

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

JASPER WAGNER - PETITIONER

v.

UNITED STATES OF AMERICA - RESPONDENT

\_\_\_\_\_

**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

The Petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis.

Petitioner's affidavit or declaration is not attached because the undersigned counsel was appointed to the present case as CJA counsel by the district court in the Northern District of Mississippi, pursuant to the Criminal Justice Act. 18 U.S.C. § 3006A.

/s/ *Kelsey L. Dismukes*  
**KELSEY L. DISMUKES**  
THE DISMUKES LAW FIRM, PLLC  
P.O. Box 365  
Starkville, Mississippi 39759  
kldismukes07@gmail.com  
Telephone: (618) 694-3112

NO. \_\_\_\_\_

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In the

# Supreme Court of the United States

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Jasper Wagner,

*Petitioner,*

v.

United States of America,

*Respondent.*

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

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## PETITION FOR A WRIT OF CERTIORARI

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*Attorney for Petitioner-Defendant*

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## **QUESTIONS PRESENTED**

I. Whether the Fifth Circuit's holding that that judicial fact-finding as to past offenses is permissible during sentencing pursuant to *United States v. Hernandez*, 633 F. 3d 370 (5th Cir. 2011) violates this Court's precedent in *Gall v. United States*, 552 U.S. 38 (2007) and *Descamps v. United States*, 570 U.S. 254 (2013), as well as the Sixth Amendment?

## **PARTIES TO THE PROCEEDING**

Petitioner is Jasper Michael Wagner, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

## **COURT PROCEEDINGS**

*United States v. Jasper Michael Wagner*, 4:22-CR-70 Northern District of Mississippi; Judgment entered on November 2, 2022.

*United States v. Jasper Michael Wagner*, Fifth Circuit Case Number 22-60599; Order affirming district court entered on July 11, 2023.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Jasper Michael Wagner, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

## **OPINIONS BELOW**

The Fifth Circuit's opinion was issued unpublished on July 11, 2023. *See* Appendix A.

The district court entered the Judgment sentencing Mr. Wagner to 240 months' imprisonment on November 2, 2022. The Judgment is attached as Appendix B.

## **JURISDICTION**

This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit Judgment. *See* Rule 13.1 of the Supreme Court Rules. The jurisdiction of this Court to review the judgment of the Fifth Circuit is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL PROVISION INVOLVED**

This petition involves the Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## STATEMENT OF THE CASE

On April 6, 2022, Mr. Wagner was arrested in Leeds, Alabama by the Federal Bureau of Investigation for the robbery of Community Bank on West Main Street in Tupelo, Mississippi. ROA 89. On June 16, 2022, Mr. Wagner was charged in a one-count indictment in the Northern District of Mississippi for robbery in violation of 18 U.S.C. § 2113(a). ROA. 7. On July 26, 2022, Mr. Wagner pled guilty and was convicted of robbery. ROA. 19; *see also* Appendix B.

Prior to sentencing, a Pre-Sentence Report (“PSR”) was drafted by the U.S. Probation Office wherein Mr. Wagner’s advisory range was listed as a period of incarceration of 151 to 188 months. ROA 99.

At sentencing, the district court found that Mr. Wagner’s past actions had “traumatized” bank employees and this aspect of his case was cited as an aggravating factor, despite the fact that no witness testimony was presented by either party and the parties agreed that Mr. Wagner did not display or threatened the use of any type of weapon during the course of the robbery. ROA. 70, 74. The district court sentenced Mr. Wagner to 240 months, the statutory maximum. ROA 75. A timely Notice of Appeal was entered.

On appeal, Mr. Wagner advanced two arguments. First, that the district court’s justification was insufficient to support the severity of the sentence rendered, as required by *United States v. Gall* wherein this Court “[found] it uncontroversial that a major departure should be supported by a more significant justification than a minor one. After settling on the appropriate sentence, [the court] must adequately

explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall*, 552 U.S. at 50. At Mr. Wagner’s sentencing, the district court’s stated justification covered less than half of the factors enumerated in 18 U.S.C. § 3553(a), comprising less than nine full lines of transcript text, before imposing the statutory maximum.

Second, Mr. Wagner asserted that the district court erred by making independent factual findings with regard to Mr. Wagner’s prior convictions in violation of this Court’s ruling in *Descamps v. United States* and the Sixth Amendment. Specifically, the district court found that Mr. Wagner’s conduct had “traumatized on countless occasions” numerous individuals across the course of many years before imposing a substantial upward variance. ROA 74.

At the time of sentencing, there were no facts before the district court to support its findings as to the traumatizing of individuals in connection with Mr. Wagner’s prior convictions, nor were these facts established by the elements of Mr. Wagner’s prior convictions. The district court’s investigation into and factual findings as to Mr. Wagner’s prior offenses violated the Sixth Amendment because it extended beyond the statutory elements of Mr. Wagner’s prior conviction and into “legally extraneous but amplifying circumstances.” *Descamps v. United States*, 570 U.S. 254, 279-280 (2013). Accordingly, the district court’s role in “making findings about underlying conduct . . . raised serious Sixth Amendment concerns” because the district court relied on this finding when imposing a substantial upward variance

from the advisory guideline range. *United States v. Davis*, 139 S. Ct. 2319, 2327 (2019).

In a per curiam opinion, Mr. Wagner’s sentence was affirmed. See *United States v. Wagner*, No. 22-60599, 2023 WL 4462113 at \*3 (5th Cir. Jul. 11, 2023). The panel opinion focused on the district court’s statement that it had considered the § 3553 factors and Fifth Circuit precedent disallowing Sixth Amendment challenges for sentencing. Citing Fifth Circuit precedent, the panel determined that the district court was “entitled to engage in judicial fact-finding” with regard to Mr. Wagner’s prior offenses. *Wagner*, 2023 WL 4462113 at \*3. This ruling is patently erroneous and plainly in contradiction of this Court’s holding in *Gall* and *Descamps*.

Mr. Wagner, Petitioner, now seeks review by this Court to settle these important questions of federal law that conflict with relevant decisions of this Court.

## REASONS FOR GRANTING THIS PETITION

### **A. The Fifth Circuit’s review of Mr. Wagner’s case violates this Court’s precedent in *Gall*.**

The Fifth Circuit’s appellate review of Mr. Wagner’s case was woefully deficient and plainly inconsistent with the review procedures mandated by this Court in *Gall*. During appellate review, the Fifth Circuit was required to “ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating the Guidelines range . . . selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.” *Gall*, 552 U.S. at 49.

However, at Mr. Wagner’s sentencing, the district court relied on “clearly erroneous facts” by finding that Mr. Wagner’s conduct in connection with his prior conviction had created trauma in multiple persons. *Id*; *see also* ROA. 74-75. The district court’s findings were made despite agreement by the parties that Wagner had not used or presented weapons during the commission of his present and past offenses. ROA. 70-71. This was clearly erroneous because there were no facts before the district court to support its findings, nor were these facts established by the statutory elements of Mr. Wagner’s prior convictions.

Lastly, the district court failed to adequately explain the chosen sentence. Although the district court did engage in a precursory consideration of the 18 U.S.C. § 3553(a) factors, the district court’s explanation was wholly deficient to support the severity of the sentence rendered, which was the maximum allowed by statute. The

district court's reasoning was inadequate to allow for "meaningful appellate review and to promote the perception of fair sentencing." *Gall*, 552 U.S. at 50.

Despite this, the Fifth Circuit noted that the district court stated it had considered the factors under 18 U.S.C. § 3553(a) and deemed this analysis adequate. *Wagner*, 2023 WL 4462113 at \*2-3.

**B. The Fifth Circuit's application of *Hernandez* allows sentencing courts to rely on legally extraneous facts in connection to a defendant's criminal history in violation of this Court's precedent in *Descamps*.**

On appeal, the Fifth Circuit further determined that "the district court was entitled to engage in judicial fact-finding" due the Fifth Circuit precedent in *United States v. Hernandez*, 633 F.3d 370 (5<sup>th</sup> Cir. 2011). Specifically, the Fifth Circuit applied its precedent in *Hernandez* as support for its holding that the district court was entitled to make factual findings relevant to Mr. Wagner's sentencing, even if those findings pertained to past offenses. *Wagner*, 2023 WL 4462113, at \*3. In *Hernandez*, the Fifth Circuit held that, with regard to "Sixth Amendment challenges to sentences within the statutory maximum that are reasonable only if based on judge-found facts, such challenges are foreclosed under our precedent." *Hernandez*, 633 F.3d 370, 374 (5<sup>th</sup> Cir. 2011).

Findings of this type, while apparently allowable by the Fifth Circuit's *Hernandez* precedent, are inconsistent with this Court's holding in *Descamps*, which prohibits sentencing courts from relying on legally extraneous facts from a defendant's prior conviction to enhance a sentence. See generally *Descamps*, 570 U.S. at 254. Although the facts of Mr. Wagner's case are different from those in *Descamps*,

the same issue is presented with a slight variation. The *Descamps* holding should apply to the present case because the district court relied on legally extraneous circumstances which were not a part of the evidentiary record or established by Mr. Wagner's prior offenses and used this finding to impose a substantial upward variance to the statutory maximum sentence. The district court's judicial fact-finding with regard to Mr. Wagner's prior offenses violates Mr. Wagner's Sixth Amendment rights because the district court's actions bypassed the Sixth Amendment requirement for "a jury – not a sentencing court – [to] find such facts, unanimously and beyond a reasonable doubt." *Descamps*, 570 U.S. at 279-80. Certiorari is warranted to reaffirm the Sixth Amendment standard in sentencing created by this Court.

## CONCLUSION

For the foregoing reasons, Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit and allow him to proceed with briefing on the merits and oral argument.

Dated: September 23, 2023

Respectfully submitted,

/s/Kelsey L. Dismukes  
**KELSEY L. DISMUKES**  
The Dismukes Law Firm, PLLC  
P.O. Box 365  
Starkville, Mississippi 39759  
Telephone: (618) 694-3112  
*Attorney for Petitioner-Defendant*

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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JASPER MICHAEL WAGNER - PETITIONER

v.

UNITED STATES OF AMERICA - RESPONDENT

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**PROOF OF SERVICE**

I, the undersigned counsel of record, do swear or declare that on this date, September 25, 2023, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above document in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States,  
Room 5614, Department of Justice  
950 Pennsylvania Ave.,  
N.W., Washington, D. C. 20530-0001

Office of the U.S. Supreme Court Clerk  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 25<sup>th</sup>, 2023.

/s/ Kelsey L. Dismukes  
**KELSEY L. DISMUKES**

# APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 11, 2023

Lyle W. Cayce  
Clerk

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No. 22-60599  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JASPER MICHAEL WAGNER,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 1:22-CR-70-1

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Before STEWART, DENNIS, and WILLETT, *Circuit Judges.*

PER CURIAM:\*

Jasper Michael Wagner pleaded guilty to one count of bank robbery in violation of 18 U.S.C. § 2113(a). The district court sentenced Wagner to the statutory maximum sentence of 240 months in prison, which was above the advisory guidelines range of 151 to 188 months of imprisonment. On appeal,

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-60599

Wagner asserts that the district court imposed a procedurally and substantively unreasonable sentence and violated the Sixth Amendment.

First, Wagner argues that the district court imposed a procedurally unreasonable sentence by both failing to adequately articulate its reasons for imposing an above-guidelines sentence and improperly relying on judge-found facts. Because Wagner did not object to his sentence on these bases, we review for plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009).

To ensure that the sentence is procedurally reasonable, the district court is required to articulate the specific reasons for imposing an above-guidelines sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The stated reasons should be “fact-specific and consistent with the sentencing factors enumerated in [18 U.S.C. §] 3553(a).” *United States v. Smith*, 440 F.3d 704, 707 (5th Cir. 2006). The record demonstrates that the district court adequately articulated its consideration of the § 3553(a) factors before imposing the above-guidelines sentence. *See id.* at 707-08.

Next, a sentence is procedurally unreasonable if the district court imposed the sentence based on clearly erroneous facts. *See Gall*, 552 U.S. at 51. The district court must “determine its factual findings at sentencing by a preponderance of the relevant and sufficiently reliable evidence.” *United States v. Alaniz*, 726 F.3d 586, 619 (5th Cir. 2013); *see United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005). The district court did not err by inferring from the presentence report (PSR) that bank employees were traumatized by Wagner’s many bank robberies because the underlying facts were established by a preponderance of the evidence and had sufficient indicia of reliability. *See Mares*, 402 F.3d at 519. Based on the foregoing, the sentence was procedurally reasonable, and Wagner has shown no error, plain or otherwise. *See Mondragon-Santiago*, 564 F.3d at 361.

No. 22-60599

Second, Wagner contends that his sentence was substantively unreasonable because the district court did not properly weigh the § 3553(a) factors. Because this challenge was preserved, we review for abuse of discretion. *See Gall*, 552 U.S. at 51. Before imposing the sentence, the district court evaluated the facts and criminal history set forth in the PSR, reviewed the written arguments of the Government and defense counsel, considered the letter of support from Wagner’s sister, listened to Wagner’s in-court apology and stated intentions during incarceration, heard arguments from counsel, and confirmed that it had considered the sentencing factors in § 3553(a). There is no indication that an important factor was overlooked, that an improper factor was given significant weight, or that the imposed sentence suggests a clear error of judgment in the court’s balancing of the factors. *See Smith*, 440 F.3d at 708. We will not reweigh the sentencing factors and substitute our judgment for that of the district court, as Wagner requests. *See United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017).

Finally, Wagner asserts that the district court’s consideration of judge-found facts violated the Sixth Amendment. We have explicitly “foreclosed as-applied Sixth Amendment challenges to sentences within the statutory maximum that are reasonable only if based on judge-found facts.” *United States v. Hernandez*, 633 F.3d 370, 374 (5th Cir. 2011). As previously discussed, the district court’s inference that bank employees were traumatized by Wagner’s many bank robberies was supported by a preponderance of the evidence. *See Mares*, 402 F.3d at 519. Moreover, Wagner was sentenced to the statutory maximum of 240 months of imprisonment. *See* § 2113(a). Accordingly, the district court was entitled to engage in judicial fact-finding, no constitutional violation occurred, and there was no error, plain or otherwise. *See Hernandez*, 633 F.3d at 374.

AFFIRMED.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

July 11, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 22-60599 USA v. Wagner  
USDC No. 1:22-CR-70-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: Whitney M. Jett, Deputy Clerk

Enclosure(s)

Ms. Kelsey Dismukes  
Mr. Paul David Roberts

# APPENDIX B

## UNITED STATES DISTRICT COURT

Northern District of Mississippi

UNITED STATES OF AMERICA ) **JUDGMENT IN A CRIMINAL CASE**  
 v. )  
 Jasper Michael Wagner )  
 ) Case Number: 0537 1:22CR00070-001  
 ) USM Number: 98000-071  
 )  
 ) Kelsey Leigh Dismukes  
 ) Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count 1 of the Indictment

pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2113(a)	Bank Robbery	04/06/2022	1

The defendant is sentenced as provided in pages 2 through 7 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)

Count(s) \_\_\_ is/are dismissed on the motion of the United States.

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 1, 2022  
 Date of Imposition of Judgment

  
 Signature of Judge

Sharion Aycock, U.S. District Judge  
 Name and Title of Judge

November 2, 2022  
 Date

DEFENDANT: Jasper Michael Wagner  
CASE NUMBER: 1:22CR00070-001**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Two Hundred Forty (240) months on Count 1 of the Indictment.**

The term of imprisonment imposed by this judgment shall run consecutively to the defendant's revocation sentence of custody in NDMS Docket Nos.: 2:11CR00081, 3:12CR00165, & 3:12CR00186.

The court makes the following recommendations to the Bureau of Prisons:

The defendant be housed in the BOP at FCI Talladega or, alternatively, at FCI Williamsburg, in order to be close to family.

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: Jasper Michael Wagner  
CASE NUMBER: 1:22CR00070-001**SUPERVISED RELEASE**Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years on Count 1 of the Indictment.

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 determine 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 cooperate in the collection of DNA as directed by the probation officer. *(check, if applicable.)*
5.  You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable.)*
6.  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.

DEFENDANT: Jasper Michael Wagner  
CASE NUMBER: 1:22CR00070-001

## STANDARD CONDITIONS OF SUPERVISION

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.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_