

No. _____

In the
Supreme Court of the United States

EBRAHIM KALATEHE,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

ANDREA RENEE ST. JULIAN
Counsel of Record
12636 High Bluff Dr., Ste. 400
San Diego, California 92130
(858) 792-6366
astjulian@san.rr.com

Counsel for Petitioner,
EBRAHIM KALATEHE

QUESTIONS PRESENTED

1. May the government use information obtained through a pen register against an individual over whom the government did not obtain a pen register order?
2. May an appellate court find an appellant has forfeited issues on appeal where the appellant cited valid legal authorities and referenced the underlying record in his briefing regarding those issues?

PARTIES TO THE PROCEEDINGS

The parties are petitioner, Ebrahim Kalatehe, and respondent, United States of America. All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI	2
OPINIONS BELOW.....	2
STATEMENT OF JURISDICTION.....	2
CONSTITUTIONAL PROVISION INVOLVED	3
STATEMENT OF THE CASE.....	4
A. Mr. Kalatehe's Background.....	4
B. Mr. Kalatehe's Arrest, the Indictment, and Arraignment	5
C. The District Court's Denial of Mr. Kalatehe's Motion to Suppress and Motion to Compel Discovery	9
1. Motion to Compel Discovery.....	9
2. Motion to Suppress	18
3. Denial of Motions	23
D. The Plea Agreement and Change of Plea	25

E. The Presentence Report and the Parties' Sentencing Positions.	27
1. The Office of Probation's Presentence Reports	27
2. The Government's Sentencing Position.....	28
3. Mr. Kalatehe's Sentencing Position.....	29
F. Sentencing	29
G. The Appeal.....	30
H. Bail Status	30
 REASONS FOR GRANTING THE WRIT.....	31
 I. THE CIRCUMSTANCES UNDER WHICH THE GOVERNMENT MAY USE INFORMATION OBTAINED THROUGH A PEN REGISTER AGAINST THIRD PARTIES IS AN ISSUE OF IMPORTANCE COMPELLING REVIEW.	31
II. THE COURT OF APPEALS' MEMORANDUM REGARDING WAIVER IS A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.	36

CONCLUSION	41
------------------	----

APPENDICES

Appendix A	
June 17, 2022, Memorandum of the Ninth Circuit Court of Appeals	2a
Appendix B	
March 4, 2021, Judgment of U.S. District Court, Central District of California	8a
Appendix C	
July 6, 2022, Order of Ninth Circuit denying petition for panel rehearing	15a

FEDERAL DECISIONS

<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	10
<i>California Pacific Bank v. Federal Deposit Insurance Corporation</i> 885 F.3d 560 (9 th Cir. 2018)	37
<i>Franks v. Delaware</i> , 438 U.S. 154 (1978)	18, 39
<i>Giglio v. United States</i> , 405 U.S. 150 (1972)	10
<i>Greenwood v. F.A.A.</i> , 28 F.3d 971 (9 th Cir. 1994)	39
<i>McNabb v. United States</i> , 318 U.S. 332 (1943) 318	34
<i>Miller v. United States</i> , 357 U.S. 301 (1958)	34
<i>Smith v. Maryland</i> , 442 U.S. 735 (1979)	33
<i>United States v. Huberts</i> , 637 F.2d 630 (9 th Cir. 1980)	38
<i>United States v. Johns</i> , 891 F.2d 243 (9 th Cir. 1989)	39
<i>United States v. Leon</i> , 468 U.S. 897 (1984)	38

United States v. Ngumezi,
980 F.3d 1285 (9th Cir. 2020) 34, 39

Wong Sun v. United States,
371 U.S. 471 (1963)..... 38

FEDERAL STATUTES

18 U.S.C. § 3121 31, 34

FEDERAL RULES

Fed. R. App. P. 28. 35-36

OTHER

145 Cong. Rec. S4033-01, 145 Cong. Rec. S4033-01, S4041, 1999 WL
230074. 33

147 Cong. Rec. H6726-04, 147 Cong. Rec. H6726-04, H6766, 2001 WL
1215497 33

PETITION FOR WRIT OF CERTIORARI

Petitioner, Ebrahim Kalatehe, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals, entered in the instant proceeding on June 17, 2022, Ninth Circuit Court of Appeal No. 21-50056.

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit issued an unpublished memorandum decision in this matter. App. 2a. See *United States v. Kalatehe*, No. 21-50056, 2022 WL 2188394 (9th Cir. June 17, 2022)(unpublished). The district court order from which Mr. Kalatehe appealed is also unpublished. App. 8a. See *United States v. Kalatehe*, U.S. District Court, Eastern District of California, No. 19-cr-00572.

STATEMENT OF JURISDICTION

The date on which the Ninth Circuit Court of Appeals filed its Memorandum in the instant matter was June 17, 2022. 2a. On July

1, 2022, petitioner filed a Petition for Panel Rehearing which was denied July 6, 2022. App 15a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V: No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

A. Mr. Kalatehe's Background

Mr. Kalatehe was born and reared in Tehran, Iran where he lived with his parents and his four siblings. PSR 20. In Iran, his family suffered from government persecution. Their dissent led the local police to detain and beat the family. In 2009, the Iranian government killed his brother Mohammad for participating in demonstrations against the regime. PSR 20.

After graduating from high school in Iran, Mr. Kalatehe worked in the field of antique rug and carpet sales. In 1994, while still in Iran, he married Khadijeh Habibpoor, and the couple had one child, Mashid . PSR 20.

In 2001, Mr. Kalatehe traveled to the United States from Iran for a business opportunity on business/tourism visas. Mr. Kalatehe over-stayed his visit and remained in the United States thereafter, living in Los Angeles where he operated his own business, Bebe Rugs Trade. PSR 22-23.

When in his early 20s, while still living in Teheran, Mr.

Kalatahe began using opium, “constantly” on a daily basis. He began smoking 2-3 grams per day, escalating to 5-6 grams per day. The last time Mr. Kalatehe used opium was prior to his arrest for the instant offense. Mr. Kalatahe was amenable to treatment and felt he could benefit from talking to others and sharing experiences. PSR 22. Mr. Kalatehe did have certain physical ailments, but did not suffer from mental health issues. PSR 21.

B. Mr. Kalatehe’s Arrest, the Indictment, and Arraignment

On or about July 26, 2019, an undercover DEA agent had a telephone call with Matthew Chavol. Mr. Chavol told the officer that he had a friend who could supply the officer with good quality opium at \$20,000 per kilogram. Mr. Chavol allegedly agreed to sell the undercover officer five kilograms of opium for \$100,000. The transaction was to take place on August 8, 2019. 3-ER-550-553, 583-584.

The DEA contacted the Burbank Police Department to

coordinate a surveillance of Mr. Chavol. 1-ER-222. Thus, on August 8, 2019, the Burbank police surveilled Mr. Chavol through GPS tracking. 3-ER-553-555. Mr. Chavol left his place of work and drove to an apartment complex on Gault Street in Reseda, entering the complex. 3-ER-553-554.

The Burbank police assertedly “knew” the Gault Street complex and that Mr. Kalatehe lived there “. . .because [that address is] listed on [Mr. Kalatehe’s] DMV, and they also knew [Mr. Kalatehe] from a prior case.” ER-554. On this basis, the Burbank police assumed that Mr. Chavol met with Mr. Kalatehe after entering the Gault Street complex. 3-ER-584, 647.

After leaving the Gault Street complex, Mr. Chavol drove toward what was allegedly the location of the intend the drug transaction. Burbank Detectives stopped Mr. Chavol based on probable cause that he was carrying opium, and the detectives allegedly found 2.1 kilograms of opium in his car. 3-ER-555-556, 560, 584.

Approximately 13 minutes after Mr. Chavol drove from the

Gault Street complex, Mr. Kalatehe left his apartment, entered his car, and started to drive when he was almost immediately stopped by Burbank police. 3-ER-577, 64. The Burbank Police chose to apprehend Mr. Kalatahe because of the information that had been obtained during the 2015 investigation. 3-ER-558-560. In this regard, law enforcement was staking out Mr. Kalatehe's residence based on the information obtained in 2015. 3-ER-562-563, 577. Once detectives stopped Mr. Kalatehe, they searched his car and allegedly found approximately 2.9 kilograms of opium. 3-ER-584-585, 562, 644-645.

Prior to the stop, law enforcement allegedly engaged in a "high-speed" chase with Mr. Kalatehe that did not end until Mr. Kalatehe's car collided with one of the detectives' cars. 3-ER-557-558, 562, 648. As Mr. Kalatehe explained, however, he did not evade police during his arrest nor did his car affirmatively crash into any police vehicle. 2-ER-260.

Mr. Kalatehe and Mr. Chavol were arrested, and in the evening of August 8, 2019, law enforcement executed a state search warrant

at Mr. Kalatehe's apartment, allegedly finding pay-owe sheets, scales, about one kilogram of a substance containing heroin, and about 7.8 kilograms of suspected opium. 1-ER-224, 227; 3-ER-644, 648.

On September 10, 2019, the government filed a complaint against Mr. Kalatehe and Mr. Chavol as a result of the August 8, 2019 incident. 3-ER-642. An indictment was later filed, followed by a first superseding indictment. 3-ER-582, 611. In the superseding indictment, the grand jury charged Mr. Kalatehe with Conspiracy to Distribute and Possess with Intent to Distribute Opium (21 U.S.C. § 846); Possession with Intent to Distribute and Distribution of Opium (21 U.S.C. §§ 841(a)(1), (b)(1)©); and Possession with Intent to Distribute Heroin (21 U.S.C . §§8 41(a)(1), (b)(1)(A)(i)). 3-ER-611. Mr. Kalatehe pleaded not guilty to the charges. 3-ER-533, 539, 603, 608

The government requested that Mr. Kalatehe be detained pending trial. 3-ER-637. The district court granted the government's request. 3-ER-622-624, 632.

C. The District Court’s Denial of Mr. Kalatehe’s Motion to Suppress and Motion to Compel Discovery

1. Motion to Compel Discovery

During the course of the instant matter, Mr. Kalatehe asked the government to produce tangible items related to the original sources of probable cause in this matter, from two different origins: (1) “wiretap” communication interceptions supposedly “authorized” by the United States District Court for the Northern District of Georgia (in or after 2015) , and (2) all information regarding the arrest of, statements by, the state prosecution documents related thereto, and offers of leniency or immunity and benefits provided for Mansour Biyoukaghai, including any and all statements made by Mr. Biyoukaghai at or after his arrest on or about June 7, 2019 to law enforcement. 1-ER-163. See also 1-ER-159, 162

The government refused to produce any of the requested documents. 1-ER-157. Thus, on January 21, 2020, Mr. Kalatehe filed a Motion to Compel Disclosure of Documents, pursuant to Rules 12,

16 and 26.2 of the Federal Rules of Criminal Procedure, the Fourth, Fifth and Sixth Amendments of the United States Constitution, *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). 1-ER-156. Mr. Kalatehe requested that the district court order the provision of the requested documents or alternatively, that the testimony of the relevant law enforcement agents be excluded from use by the government in the Motion to Suppress hearing in the case, and/or that the case be dismissed. 1-ER-157.

a. The Wiretap

Mr. Kalatehe was unaware that he had been wiretapped by the U.S. government, beginning in 2015, until he received a letter from the a Georgia district court in 2019, following his arrest in the instant matter. 1-ER-161. 217. Mr. Kalatehe's understanding of the wiretap came in the form of a three paragraph letter that did little more than inform him that conversations involving him had been intercepted by the Drug Enforcement Administration through wiretaps authorized by a Georgia district court. 1-ER-217.

The wiretap letter did not inform Mr. Kalatehe of the bases of the wiretap authorization. 1-ER160, 217. The letter Mr. did not identify a case name, case number, warrant number, law enforcement agency or related number, an authorizing judicial officer or designation. 1-ER-161, 217. For these reasons, Mr. Kalatehe needed the affirmative actions of the government to obtain and disclose the requested information and documents sought. 1-ER-162.

Mr. Kalatehe believed that the wiretap authorization was illegal because there was no lawful justification in any affidavit for the orders authorizing the wiretap. 1-ER-160. Mr. Kalatehe also believed that the information illegally obtained during that wiretap was used to stop, detain, arrest, search and seize him in this instant matter. 1-ER-160-162.

In response to Mr. Kalatehe's motion, the government claimed that the notice of a wiretap had been in error and that no intercept of Mr. Kalatehe's communications ever took place. Rather, Mr. Kalatehe's phone number was captured on a pen register. 1-ER-99. Despite Mr. Kalatehe's phone number having been captured on a pen

register, the government asserted that Mr. Kalatehe had not been the subject of either a wiretap or a pen register. 1-ER-99-100. The government additionally claimed that the pen register information received about Mr. Kalatehe was not discoverable in this matter “because the government does not intend to introduce any pen register evidence, and because our review of the pen register does not include any statements or Brady material”, and thus it refused to produce it. 1-ER-100.

Mr. Kalatehe took exception to the government’s assertions of non-existence and non-discoverability. He thus, requested the district court perform an in camera inspection of the 2015 intercept warrant and the logs, the intercepts and all related information. 1-ER-77.

b. The significance of Mr. Biyoukaghai’s arrest

Despite Mr. Biyoukaghai being arrested for an attempt to smuggle a large quantity of an illicit narcotic, the Los Angeles County Superior Court set his bail was set of only \$ 1,000.00, which he posted almost immediately. Mr. Biyoukaghai plead guilty and

was given a sentence of six months of house arrest, for which only served an actual three months. This was an exceptionally lenient sentence. 1-ER-167-168.

Based on these circumstances, Mr. Kalatehe believed that Mr. Biyoukaghai spoke extensively with law enforcement officers and agents in or about June, 2019 who documented such conversations in writing, about Mr. Kalatehe and Mr. Chavol, and was provided leniency and a kind of federal criminal “immunity” by such law enforcement agents in reward for the information provided to law enforcement. 1-ER-168.

c. The exchange of information among law enforcement involved in the 2015 intercepts and the 2019 arrests of Mr. Biyoukaghai and Mr. Kalatehe

The exchange of information from the 2015 intercepts and the 2019 arrests of Mr. Biyoukaghai and Mr. Kalatehe occurred through Drug Enforcement Agency (DEA) Agent Michael Sier , Homeland Security (HSI) Agent Conan Chang, and Burbank Police Detective G.

Mirakyan. 1-ER-163. The transmission of information among these three officers was detailed in a report by Detective Mirakyan, who was an investigator on the 2019 case involving Mr. Biyoukaghai. 1-ER-163, 219, 221.

During his investigation of Mr. Biyoukaghai, Detective Mirakyan contacted Agent Sier. 1-ER-163, 221. Agent Sier related to Detective Mirakyan that his taskforce was working a case involving a large opium trafficking organization and Mr. Biyoukaghai was one of the subjects involved. Later, in July 2019, Agent Sier contacted Detective Mirakyan and told him that his taskforce was concurrently investigating Mr. Chavol and Mr. Kalatehe who they believed were involved with Mr. Biyoukaghai. 1-ER-163, 221.

As explained by Detective Mirakyan in his report, Agent Chang had worked the 2015 case involving Mr. Kalatehe. 1-ER-163. It also happened that Agent Chang was assigned to Agent Sier's taskforce in the summer of 2019. 1-ER-163, 221. Consequently, after having spoken with Agent Sier, Detective Mirakyan contacted Agent Chang. 1-ER-163, 221. Agent Chang informed Detective Mirakyan that in

2015, Mr. Kalatehe was living at the Gault Street apartment complex and that Mr. Kalatehe was “. . .the apprentice of Assodollah Mohammedi who was a major Iranian opium trafficker . . .” 1-ER-163, 221-222.

As a result of the information provided by Agents Sier and Chang, Detective Mirakyan conducted a records check of Mr. Kalatehe and learned that he had a listed home address on Gault Street in Reseda. 1-ER-222.

On August 7, 2019, Agent Sier contacted Detective Mirakyan to inform him of the meeting between him and Matthew Chavol where an exchange of opium was to take place. As a result of that call, Detective Mirakyan and others from the Burbank Police Department coordinated with Agent Sier to surveille Mr. Chavol. 1-ER-222. Detective Mirakyan thus followed Mr. Chavol to the Gault Street apartment complex in the afternoon of August 8, 2019 and knew “. . . This location is Kalatehe's place of residence and the same location where DEA and HIS agents had conducted an undercover purchase of narcotics before.” 1-ER-222.

In his report, Detective Mirakyan detailed how his team came to identify and then stop Mr. Kalatehe during their surveillance of Mr. Chavol. Detective Mirakyan stated:

I heard Det. Dugas advised over the radio that he observed a subject leaving the apartment complex of . . . Gault Street, Reseda in a Honda CRV bearing the license plate of . . . I had previously conducted a records check of Kalatehe's vehicles that were registered to him and I knew that this vehicle was registered to him.

1-ER-223.

Detective Mirakyan further stated that "I knew, based on the information provided to me by Agent Sier and Agent Chang that Kalatehe was a known opium narcotics trafficker." 1-ER-223
Based on this information, Detective Mirakyan ". . . was of the opinion that Kalatehe was in possession of opium for sales (11351 H&S) and was transporting the narcotics to the meeting location to sell it to Agent Sier (in violation of 11352 H&S.)" 1-ER-223

d. The government's asserted use of the 2015 investigation information and Mr. Biyoukaghai's statements in the search warrant

In seeking an order compelling the production of discovery, Mr. Kalatehe pointed out that it was Agent Sier who was the affiant to the search warrant of Mr. Kalatehe's home issued in this matter. 1-ER-168, 227. As discussed by Agent Mirakyan, Agent Sier exchanged information regarding Mr. Kalatehe and Mr. Biyoukaghai with Agent Mirakyan. Also, Agent Sier, Agent Mirakyan and Agent Chang exchanged information about Mr. Kalatehe obtained through the 2015 investigation. 1-ER-168.

The search warrant detailed the illicit drugs allegedly recovered from Mr. Kalatehe's vehicle at the time of the 2019 stop. 1-ER-. As detective Mirakyan detailed in his report, the decision to stop Mr. Kalatehe as Mr. Chavol's suspected accomplice was based on the information the detective had received from Agent Chang who was a part of the 2015 investigation involving Mr. Kalatehe. 1-ER

Ultimately, the purpose of Mr. Kalatehe's motion to compel discovery was to obtain relevant documents, files, and recordings so that he could show that the stop, detention, searches and seizures, bases for the warrant for the search of Defendant's apartment, and prior alleged criminal activity in 2015, alleged by the government took place pursuant to law enforcement surveillance, investigation, and law enforcement undercover activity which were the products of illegal wiretap activity by the Government and the Drug Enforcement Administration, and undisclosed and unreliable information furnished by informant Mansour Biyoukaghai. 1-ER-62-63.

2. Motion to Suppress

On January 1, 2020, Mr. Kalatehe filed a Motion to Suppress Evidence, Quash and Traverse Warrants. 1-ER-183. In so doing, Mr. Kalatehe requested that the district court grant an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978).

Mr. Kalatehe sought an order to suppress the following items and any resulting or derivative evidence therefrom not lawfully

demonstrated as attenuated:

1. The wiretap communications interception of Defendant in or about 2015;
2. The authorization, if any, for such wiretap; whether warrant or otherwise;
3. The investigation in 2015 of Defendant as belonging to a drug distribution ring having been based upon the illegal wiretap interception;
4. Any evidence derived from the 2015 undercover investigation;
5. The stop, detention, search, seizure, and arrest of Defendant in 2019;
6. Any evidence derived from such stop, detention, search, seizure, and arrest 2019;
7. The search of an apartment in August 2019 allegedly rented by Defendant;
8. Any evidence derived from such search of an apartment; and

9. The use by the Prosecution for any reason in this case of the undercover investigation of Defendant in 2015 and any evidence obtained therefrom. 1-ER 202-203.

There were three significant categories of items of evidence that the government sought to use in the its case-in-chief against Mr. Kalatehe that were obtained in violation of the Fourth Amendment to the United States Constitution. These categories were (1) the items seized from Mr. Kalatehe's person and vehicle when he was stopped and searched by Burbank Police which included the allegedly illicit drugs, currency and apartment keys; (2) the allegedly illicit drugs and drug related items seized from Mr. Kalatehe's apartment pursuant to a state search warrant; and, (3) any evidence obtained during a prior undercover investigation in 2015 involving alleged sales of opium, which was not alleged in the indictment but which the government had given notice that it intended to utilize at trial against Mr. Kalatehe. 1-ER-185-186.

Mr. Kalatehe explained that his stop and arrest as well as the searches of his car and home conducted in this matter were based on

the information illegally obtained during the 2015 wiretap/pen register, and without that information, probable cause did not exist to stop him, arrest him, or search his vehicle and home. 1-ER-186-187, 189-191. In this regard, Mr. Kalatehe pointed out that in the declaration prepared by Agent Sier in support of the warrant to search Mr. Kalatehe's apartment, he alluded to the 2015 investigation of which he was not a part and that did not result in any charges being filed against Mr. Kalatehe. Yet, Agent Sier failed to explain to the court issuing the warrant how he obtained the supporting information or from whom the information came, nor did he provide the facts necessary to determine whether the information obtained was reliable. 1-ER-187-188. Nothing in Agent Sier's affidavit indicated whether the information he had obtained from other sources was second, third or even fourth-hand knowledge. 1-ER-188. Mr. Kalatehe further explained that even if the 2015 information had not been illegally obtained, it was stale by the time of the 2019 affidavit and thus could not support a finding of probable cause. 1-ER-192.

Mr. Kalatehe alleged that Agent Sier knew there were additional facts that he should have disclosed to the court in his affidavit but chose to hide, conceal, omit, and mislead the Magistrate. 1-ER-192. In this regard, Mr. Kalatehe alleged that Agent Sier was not only aware of the 2015 wiretap communications interception and aware that he and other members of the DEA and other law enforcement personnel used it as the basis for conducting the 2015 investigation and operation, he was also aware that such interception was obtained illegally. 1-ER-192-193. Mr. Kalatehe further alleged that Agent Sier, the DEA and other law enforcement agency personnel did not arrest Mr. Kalatehe in 2015 because he and they knew that the wiretap communications interceptions, which formed the basis for the 2015 investigation and operation, were obtained illegally. 1-ER-193-194.

Mr. Kalatehe further explained that statements made by Mr. Biyoukaghai were also a basis for the search warrant issued for Mr. Kalatehe's apartment, yet Agent Sier improperly failed to include that information in his affidavit. 1-ER-197.

3. Denial of Motions

The district court chose to hear the motion to compel and the motion to suppress at the same time. Thus, the hearings on both motions took place on February 25, 2020. 1-ER-40. At that time, the district court denied both motions. 1-ER-40.

a. Denial of the Motion to Suppress

Although Mr. Kalatehe indicated that some of the items he sought in his motion to compel were necessary to support his motion to suppress, the district court chose to hear the motion to suppress first. 1-ER-45. In denying the motion to suppress, the district court concluded that, based on the information contained in the affidavit, law enforcement had a sufficiently reasonable suspicion that Mr. Kalatehe was committing a crime, including a traffic violation. 1-ER-64. The district court further found that law enforcement had probable cause to believe that Mr. Kalatehe was transporting opium or had evidence of drug trafficking in his car. 1-ER-65-67. Additionally, the district court believed that the search-incident-to-arrest exception applied. 1-ER-68-69.

The district court further found that the search of Mr. Kalatehe's apartment was valid given that the affidavit on which the warrant was based relied on the results of the search of Mr. Kalatehe's vehicle. 1-ER-69-71. The district court found that even if probable cause had been lacking, the officers relied in good faith on the validity of the warrant. 1-ER-71.

With respect to Mr. Kalatehe's request for a *Franks* hearing, the district court found that none of the omissions claimed by Mr. Kalatehe justified a *Franks* hearing. 1-ER-72. The district court further found that based on the government's statements, Mr. Kalatehe was sent the notice of a wiretap in error and that no intercept of Mr. Kalatehe's communications ever took place. Rather, Mr. Kalatehe's phone number was captured on a pen register. 1-ER-73.

The district court concluded that Mr. Kalatehe's assertions regarding Mr. Biyoukaghai were speculative, and thus did not warrant a *Franks* hearing. 1-ER-73-74. Rather, the district court relied on the government's statement that Mr. Biyoukaghai made no

statements to law enforcement about Mr. Kalatehe or anyone else. 1-ER-73-74.

b. Denial of the Motion to Compel

In denying the motion to compel, the district court found that the materials requested by Mr. Kalatehe were either produced, non-existent or not material to the defense. 1-ER-80-81. Thus, neither *Brady* nor Federal Rules of Criminal Procedure, Rule 16 required their production. 1-ER-81-82.

D. The Plea Agreement and Change of Plea

On February 27, 2020, Mr. Kalatehe and the government entered into a plea agreement. 2-ER-352. Mr. Kalatehe agreed, *inter alia*, to plead guilty to Counts One of the First Superseding Indictment, conspiracy to distribute and possess with intent to distribute opium, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)C; and Count Seven of the First Superseding Indictment, possession with intent to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(i). 2-ER-353.

Mr. Kalatehe and the government agreed that the entry of guilty pleas would be conditional, in that Mr. Kalatehe reserved the right, on appeal from the judgment, to seek review of the adverse determination of Mr. Kalatehe's Motion to Suppress Evidence and his Motion to Compel Discovery. 3-ER-353. The plea agreement allows Mr. Kalatehe to withdraw his guilty pleas in the event he prevails on appeal. 3-ER-353-354.

The government agreed to recommend a two-level reduction in the applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. § 3E1.1, and recommend, and if necessary, move for an additional one-level reduction if available under that section, provided that Mr. Kalatehe demonstrated an acceptance of responsibility for the offense. It further agreed to move to dismiss the remaining counts against Mr. Kalatehe. 2-ER-354.

The government also agreed to recommend that Mr. Kalatehe be sentenced to a term of imprisonment no higher than the low end of the applicable Sentencing Guidelines range, provided that the offense level used by the Court to determine that range was 30 or

higher, and provided that the total term of imprisonment is at or above the statutory mandatory minimum sentence. 2-ER-354.

In the plea agreement, Mr. Kalatehe waived the right to appeal his conviction, except for, *inter alia*, an appeal based on a claim that the guilty plea was involuntary or on a ground regarding the offer of proof. 2-ER-330, 331 362-363. Mr. Kalatehe also agreed to a limited waiver of appeal of the sentence provided the Court imposed a total term of imprisonment within or below the range corresponding to an offense level of 30 and the criminal history category calculated by the Court. 2- ER 363.

At the change of plea hearing, Mr. Kalatehe pleaded guilty to Counts One and Seven of the First Superseding Indictment. 2- ER 311, 341. The district court accepted the pleas. 2-ER-311, 341-342

E. The Presentence Report and the Parties' Sentencing Positions.

1. The Office of Probation's Presentence Reports

In advising the district court as to Mr. Kalatehe's appropriate

sentence, Probation filed a Presentence Report, a Revised Presentence Investigation Report, two addenda, and a revised letter of recommendation. PSRs 1, 8, 28, 36, 56. Ultimately, the Office of Probation recommended a 120-month term of incarceration on each of the two counts, to run concurrently. PSRs 29. Probation recommended 5 years of supervised release on each count to run concurrently. PSRs 29. Probation also recommended a \$30,000 fine, PSRs 34.

2. The Government's Sentencing Position

In taking a sentencing position, the government objected to Probation's decision not to apply a two-level enhancement for reckless endangerment during flight. The government believed the total offense level should be 31, resulting in a guidelines range of 135-168 months' imprisonment. 2-ER-297, 307-308. Consequently, the government recommended that Mr. Kalatehe be sentenced to a total of 135 months of imprisonment, to be followed by five years of supervised release, with a \$30,000 fine. 2- ER 297, 309.

3. Mr. Kalatehe's Sentencing Position

Mr. Kalatehe filed a sentencing position requesting a sentence of 97 months. 2-ER-270. In support of his sentencing request, Mr. Kalatehe asked, *inter alia*, that the court make a downward departure and/or a variance based on his long term drug addiction and his minor roles in past offenses. 2-ER-264-265, 267-268.

F. Sentencing

Mr. Kalatehe's sentencing hearing took place on March 4, 2021. 1-ER-1, 9. In determining Mr. Kalatehe's term of incarceration, the district court stated that it could not sentence Mr. Kalatehe to a prison term of less than the mandatory minimum which was 120 months. 1-ER-27.

The district court imposed a 120-month term of incarceration on Count One to run concurrently with the 120-month term imposed on Count Seven. 1- ER 1, 33. The district court imposed 5 years of supervised release on both counts, to run concurrently. 1-ER-1, 33.

On the government's motion, the district court dismissed the

remaining counts against Mr. Kalatehe. 1-ER-3, 37.

G. The Appeal

On March 13, 2021, Mr. Kalatehe filed a timely notice of appeal. 1-ER-651. On June 17, 2022, the Ninth Circuit Court of Appeals issued a memorandum affirming Mr. Kalatehe's conviction and judgement. App 2a. On July 1, 2022, petitioner filed a Petition for Panel Rehearing which was denied July 6, 2022. App 15a.

H. Bail Status

Mr. Kalatehe is in federal custody serving his concurrent 120-month sentences. 1-ER-1. According to www.bop.gov, his projected release date is February 13, 2028.

REASONS FOR GRANTING THE WRIT

I. THE CIRCUMSTANCES UNDER WHICH THE GOVERNMENT MAY USE INFORMATION OBTAINED THROUGH A PEN REGISTER AGAINST THIRD PARTIES IS AN ISSUE OF IMPORTANCE COMPELLING REVIEW.

The government may not use a pen register to obtain information against an individual unless it has first obtained an order allowing it to do so. 18 U.S.C. § 3121(a). See also *United States v. Forrester*, 512 F.3d 500, 512 (9th Cir.2008). As the government explained in the proceeding below, Mr. Kalatehe was not the target of an order authorizing a pen register. 1-ER-99. Rather, Mr. Kalatehe's information was collected by the federal government beginning in 2015 as a result of a pen register installed on the telephone service of an unidentified third party. 1-ER100. The government thus confirmed that no order was ever obtained to collect information about Mr. Kalatehe through a pen register.

Despite the lack of an order against Mr. Kalatehe for the pen register, the federal government conveyed the information obtained from the pen register about Mr. Kalatehe to the Burbank Police Department who then used the information as the basis for the detention, arrest and search of Mr. Kalatehe in this matter. 1-ER-223. Although the government denied any such transfer of information, Burbank Police Detective Mirakyan detailed in his report that HSI Agent Chang was a part of the 2015 investigation as well as the instant one and that Agent Chang exchanged information with him and Agent Sier that was a result of the 2015 investigation. 1-ER-163, 219, 221-223.

On appeal, Mr. Kalatehe explained that the information obtained through the pen register was used to investigate him and ultimately stop, detain, arrest, search and seize him in the instant matter. 1-ER-160-162. Mr. Kalatehe further explained that because there was no authorization regarding the pen register as to him, the information from the pen register and all of the information obtained as a result of the pen register must be suppressed. Although relevant

statute and case law supported Mr. Kalatehe's contention on appeal, the Court of Appeals affirmed the district court's denial of his motion to suppress. A review of the relevant legal authorities shows the compelling reasons why this Court must address the issue raised by Mr. Kalatehe.

A failure to obtain an order for a pen register is not technically a violation of the Fourth Amendment. *Smith v. Maryland*, 442 U.S. 735, 742 (1979). That does not mean, however, that the information obtained from the installation of a pen register is not subject to suppression.

Because suppression is a disfavored remedy, it will normally impose it to remedy a statutory violation only where it is clearly contemplated by the relevant statute. *United States v. Moalin*, 973 F.3d 977, 996 (9th Cir.2020) citing *Forrester*, 512 F.3d at 512. A court, however, may order suppression to remedy the violation of a statute that enforces constitutional norms, even if the statute does not expressly call for suppression. *McNabb v. United States*, 318 U.S. 332, 344–45 (1943), invoking suppression for violation of a statutory

right intended to ward against “all the evil implications of secret interrogation,” a concern rooted in the Fifth Amendment; *United States v. Dreyer*, 804 F.3d 1266, 1278 (9th Cir.2015) citing *Miller v. United States*, 357 U.S. 301, 313–14 (1958), requiring suppression of evidence uncovered in search incident to unlawful arrest.

The legislative history of 18 U.S.C. § 3121(a) shows the statutory prohibition of the use of pen registers without a court order, is rooted in the Fourth Amendment’s protection of personal privacy. See 145 Cong. Rec. S4033-01, 145 Cong. Rec. S4033-01, S4041, 1999 WL 230074; 147 Cong. Rec. H6726-04, 147 Cong. Rec. H6726-04, H6766, 2001 WL 1215497. Under these circumstances, all information obtained as a result of the 2015 pen register should have been suppressed. The suppression of this evidence required the suppression of all evidence obtained through the information acquired through the 2015 pen register. *Utah v. Strieff*, 136 S.Ct. 2056, 2061 (2016); *United States v. Ngumezi*, 980 F.3d 1285, 1290 (9th Cir.2020).

Based on the relevant legal authority, there are compelling

reasons why this Court should address whether information obtain from a pen register conducted on a third part may be used to identify, investigate, stop, detain, arrest, search and seize a defendant in a separate matter and under what circumstances must the evidence obtained as a result of that information be suppressed.

**II. THE COURT OF APPEALS' MEMORANDUM
REGARDING WAIVER IS A DEPARTURE FROM
THE ACCEPTED AND USUAL COURSE OF
JUDICIAL PROCEEDINGS.**

In its Memorandum, the Court of Appeals concluded that Mr. Kalatehe waived two issues on appeal because he did not “specifically and distinctly” argue against certain conclusions by the district court. See Appendix A, Memorandum at App 4a. In this regard, the Court of Appeals stated Mr. Kalatehe:

. . . does not challenge the district court's conclusion that law enforcement had probable cause to arrest him and search his vehicle based on his speeding, reckless driving, and attempts to evade police. Kalatehe also does not challenge the district court's conclusion that even assuming the search warrant for his apartment was not supported by probable cause, law enforcement relied in good faith on its validity.

Appendix A, Memorandum at App 4a.

This ruling by the Court of Appeals was at odds with Fed. R. App. P. 28(a)(8)(A) and to the extent that it is a significant departure

from the accepted and usual course of judicial proceedings, this Court should grant the instant petition for certiorari.

Fed. R. App. P. 28(a)(8)(A) requires that an appellant's brief contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies. . . ." Thus where a party cites valid legal authorities and references the record, that party has preserved his challenges on appeal. *California Pacific Bank v. Federal Deposit Insurance Corporation* 885 F.3d 560, 570 (9th Cir. 2018).

In his briefing, Mr. Kalatehe explained that each of the searches and seizures which produced the evidence on which Mr. Kalatehe's guilty plea was based was improperly obtained information. (Appellant's Opening Brief at p. 56 et seq.) Mr. Kalatehe explained that each search and seizure violated the Fourth Amendment. Mr. Kalatehe also explained that the stale and unreliable information which was at the base of the searches could not support their legality. In so explaining Mr. Kalatehe cited myriad legal authority and specifically cited to the record. (Appellant's

Opening Brief at p. 56-63.)

In section II.B.3 of his opening brief, Mr. Kalatehe built on the arguments made in sections II.B.1 and II.B.2 by explaining that the fruit of the poisonous tree precluded the district court from relying on the alleged traffic violations and improperly obtained warrant to search Mr. Kalatehe's apartment. (Appellant's Opening Brief at p. 63-66. *Id.* at p. 65) In so doing, Mr. Kalatehe cited, *inter alia*, *Wong Sun v. United States*, 371 U.S. 471, 488-89, 83 (1963); *United States v. Huberts*, 637 F.2d 630, 638-39 (9th Cir.1980). He also cited to the record at 1-ER-154-155, 222-224, 233-234; 3-ER 550-553, 583-584.

In his Reply Brief, Mr. Kalatehe continued to explain that "Mr. Kalatehe's 'fruit of the poisonous tree' argument challenges the assertion of the alleged traffic violations. Similarly, Mr. Kalatehe's arrest and the related searches are the unattenuated fruit of the poisonous tree and thus the use of the good-faith reliance exception by the district court was misplaced." (Appellant's Reply Brief at p. 28.) In so doing, Mr. Kalatehe referenced legal authority that included *United States v. Leon*, 468 U.S. 897, 914 (1984) citing

Franks v. Delaware, 438 U.S. 154 (1978); *United States v. Ngumezi*, 980 F.3d 1285, 1291 (9th Cir.2020); *United States v. Johns*, 891 F.2d 243, 245 (9th Cir. 1989). (Appellant's Reply Brief at p. 29.) Mr. Kalatehe concluded by stating, "In his Opening Brief, Mr. Kalatehe argued that the "fruit of the poisonous tree" doctrine required the grant of his Motion to Suppress despite the exceptions relied upon by the district court. These exceptions included the assertion of the traffic violations and good-faith reliance. Additionally, Mr. Kalatehe's Opening Brief explained that the affidavit that is the subject of this appeal suffered from material omissions as a result of intentional/reckless conduct. Such conduct, as discussed, is a per se bar to the application of the good-faith exception." (Appellant's Reply Brief at pp. 29-30.)

Certainly, a reviewing court will not "manufacture arguments for an appellant. . . ." *Greenwood v. F.A.A.*, 28 F.3d 971, 977 (9th Cir. 1994). No such manufacturing was necessary in this matter. The arguments Mr. Kalatehe made on appeal were distinct and they were supported by references to the record and relevant legal authority.

Under these circumstances, the waiver ruling by the Court of Appeals is a significant departure from the accepted and usual course of judicial proceedings, thus this Court should grant the instant petition for certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: September 13, 2022 Respectfully submitted,

/s/ *Andrea R. St. Julian*

Andrea R. St. Julian
Attorney for Defendant/Appellant
EBRAHIM KALATEHE

APPENDICES

APPENDIX A

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 17 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EBRAHIM KALATEHE,

Defendant-Appellant.

No. 21-50056

D.C. Nos.
2:19-cr-00572-JFW-1
2:19-cr-00572-JFW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted June 6, 2022
Pasadena, California

Before: M. SMITH, BADE, and VANDYKE, Circuit Judges.

In August 2019, law enforcement arrested Ebrahim Kalatehe for opium trafficking. Kalatehe initially pleaded not guilty to all counts alleged in the indictment. He then filed a motion to suppress evidence and a motion to compel production. Kalatehe also requested an evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154 (1978).

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

The district court denied both motions and Kalatehe’s request for a *Franks* hearing. Kalatehe then pleaded guilty and was sentenced to 120 months’ imprisonment. Kalatehe now appeals the district court’s denial of his motion to compel, motion to suppress, and request for a *Franks* hearing. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Kalatehe argues that the district court erred in denying his motion to compel because the materials he sought were discoverable as favorable evidence or as impeachment evidence under *Brady v. Maryland*, 373 U.S. 83 (1963).

Because Kalatehe “cannot point to any existing favorable evidence to support his speculation” that the government did not produce *Brady* evidence, we review for an abuse of discretion. *United States v. Lucas*, 841 F.3d 796, 802–03 (9th Cir. 2016). To prevail, Kalatehe was required to “either make a showing of materiality under Rule 16 [of the Federal Rules of Criminal Procedure] or otherwise demonstrate that the government improperly withheld favorable evidence.” *Id.* at 808. His motion could not rest on “mere speculation about materials in the government’s files.” *Id.* (citation omitted).

Kalatehe’s arguments fail because they rely on such speculation. *See id.* at 808–09; *Runningeagle v. Ryan*, 686 F.3d 758, 767, 769–70 (9th Cir. 2012). Further, Kalatehe fails to demonstrate that production of these materials, assuming they existed, would “undermine confidence” in the denial of his motion to

suppress. *Kyles v. Whitley*, 514 U.S. 419, 435 (1995); *see also United States v. Booth*, 309 F.3d 566, 574 (9th Cir. 2002); *United States v. Lopez-Alvarez*, 970 F.2d 583, 598 (9th Cir. 1992). The district court did not abuse its discretion.

2. Kalatehe argues that the evidence against him should have been suppressed because it was tainted by a purportedly illegal 2015 pen register and because information derived from a separate 2015 undercover operation was stale and unreliable.

We review the district court’s denial of the motion to suppress de novo and its factual findings for clear error. *United States v. Peterson*, 995 F.3d 1061, 1064 (9th Cir. 2021). We affirm the district court for two reasons.

First, Kalatehe does not challenge the district court’s conclusion that law enforcement had probable cause to arrest him and search his vehicle based on his speeding, reckless driving, and attempts to evade police. Kalatehe also does not challenge the district court’s conclusion that even assuming the search warrant for his apartment was not supported by probable cause, law enforcement relied in good faith on its validity. Because Kalatehe did not “specifically and distinctly” argue against these conclusions in his opening brief, he has waived any challenge to them. *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); *see Fed. R. App. P.* 28(a). Because these independent bases for probable cause support denying the

motion to suppress, Kalatehe’s waiver is sufficient to affirm the district court’s ruling. *Cf. United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005).

Second, even if Kalatehe’s waiver is overlooked, the challenges he does raise are without merit. There is nothing in the record to suggest that the 2015 pen register that captured Kalatehe’s phone number played a role in the 2015 undercover operation or in the 2019 investigation that led to his arrest.¹ There is also nothing in the record to suggest that the pen register was illegal. *Cf. United States v. Reed*, 575 F.3d 900, 913 (9th Cir. 2009) (rejecting the “highly speculative” theory that wiretap was illegal). And even if the pen register were illegal, suppression would likely be inappropriate. *See United States v. Forrester*, 512 F.3d 500, 509, 512–13 (9th Cir. 2008) (as amended).

As for the purportedly stale evidence derived from the 2015 undercover operation, the age of the information “is not controlling,” *United States v. Flores*, 802 F.3d 1028, 1043 (9th Cir. 2015) (citation omitted), and it must be “evaluated ‘in light of the particular facts of the case,’” *United States v. Ped*, 943 F.3d 427, 431 (9th Cir. 2019) (citation omitted). Because the information derived from the 2015 undercover operation formed only a small part of the evidence supporting probable cause to search Kalatehe, its role in the investigation does not compel

¹ During oral argument, Kalatehe suggested that the 2015 pen register may in fact have been a wiretap. Nothing in the record suggests the district court clearly erred in finding that the device in question was a pen register, not a wiretap.

suppression. *Cf. United States v. Perkins*, 850 F.3d 1109, 1120–21 (9th Cir. 2017); *see also Burrell v. McIlroy*, 464 F.3d 853, 857–58 & n.3 (9th Cir. 2006) (as amended) (observing that law enforcement may consider a defendant’s prior criminal history “as part of the total calculus of information in [probable cause] determinations”). The record also does not support Kalatehe’s argument that this information was unreliable, because, as the district court found, the information was based on an officer’s direct observations of Kalatehe’s actions.

3. Kalatehe argues that he showed an entitlement to a *Franks* hearing because the affidavit in support of the search warrant for his apartment omitted information about the 2015 undercover operation. *See United States v. Norris*, 942 F.3d 902, 909–10 (9th Cir. 2019) (setting forth the standard for granting a *Franks* hearing).

Reviewing the district court’s denial de novo and its factual findings for clear error, we affirm. *See United States v. Christie*, 825 F.3d 1048, 1069 (9th Cir. 2016). Even if the purportedly omitted material were added into the affidavit, there would still be probable cause to search Kalatehe’s apartment. *See Norris*, 942 F.3d at 910 (“The key inquiry in resolving a *Franks* motion is whether probable cause remains once any misrepresentations are corrected and any omissions are supplemented.”).

AFFIRMED.

APPENDIX B

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.

Docket No.

CR 19-572(A)-JFWDefendant 1. Ebrahim Kalatehe | 66348-112 |akas: NoneSocial Security No. 3 3 3 0

(Last 4 digits)

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
March	4	2021

COUNSEL Garrett J. Zelen, Retained

(Name of Counsel)

PLEA GUILTY, and the court being satisfied that there is a factual basis for the plea. NOLO CONTENDERE NOT GUILTY**FINDING**

There being a finding of GUILTY, defendant has been convicted as charged of the offense(s) of:
Conspiracy to Distribute and Possess with Intent to Distribute Opium in violation of 21 U.S.C. §:846 [Ct 1]; Possession with Intent to Distribute Heroin in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(i) [Ct 7] as charged in the Seven-Count First Superseding Indictment filed on October 8, 2019

JUDGMENT AND PROB/ COMM ORDER

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: **Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Ebrahim Kalatehe, is hereby committed on Count 1 and 7 of the First Superseding Indictment to the custody of the Bureau of Prisons for a term of 120 months. This term consists of 120 months on each of Counts 1 and 7 of the First Superseding Indictment, to be served concurrently.**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 5 years. This term consists of 5 years on each of Counts 1 and 7 of the First Superseding Indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04.
2. The defendant shall not commit any violation of local, state, or federal law or ordinance.
3. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
4. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
5. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the U.S. Probation and

Pretrial Services Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant has reverted to the use of drugs. The defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.

6. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the Court-ordered treatment to the aftercare contractors during the period of community supervision. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required.
7. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
8. The defendant shall comply with the immigration rules and regulations of the United States, and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation & Pretrial Services Office while residing outside of the United States; however, within 72 hours of release from any custody or any reentry to the United States during the period of Court-ordered supervision, the defendant shall report for instructions to the United States Probation Office located at: the 300 N. Los Angeles Street, Suite 1300, Los Angeles, CA 90012-3323
9. The defendant shall cooperate in the collection of a DNA sample from the defendant.
10. The defendant shall submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), cell phones, other electronic communications or data storage devices or media, email accounts, social media accounts, cloud storage accounts, or other areas under the defendant's control, to a search conducted by a United States Probation Officer or law enforcement officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search pursuant to this condition will be conducted at a reasonable time and in a reasonable manner upon reasonable suspicion that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.

It is ordered that the defendant shall pay to the United States a special assessment of \$200.00, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Section 5E1.2(e) of the Guidelines, all fines are waived as it is found that the defendant does not have the ability to pay a fine.

The Court authorizes the Probation & Pretrial Services Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

Defendant informed of right to appeal.

On the Government's Motion, the Court orders Counts 5 and 6 of the First Superseding Indictment filed on October 8, 2019 as well as Counts 1, 5, 6 and 7 of the Indictment filed on September 24, 2019 dismissed as to this defendant only.

Court recommends that the defendant be placed in a facility located in Southern California, specifically MDC Los Angeles or Lompoc.

USA vs. **Ebrahim Kalatehe [66348-112]**

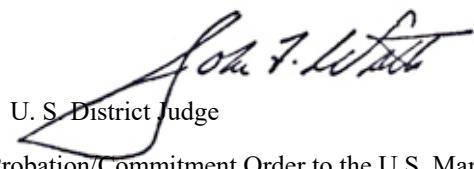
Docket No.: **CR 19-572(A)-JFW**

Court recommends that the defendant be placed in the 500 hour drug treatment program (RDAP) while in the custody of the Bureau of Prisons.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

March 4, 2021

Date

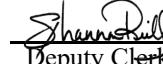

U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

March 4, 2021

Filed Date

By 

Deputy Clerk

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

United States District Court, Central District of California
 Attn: Fiscal Department
 255 East Temple Street, Room 1178
 Los Angeles, CA 90012

or such other address as the Court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(l)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
Defendant noted on appeal on _____
Defendant released on _____
Mandate issued on _____
Defendant's appeal determined on _____
Defendant delivered on _____ to _____
at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____
Date _____
Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____
Filed Date _____
Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant _____
Date _____

U. S. Probation Officer/Designated Witness _____
Date _____

APPENDIX C

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 6 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 21-50056

Plaintiff-Appellee,

D.C. Nos.

v.

2:19-cr-00572-JFW-1

EBRAHIM KALATEHE,

2:19-cr-00572-JFW

Defendant-Appellant.

Central District of California,
Los Angeles

ORDER

Before: M. SMITH, BADE, and VANDYKE, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing.

The petition for panel rehearing, Dkt. 44, is **DENIED**.