney General
Washington, D. C. 20530

April 3, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU OF PRISONS

FROM: THE ATTORNEY GENERAL

SUBJECT: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19

The mission of BOP is to administer the lawful punishments that our justice system imposes. Executing that mission imposes on us a profound obligation to protect the health and safety of all inmates.

Last week, I directed the Bureau of Prisons to prioritize the use of home confinement as a tool for combatting the dangers that COVID-19 poses to our vulnerable inmates, while ensuring we successfully discharge our duty to protect the public. I applaud the substantial steps you have already taken on that front with respect to the vulnerable inmates who qualified for home confinement under the pre-CARES Act standards.

As you know, we are experiencing significant levels of infection at several of our facilities, including FCI Oakdale, FCI Danbury, and FCI Elkton. We have to move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of these institutions. I would like you to give priority to these institutions, and others similarly affected, as you continue to process the remaining inmates who are eligible for home confinement under pre-CARES Act standards. In addition, the CARES Act now authorizes me to expand the cohort of inmates who can be considered for home release upon my finding that emergency conditions are materially affecting the functioning of the Bureau of Prisons. I hereby make that finding and direct that, as detailed below, you give priority in implementing these new standards to the most vulnerable inmates at the most affected facilities, consistent with the guidance below.

I. IMMEDIATELY MAXIMIZE APPROPRIATE TRANSFERS TO HOME CONFINEMENT OF ALL APPROPRIATE INMATES HELD AT FCI OAKDALE, FCI DANBURY, FCI ELKTON, AND AT OTHER SIMILARLY SITUATED BOP FACILITIES WHERE COVID-19 IS MATERIALLY AFFECTING OPERATIONS

While BOP has taken extensive precautions to prevent COVID-19 from entering its facilities and infecting our inmates, those precautions, like any precautions, have not been perfectly successful at all institutions. I am therefore directing you to immediately review all inmates who have COVID-19 risk factors, as established by the CDC, starting with the inmates incarcerated at FCI Oakdale, FCI Danbury, FCI Elkton, and similarly situated facilities where you determine that COVID-19 is materially affecting operations. You should begin implementing this directive immediately at the facilities I have specifically identified and any other facilities facing similarly serious problems. And now that I have exercised my authority under the CARES Act, your review should include all at-risk inmates—not only those who were previously eligible for transfer.

For all inmates whom you deem suitable candidates for home confinement, you are directed to immediately process them for transfer and then immediately transfer them following a 14-day quarantine at an appropriate BOP facility, or, in appropriate cases subject to your case-by-case discretion, in the residence to which the inmate is being transferred. It is vital that we not inadvertently contribute to the spread of COVID-19 by transferring inmates from our facilities. Your assessment of these inmates should thus be guided by the factors in my March 26 Memorandum, understanding, though, that inmates with a suitable confinement plan will generally be appropriate candidates for home confinement rather than continued detention at institutions in which COVID-19 is materially affecting their operations.

I also recognize that BOP has limited resources to monitor inmates on home confinement and that the U.S. Probation Office is unable to monitor large numbers of inmates in the community. I therefore authorize BOP to transfer inmates to home confinement even if electronic monitoring is not available, so long as BOP determines in every such instance that doing so is appropriate and consistent with our obligation to protect public safety.

Given the speed with which this disease has spread through the general public, it is clear that time is of the essence. Please implement this Memorandum as quickly as possible and keep me closely apprised of your progress.

II. PROTECTING THE PUBLIC

While we have a solemn obligation to protect the people in BOP custody, we also have an obligation to protect the public. That means we cannot simply release prison populations en masse onto the streets. Doing so would pose profound risks to the public from released prisoners engaging in additional criminal activity, potentially including violence or heinous sex offenses.

That risk is particularly acute as we combat the current pandemic. Police forces are facing the same daunting challenges in protecting the public that we face in protecting our inmates. It is impossible to engage in social distancing, hand washing, and other recommend steps in the middle of arresting a violent criminal. It is thus no surprise that many of our police officers have fallen ill with COVID-19, with some even dying in the line of duty from the disease. This pandemic has dramatically increased the already substantial risks facing the men and women who keep us safe, at the same time that it has winnowed their ranks while officers recover from getting sick, or self-quarantine to avoid possibly spreading the disease.

The last thing our massively over-burdened police forces need right now is the indiscriminate release of thousands of prisoners onto the streets without any verification that those prisoners will follow the laws when they are released, that they have a safe place to go where they will not be mingling with their old criminal associates, and that they will not return to their old ways as soon as they walk through the prison gates. Thus, while I am directing you to maximize the use of home confinement at affected institutions, it is essential that you continue making the careful, individualized determinations BOP makes in the typical case. Each inmate is unique and each requires the same individualized determinations we have always made in this context.

I believe strongly that we should do everything we can to protect the inmates in our care, but that we must do so in a careful and individualized way that remains faithful to our duty to protect the public and the law enforcement officers who protect us all.

RESPONSE TO INMATE REQUEST TO STAFF
INMATE: STOCKMAN, STEPHEN
REGISTER NO: 23502-478
INSTITUTION: FCC BEAUMONT (CAMP)
UNIT: GB

This is in response to your correspondence received April 15, 2020, wherein you request a reduction in sentence (RIS) based on concerns about COVID-19. After careful consideration, your request is denied.

Title 18 of the United States Code, section 3582(c)(1)(A), allows a sentencing court, on motion of the Director of the BOP, to reduce a term of imprisonment for extraordinary or compelling reasons. BOP Program Statement No. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), provides guidance on the types of circumstances that present extraordinary or compelling reasons, such as the inmate's terminal medical condition; debilitated medical condition; status as a "new law" elderly inmate, an elderly inmate with medical conditions, or an "other elderly inmate"; the death or incapacitation of the family member caregiver of the inmate's child; or the incapacitation of the inmate's spouse or registered partner. Your request has been evaluated consistent with this general guidance.

The BOP is taking extraordinary measures to contain the spread of COVID-19 and treat any affected inmates. We recognize that you, like all of us, have legitimate concerns and fears about the spread and effects of the virus. However, your concern about being potentially exposed to, or possibly contracting, COVID-19 does not currently warrant an early release from your sentence. Accordingly, your RIS request is denied at this time.

If you are not satisfied with this response to your request, you may commence an appeal of this decision via the administrative remedy process by submitting your concerns on the appropriate form (BP-9) within 20 days of the receipt of this response.

In response to your request for home confinement, the Bureau of Prisons is utilizing the full scope of its various authorities to ensure that inmates at heightened risk of complications from COVID-19 are identified and housed safely and appropriately given their specific needs and circumstances. This includes modified

institution operations; routine staff and inmate medical screening; use of the home confinement authority, where appropriate, based on guidance from the Attorney General; and use of compassionate release for appropriate inmates who have existing terminal and debilitated medical conditions or who are elderly and nearing the end of their sentence, as provided for in current agency policy.

The CARES Act authorizes the Attorney General to expand the cohort of inmates who can be considered for home confinement upon his findings of emergency conditions which are materially affecting the function of the BOP. On April 3, 2020, the Attorney General made that finding and authorized the Director of the BOP to immediately maximize appropriate transfers to home confinement of all appropriate inmates held at FCI Oakdale, FCI Danbury, FCI Elton, and other similarly situated BOP facilities where COVID-19 is materially affecting operations.

Pursuant to the Attorney's General's direction, the BOP will continue to monitor the situation at all of its facilities, to include FCC Beaumont, and will take swift action to exercise its expanded home confinement authority for any inmate who is found to be at risk for COVID-19 and suitable for home confinement.

Staff have reviewed your sentence for potential placement on home confinement in connection with the current criteria. After careful review, staff submitted your paperwork on April 15, 2020, to the Residential Re-entry Center (RRC) for potential approval in home confinement placement. Once the RRC makes a determination, you will be informed of that decision.

I trust this information addresses your concern.

F. J. Garrido, Warden

4/20/20
Date

Correctional Programs Branch

Central Office
320 First Street, N.W.
Washington, DC 20534

MEMORANDUM FOR CORRECTIONAL PROGRAM ADMINISTRATORS

FROM: David Brewer, Acting Senior Deputy Assistant Director

SUBJECT: Furlough and Home Confinement Additional Guidance

The following guidance is provided from information contained in the CARES Act, memoranda from Attorney General Barr, and the Bureau of Prisons. This memorandum rescinds guidance previously provided.

Furlough

The current pandemic is considered an urgent situation that may warrant an emergency furlough under 570.32(b)(1) and 570.33(b). These regulations authorize a non-transfer emergency furlough if the inmate is otherwise deemed appropriate, even if he/she has been submitted for Home Confinement (HC). Effective April 16, 2020, all inmates referred for an emergency furlough due to the Covid-19 pandemic should be submitted and keyed as FURL CRI.

Inmates who have been referred for a release planning furlough based on guidance issued prior to April 16, 2020, do not require a new application. These inmates should be keyed out of the facility as FURL REL. Furlough applications completed on or after April 16, 2020, should follow the updated guidance. Inmates within 12 months of his/her Projected Release Date (PRD), or those who have received Home Confinement placement and have a PRD exceeding one year, should be reviewed for furlough.

Home Confinement

In an effort to alleviate concerns and questions, the following criteria should be met when reviewing and referring inmates for HC:

- Primary or prior offense is not violent

- Primary or prior offense is not a sex offense
- Primary or prior offense is not terrorism
- No detainer
- Mental Health Care Level is less than CARE-MH 4
- PATTERN risk score is Minimum (R-MIN)
- No incident reports in the past 12 months (regardless of severity level)
- U.S. Citizen
- Viable Release Plan

If the inmate meets the criteria above, the following factors should be noted, but are not a reason for denial:

- Age
- Projected Release Date
- Percentage of time served
- Medical Care Level
- Victim Witness Program
- Arrival dated (ARSD)

Any concerns regarding an inmate's suitability for HC placement should be noted in Section 11 of the BP-210, *Institutional Referral for CCC Placement.* It is strongly encouraged to refer inmates currently housed in a facility with active Covid-19 cases.

For inmates requesting relocation, a release plan must be submitted to the USPO prior to HC referral submission. The USPO approval letter must be forwarded to the RRM, once received. Institution staff should contact the Health Service Specialist in the RRM's office with questions regarding HC placement for inmates with medical concerns.

If you have any questions, please contact David Brewer, Acting Senior Deputy Assistant Director, Correctional Programs Division, at (202)353-3638.

DECLARATION OF PATTI STOCKMAN

I, Patti Stockman, hereby declare and state as follows:

1. I am over 18 years of age, and I reside in Friendswood, Texas.

2. I am married to the applicant Steven E. Stockman and have power of attorney over his affairs. We were married in December 1988. From my close relationship with my husband over 31 years, I am familiar with the personal information about him in this declaration.

3. My husband is a U.S. citizen.

4. There is no detainer against my husband by any other law-enforcement agency.

5. Mr. Stockman has had no incident reports during his incarceration.

6. Because of my deepest concern over my husband's exposure to COVID-19 and his increased risk from infection (discussed below), I have monitored the reported COVID-19 exposures at FCC Beaumont, where he is incarcerated. On or about June 30, 2020, the Bureau of Prisons ("BOP") reported 5 COVID-19 cases at the facility, but by July 5, 2020, there were 41 cases. I understand from speaking with others involved with FCC Beaumont that there may be at least an additional 9 cases about to be reported.

7. I am not familiar with the "Mental Health Care Level" used by the federal government, but my husband has no mental-health issues.

8. My husband's PATTERN risk score is Minimum.

9. My husband is 63 years old and suffers from diabetes, high blood pressure, mild asthma, a weakened immune system from multiple intestinal

surgeries, and other health challenges. He is obese (approximately 5', 9" tall and 225-230 pounds).

10. My husband takes several prescriptions for his health conditions, including metFORMIN HCL 850, Glucose 4 GM, Cyanocoblamin 1000 MCG, OXcarbazepine 150 MG, MPH insulin, regular insulin, Chorlecalciferol, Folic Acid 400 MCG, Atorvastatin 1 OMG, Calcium Carbonate 500MG, Atenolol 25 MG, glipiZIDE 5 MG, and Lisinopril 20 MG. He also should be taking zinc supplements, but FCC Beaumont has not filled that prescription since February.

11. My husband is currently carried on my Blue Cross/Blue Shield health care plan through work.

12. My husband would shelter in place with me at our three-bedroom home in Friendswood, TX, where I am not aware of any reported problem with COVID-19. If necessary, my husband could be quarantined in our home in a separate bedroom and bathroom.

13. I work remotely from home as a GS-14 Records and Privacy Act Officer for a federal agency, and my income is adequate to support both myself and my husband.

14. From my husband's past employment experience and given the suitability of our home for remote work, my husband could earn income by working as an accountant and a consultant.

15. On June 30, 2020, I contacted the regional BOP office in Grand Prairie, Texas, for an explanation why my husband had not yet been transferred to home

confinement. I spoke with a Mr. Derrick there who said he would contact FCC Beaumont and to find out why my husband has not been released. He invited me to call him back the next day, which I did. When we spoke the second time on July 1, 2020, Mr. Derrick said that my husband remained at FCC Beaumont because he has not completed half of his sentence. I argued that the "CARES Act" has no percentage-of-sentence-served restriction, and Mr. Derrick argued that it does.

I declare under penalty of perjury that the foregoing is true and correct of my personal knowledge, which I believe to be true and if called as a witness I would be competent to testify thereto. Executed on this 7th day of July 2020.

Patti F. Stockman

Patti Stockman

DECLARATION OF LAWRENCE J. JOSEPH

I, Lawrence J. Joseph, hereby declare and state as follows:

1. I am over 18 years of age, and I reside in McLean, Virginia.

2. As of today, the COVID-19 pandemic has reportedly killed approximately 130,000 Americans according to U.S. government data reported at https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/us-cases-deaths.html.

3. I have offered to represent Mr. Stockman in filing a petition for a writ of *certiorari* by July 30, 2020, although I recommended that he seek better-known counsel to serve as counsel of record. I mostly work through Mr. Stockman's wife – who has power of attorney over his affairs – because I have been unable to reach Mr. Stockman through the Bureau of Prisons ("BOP"). It would help immeasurably to assist Mr. Stockman if he had access to a telephone and email; that would enable him not only to attempt to secure better counsel but also to assist in the preparation of his petition to this Court.

4. On information and belief, formed after reasonable inquiry, FCC Beaumont has converted its law library into a quarantine staging area.

5. It has proven impossible to reach Mr. Stockman via his BOP counselor or case worker. I attempted to arrange an attorney-client call through a BOP counselor by emails dated June 30 and July 2, 2020 but did not receive a response.

6. I would have preferred to have Mr. Stockman enter a declaration in support of this application, but he is simply unavailable through BOP.

7. On information and belief formed after reasonable inquiry, all other prisoners at FCC Beaumont's minimum-security satellite camp with comparable risk

factors for COVID-19 have already been transferred to home confinement or been given other, more favorable treatment.

8. I have reviewed the docket for *United States v. Ferguson*, No. 4:12-cr-00600 (S.D. Tex.), and the sealed motion granting Mr. Ferguson's alteration in sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) was apparently filed on June 21, 2020 (ECF #882) and granted on July 3, 2020 via an unsealed Memorandum and Order Granting Compassionate Release (ECF #897).

9. I filed a materially identical version of the accompanying application, with the e-filing complete circa 10:45 a.m. on July 7, 2020, the filing emailed to opposing counsel at 10:45 a.m. on July 7, 2020, and the paper copies delivered to the Court at 12:53 p.m. on July 7, 2020. Other than the final three paragraphs of this declaration, the addition of the introductory section on why this Court's Rule 23.3 does not bar the relief requested, updating the further spiking of COVID-19 infections at the FCC Beaumont camp where Mr. Stockman is incarcerated, and requesting exigent treatment in the Relief Requested, the application has not materially changed from the version emailed to opposing counsel in connection with the initial filing. In a phone conversation on the evening of July 9, 2020, Mara Silver of the Clerk's Office indicated that the application could not be filed because Mr. Stockman had not sought relief below, analogizing the situation to seeking bail from the Supreme Court.

10. On the early morning of July 9, 2020, the BOP website showed 80 inmates infected with COVID-19 – plus one staff member infected – at FCC Beaumont's low-security camp where Mr. Stockman is incarcerated.

11. I have reviewed the docket for *United States v. Stockman,* No. 18-20780 (5th Cir.), which shows the following entry for March 10, 2020: "MANDATE ISSUED. Mandate issue date satisfied. [18-20780] (NFD) [Entered: 03/10/2020 08:33 AM]."

I declare under penalty of perjury that the foregoing is true and correct of my personal knowledge, which I believe to be true and if called as a witness I would be competent to testify thereto. Executed on this 9th day of July 2020.

/s/ Lawrence J. Joseph

Lawrence J. Joseph