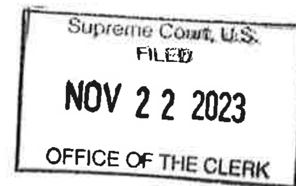


No. 23A495

SUPREME COURT OF THE UNITED STATES

MARKOS N. PAPPAS,

Applicant,

-vs-

UNITED STATES OF AMERICA,

Respondent.

ON APPLICATION FOR BAIL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT RE: APPEAL NO. 23-6762

APPLICATION REGARDING BAIL ADDRESSED TO THE HONORABLE SONIA SOTOMAYOR CIRCUIT JUSTICE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To: The Honorable Sonia Sotomayor, Supreme Court Justice

PRELIMINARY STATEMENT

Markos N. Pappas, Applicant *pro se* ("Pappas"), brings this application regarding bail to Your Honor per S.Ct. Rule 22.5. Pappas is *pro se* in the district court proceedings (D.Conn.) still in the pretrial phase, and he prosecuted his bail appeal to the United States Court of Appeals for the Second Circuit *pro se*. Pappas' bail appeal was decided on October 12, 2023 and reconsideration was denied on November 16, 2023, and the appeal related to serious due process violations and the unconstitutional application of the Bail Reform Act ("the Act") per the district court's disregard of the procedures built

into the Act, *i.e.*, 18 U.S.C. § 3142(f), which this Court relied on to uphold the validity of the Act against a facial due process challenge in *United States v. Salerno*, 481 U.S. 739 (1987).

Because a two judge panel of the Second Circuit affirmed the district court without any explanation as to the reasoning for its decision when there has been such a clear disregard for the plain language of the Act and this Court's decision in *Salerno* by the district court, Pappas respectfully requests that Your Honor give this matter some attention via a brief look at what Pappas submits herewith. If Your Honor does so, Pappas humbly and respectfully submits that Your Honor would agree that it is appropriate to remand to the Second Circuit with instructions that it order that Pappas be released on the same standard conditions of release as his codefendants.

REASONS WHY THE APPLICATION SHOULD BE GRANTED

Pappas had a detention hearing in the United States District Court for the District of Connecticut on April 3, 2023 before Magistrate Judge Robert Spector. Magistrate Judge Spector ordered that Pappas be detained finding him both a risk of flight and a danger to the community. (App. A, at 3-5).[1]

Per 18 U.S.C. § 3145(b) Pappas moved to revoke the magistrate's detention order, (App. A, at 5-6), and on June 7, 2023 District Judge Omar Williams held a hearing. But, Judge Williams limited the hearing to 30 minutes, which Pappas objected to on the basis that the time limitation would prevent him from calling the two law enforcement witnesses, and one lay witness, to refute certain facts relied on by the magistrate and to establish additional favorable facts relevant to the matters of flight and dangerousness. Judge Williams refused to accommodate Pappas in any way despite Pappas offering some compromises, and Pappas objected. (App. A, at 6-7).

[1] Cites preceded by "App." are to each of the appendices annexed hereto.

Pappas then presented a very pointed argument and at the conclusion of the same pointed out that his argument took the entire 30 minutes allotted by Judge Williams and again objected to not being able to call the witnesses who were present in court. Judge Williams commended Pappas on presenting a focused argument, but the court did not grant any additional time for Pappas to present witnesses. (App. A, at 7-8).

After reading what Pappas objected to as a decision reflecting pre-judgment of the matter of bail prepared prior to the hearing, (App. A, at 9-12), Pappas again noted his objection to not being permitted to call the witnesses as the decision read by Judge Williams indeed reflected that what Pappas submitted as an offer of proof as to what the witnesses would have testified about favorably to Pappas, ended up being the precise subjects the court relied on to deny bail. (App. A, at 12). The relevance of the witnesses Pappas wanted to call is thus reflected by the decision itself, and notably, neither the government nor the court ever disputed the relevance of the witnesses Pappas identified or the offer of proof he made as to what they would have testified about. Moreover, the decision did not identify why the conditions of release proposed by Pappas would not "reasonably" assure his appearance and the safety of the community because the pre-hearing prepared decision did not account for the creative combination of conditions Pappas proposed during the hearing.

Pappas fairly argued in the Second Circuit that the district court's decision violated the specific due process written into and required by the Act, specifically 18 U.S.C. § 3142(f) that provides a right to call witnesses, which due process this Court relied on in *Salerno* to save the Act from wholesale invalidation on due process grounds. (App. A, at 13-27). The government opposed in a pleading that was wrought with inaccurate factual and legal

positions, inaccurate citations to authority, and inaccurate claims as to the holding in *Salerno*, (App. B), all of which Pappas fully pointed out in his reply, (App. C, at 10-15).

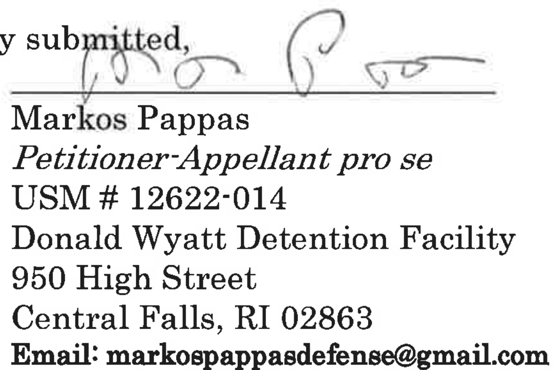
Nevertheless, a two judge panel of the Second Circuit affirmed without offering any reasoning for the same, (App. D), which Pappas sought reconsideration of based on the clear departure from *Salerno* and binding Second Circuit precedent that was in issue in Pappas' appeal. (App. E, at 3-5). Again with no explanation, reconsideration was denied. (App. F).

It is understood that Your Honor is extremely busy, but Pappas has kept this application intentionally brief because he thinks the best way to demonstrate to Your Honor that he deserves the relief he sought in the Second Circuit is by asking Your Honor to take a little time and read through the relevant documents submitted to the Second Circuit (App A, App. B, and App. C annexed hereto), and if Your Honor does so, I would suggest that maybe my *pro se* status got in the way of the good judges below giving my filings the attention and consideration they would have gotten if filed by an attorney. I know the norm is usually that *pro se* parties don't know law well enough to make proper arguments in an appeal so there is an understandable comfort in trusting the government's position in such appeals as the government is supposed to be party courts can rely on to be fair and accurate most of the time. That is not so here and I implore Your Honor to please just take a look at App. A, App. B, and App. C, and if Your Honor says I am wrong after doing so I will accept that and move on as I have been a follower of Your Honor's work for over two decades dating back to when Your Honor was a District Judge and I trust that Your Honor is fair in assessing and deciding legal issues.

CONCLUSION

Applicant Pappas humbly prays that Your Honor will give this matter appropriate consideration and ultimately agree that the Act and Salerno was misapplied and that this matter should be remanded with instructions that the Second Circuit remand this matter to the district court with instructions to release Pappas on the same standard conditions his codefendants were released on, and direct that the case be reassigned to a new judge for the duration of the proceedings in this case.

Respectfully submitted,



Markos Pappas
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* * *

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via prepaid, First-Class, U.S. Mail, on this 22nd day of November, 2023, upon:

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

By:
Markos Pappas

****

Appendix A

****

<u>PAPPAS' INITIAL BRIEF</u>

23-6762

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 23-6762

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

MARKOS PAPPAS,

Defendant-Appellant.

APPEAL FROM A DETENTION ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT (O. WILLIAMS, J.)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT-APPELLANT MARKOS PAPPAS' MOTION FOR REMAND TO SET CONDITIONS OF PRETRIAL RELEASE AND REASSIGNMENT TO A DIFFERENT JUDGE

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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No. 23-6762

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

MARKOS PAPPAS,

Defendant-Appellant.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT-APPELLANT MARKOS PAPPAS' MOTION FOR REMAND TO SET CONDITIONS OF PRETRIAL RELEASE AND REASSIGNMENT TO A DIFFERENT JUDGE

JURISDICTIONAL STATEMENT

Defendant-Appellant Markos Pappas ("Pappas") appeals the June 7, 2023 order of the United States District Court for the District of Connecticut (Williams, J.), denying his motion under 18 U.S.C. § 3145(b) for revocation of the magistrate judge's detention order. A timely notice of appeal was filed on June 11, 2023. (Doc. 147).[1] This Court has jurisdiction pursuant to 18 U.S.C. § 3145(c), 18 U.S.C. § 3731, and 28 U.S.C. § 1291.

PRELIMINARY STATEMENT

On March 28, 2023, Defendant Pappas was arrested pursuant to a federal criminal complaint, (Doc. 1-1), charging drug conspiracy offenses. Counsel was appointed and Pappas was arraigned and detained that same date. (Doc. 7 and 10). After a hearing on April 3, 2023, (Exhibit A, annexed hereto), Magistrate Judge Robert M. Spector ordered

[1] Cites preceded by "Doc." are to entries in the docket of D.Conn. Case No. 3:23-CR-0062(OAW).

pretrial detention of Pappas, without prejudice. (Doc. 18). The following day, on April 4, 2023, a New Haven grand jury returned a 14-count indictment against Pappas and 13 others, in which, Pappas is charged in two drug conspiracy counts. (Doc. 21).

Pappas moved to represent himself in this matter, (Doc. 63), and after a hearing and inquiry of Pappas on May 2, 2023, the Honorable Omar A. Williams, U.S. District Judge, granted Pappas' request. (Doc. 107). Pappas filed a motion for revocation of the magistrate judge's detention order that same day. (Doc. 108--Exhibit B, annexed hereto). The government opposed, (Doc. 118--Exhibit C, annexed hereto), and Pappas replied, (Doc. 135--Exhibit D, annexed hereto). On June 7, 2023, Judge Williams conducted a hearing at which the parties were strictly limited to a total of 30 minutes per side for their presentations and arguments, (Doc. 140 and Doc. 141), and after which Judge Williams denied Pappas' motion for revocation of the magistrate judge's detention order via a decision prepared prior to the hearing. (Exhibit E, annexed hereto, at 32-34). That decision is the basis of this appeal.

As discussed in greater detail below: (1) a remand with instructions to set conditions of release is warranted because the district court's strict time limitation was a *de facto* or functional equivalent of a denial of Pappas' right to call witnesses relevant to material facts in issue regarding flight/dangerousness, and the district court's refusal to enable the immediate review by this Court provided for in the Bail Reform Act, renders the Act unconstitutional as applied to Pappas; (2) a remand with instructions to set conditions of release is appropriate because the district court did not reconcile why other similarly, or worse, situated defendants in this and other cases were able to be accommodated with conditions of pretrial release and that there were none, including the acknowledged "creative" conditions proposed by Pappas at the hearing, to "reasonably" assure Pappas' appearance in court and the safety of the community; and (3) this case presents the sort of rare situation warranting that this Court direct reassignment of this case for all further proceedings as to Pappas because the record amply reflects that the district court prejudged the entire issue of pre-trial detention via a decision prepared prior to the hearing, in which the district judge specifically made a finding of guilt per application of state law as to a key

issue in the case and demonstrates that the district judge intended to punish Pappas via pre-trial detention, thus giving rise to a legitimate concern regarding the appearance of justice.

RELEVANT FACTS

A. The April 3, 2023 Hearing Before Magistrate Judge Spector

Although Pappas was represented by counsel at the April 3, 2023 hearing, Judge Spector permitted Pappas to address the Court directly, during which, Pappas addressed his prior federal convictions noting that he was surely not the same person he was prior to spending 22 years, 6 months, 6 days in federal prison after convictions on drug conspiracy and witness retaliation charges. (Exhibit A, at 12). Pappas explained that he was a lifelong, well-rooted New Haven resident who did not flee to avoid federal prosecution in his last federal case in 1996 while he was out on bail in the state precursor to that case where he was facing more time than he now faces, for over a year, and that his roots in New Haven have grown deeper since his release from federal prison in 2019 via his acquisition of properties and businesses, and that he had his first grandchild on the way which would only root him further as he very much wants to be a big part of his grandson's life. (Exhibit A, at 15-16).

In giving an example of his growth over his lengthy prior federal imprisonment, and to demonstrate he is not presently a danger to any person or the community, Pappas pointed to his making of amends a few years prior to his release with the witness, Ronald Fassett, he was convicted of retaliating against. (Exhibit A, at 18).

The government argued that Pappas should be detained because: (1) cash deposits in Pappas' bank accounts that it argued were inconsistent with how a business typically works and the foot traffic at Pappas' auto repair shop, which the government said was relevant to its ongoing money laundering investigation of Pappas; (2) that there was no Department of Labor information about Pappas' employees; (3) that Pappas was heard in an intercepted phone call saying he hasn't paid taxes in three years; (4) that one of Pappas' sureties (his fiancé) was heard in a call intercepted on Pappas' phone "warning Mr. Pappas about law enforcement in their neighborhood[]"; but (5) as to dangerousness admitted "there's no allegations as to violence as to Mr. Pappas...." (Exhibit A, at 22-23). The

government pointed to drug seizures from people other than Pappas, and relied heavily on Pappas flight from the scene of a motor vehicle stop by Connecticut State Police on the highway on February 2, 2023, and a search several hours later at a motel Pappas was observed coming out of with a brown paper bag. (Exhibit A, at 24-25). The government summed up its argument:

> "So I think in terms of Mr. Pappas' history I would agree he's not the man he was 20 years ago, that this has been taken to a new level of financial sophistication with tens of thousands of dollars of money involved in the businesses. And for those reasons the Government believes that Mr. Pappas is a flight risk given the significant, significant penalties that he faces if convicted on these matters, as well as the risk, the ongoing risk to the community and that nothing in the bond package does anything to address those concerns."

(Exhibit A, at 26).

Judge Spector then summed up his position at that point which was that the affidavit in support of the criminal complaint Pappas was arrested on laid out calls and surveillance:

> "...which make it quite clear that after Mr. Taylor was arrested in November of '22 and astounding quantities of drugs were seized, Mr. Pappas switched to a different supplier... And what the affidavit alleges is that he's able to evade capture, ditch what he has and then he's going to go turn himself in once he's gotten rid of the drugs. So I assume you're going to tell me that these calls mean something different?

(Exhibit A, at 27).

Pappas offered fair counter-explanations as to the misinterpretations of calls based on investigators' uncorroborated, self-serving, beliefs, and offered his position about his PTSD as to why he left the scene of the stop on the highway but pointed out his undisputed intent to turn himself in, (Exhibit A, at 25-26), after which Judge Spector noted Pappas' finances, cash bank deposits, and the suspicion of money laundering by the government and TD Bank which closed Pappas' personal account in October of 2022. (Exhibit A, at 38-40). Pappas was candid about his record keeping deficiencies and noted he was scheduled to meet with an accountant to get his records and taxes in order as he was not

able to do that on his own and needed expert assistance, but made clear all his revenue was from legitimate sources, including an entirely cash based T-shirt company the government is aware Pappas owns. (Exhibit A, at 41-43).

After a short recess Judge Spector denied bail without prejudice noting his main point of concern was Pappas leaving the scene of the February 2, 2023 Connecticut State Police stop on the highway, which Judge Spector viewed as an indication that Pappas was involved in criminal conduct and that such conduct continued on February 2, 2023, several months after searches and seizures from people at locations Pappas maintains he had nothing to do with. (Exhibit A, at 44-51). The written decision memorialized what was stated in Court. (Doc. 18).

B. Filings Re: Pappas' Motion To Revoke Under 18 U.S.C. § 3145(b)

1. Pappas' motion to revoke the magistrate judge's order

When Pappas' request to represent himself was granted on May 2, 2023, he filed that same day a motion under 18 U.S.C. § 3145(b) to revoke the magistrate judge's detention order, in which Pappas contested some of the factual information relied on by Judge Spector in his detention order, and set forth some case comparisons of defendants with more severe charges and evidence against them whom were granted bail. (Exhibit B, at 2-12). Pappas also argued that proven prosecutorial misconduct he was subjected to and severely harmed by relative to his 1996 federal case, that was remedied in 2019 resulting in Pappas' immediate release, also warranted that this entire matter be viewed with a suspicious eye as to him and should alone serve as a sufficient basis for his release on bail in this matter especially since the government got almost five more years in prison from Pappas than it was lawfully entitled to. (Exhibit B, at 12-15). The Court scheduled a hearing for May 15, 2023. (Doc. 108)

2. The government's opposition and the aborted May 15 hearing

The government opposed, (Exhibit C), arguing in support of Judge Spector's findings, (Exhibit C, at 15-20), and relying heavily on Pappas' flight from the scene of the Connecticut State Police stop on the highway on February 2, 2023. (Exhibit C, at 18-19). In support, the government included a video recording of the body worn camera of

Connecticut State Trooper Brian Pagoni ("Tpr. Pagoni") whom stopped Pappas as an exhibit to its opposition. (Doc. 119).

Because Pappas was not able to view the recording prior to the hearing, and because no one was able to facilitate playing the recording for Pappas in any way at the courthouse, the court rescheduled the hearing for June 7, 2023. (Doc. 120).

3. Pappas' reply

In reply Pappas fully set forth what was reflected in Tpr. Pagoni's recording and noted there appeared to be additional recordings that he asked be provided to him and the Court for use at the June 7, 2023 hearing, (Exhibit D, at 2-5, and 5 n. 4)[2], and he gave a thorough, thirteen point analysis as to why the February 2, 2023 event did not justify keeping him imprisoned pretrial. (Exhibit D, at 2-15). He also corrected facts misstated by the government regarding government misconduct he was subjected to that resulted in him spending almost five years longer in prison than allowed by law and explained the relevance of that fact in the present context, (Exhibit D, at 15-19), and asked that the government arrange for the presence of Tpr. Pagoni and FBI Agent Ryan Halpin, for questioning at the June 7, 2023 hearing. (Exhibit D, at 1 n.1, and 7 n. 7).

C. The June 7, 2023 Hearing Before District Judge Williams

The week prior to the hearing, via correspondence addressed to the Court and government counsel, Pappas again asked that the government arrange for the presence of Tpr. Pagoni and Agent Halpin. Despite the letter being addressed to both the Court and government counsel, the Court believed the letter was inappropriate *ex parte* communication and ordered the Clerk to return it to Pappas. (Doc. 145). However, government counsel did also receive Pappas' letter and was good enough to arrange to have the two law enforcement witnesses in Court. (Exhibit E, at 5-6).

The Court opened the June 7th hearing by noting that the night before, it entered an order, (Doc. 140), informing the parties that they would be limited to a 30 minute presentation per side. (Exhibit E, at 4). Pappas sought a modification of the order

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[2] Pappas learned later via discovery that there are additional recordings and they are favorable to his position, but they were not produced for use at the hearing ultimately held on June 7th.

explaining that he needed to call Tpr. Pagoni, Agent Halpin, and one additional witness, Robert Ruiz, who was present in court, to establish his points relevant to the magistrate judge's decision under review, and Pappas made an offer of proof as to the specific points relevant to the issues of risk of flight and dangerousness that the testimony of each witness would be relevant to. (Exhibit E, at 5-8 ((a) as to Tpr. Pagoni, that during the approximate 30 minute ride to the State Police Barracks he and Pappas discussed the reason Pappas fled the scene of the stop during which Pappas identified the origins of his anxiety/PTSD, as well as Pappas telling Tpr. Pagoni to back away from the vehicle before he pulled off and the apology Pappas offered Tpr. Pagoni; (b) as to Agent Halpin, specific questions relative to events on February 2, 2023 and interpretations of calls between Pappas and others claimed in the complaint affidavit to relate to illicit conduct which Pappas wanted to establish was not the entire and proper context as well as some additional questions on matters in the complaint affidavit that came up in the hearing before Judge Spector; and (c) as to Pappas' witness Robert Ruiz, Pappas identified specific allegations in the affidavit of illicit conduct claimed relevant by the government to the charges in this case which Pappas said Ruiz would "shed some light on all of that.")).

The Court told Pappas he could use his 30 minutes however he wanted, and for context of the court's basis for the limitation it stated it allows 45 minutes for closing arguments "after a complete trial" but acknowledged that there would likely be insufficient time to get the witnesses testimony completed given that there might be objections along the way. (Exhibit E, at 9). Pappas specifically objected to the time limitation, which the Court noted. (Exhibit E, at 9-10)

Pappas went on to make a very pointed argument as to why he should be granted bail, which included an analysis of his codefendants with charges more serious than Pappas' and others with a greater weight of evidence against them then Pappas, but none of whom had a flight from police situation like Pappas' February 2, 2023 event, who were granted bail in this case. To strike a balance, Pappas proposed a phased system of conditions including placement in a halfway house with limited daily release, coupled with a driving restriction, 24-hour GPS location monitoring, and hourly video reporting to

pretrial services during the hours he is released from the halfway house to a third-party custodian, all of which the Court could impose beginning with a very restrictive phase including all of those conditions subject to periodic review for relaxation of some conditions. Pappas also noted that his due process interest in pretrial release was enhanced because he was in jeopardy of losing his businesses, his commercial properties, and defaulting on a number of debts if he was not released to get his affairs in order, and summed up by expressing that given the non-overwhelming nature of the evidence against him, that the presumption of innocence should have some weight in the matter and tip the scales in his favor to justify granting him pretrial release in some form. (Exhibit E, at 10-22). The Court allowed Pappas to reserve the balance of his time for rebuttal and noted, "That was a coherent, well-reasoned focused argument, and I will now hear from the government." (Exhibit E, at 22).

In response the government pointed out that it was not aware of anyone engaging in an unlawful flight other than Pappas. (Exhibit E, at 22-24). In its continued attack on the legitimacy of Pappas' businesses, the government noted a seizure of two allegedly stolen vehicles at one of Pappas' businesses, (Exhibit E, at 24), which Pappas noted were legally purchased by him and that one was a gift to his son and that both were lawfully registered and insured after undergoing a Connecticut DMV VIN verification, and that he would establish at the proper juncture his lawful possession and ownership of those vehicles. (Exhibit E, at 25-26).[3]

Regarding the additional conditions proposed by Pappas, government counsel said a bail hearing:

> "...is not to sort of negotiate what might be acceptable to the Court, government or probation. These things have to be investigated and carefully thought out. The government has addressed the concerns or has set forth [in

[3] On June 20, 2023 the government did indeed obtain an additional indictment filed under D.Conn. Case No. 3:23-cr-107(OAW) relative to those vehicles and Pappas does intend to establish in that matter his lawful possession and ownership of the vehicles and either seek the return of his vehicles or seek compensation from someone for them. By agreement among the government and Pappas, bail in that matter was denied without prejudice in light of this appeal and subject to renewal if this appeal is successful.

> its written opposition] its concerns about the third-party custodians here, and for all of those reasons, Your Honor, the government believes that Judge Spector's decision was legally sound. So unless the Court has any questions for me, we would rest on our previous submissions."

(Exhibit E, at 25).

In rebuttal, as to the government's position on distinctions between other defendants and Pappas, Pappas pointed out that there are indeed differences based on each individual and added in that regard that because of his prior experience with the federal system he has a greater respect for the system than some of the released defendants as demonstrated by some of them having, at that time, violation reports pending against them, which demonstrated that they do not appreciate, as Pappas would, the consideration they were given in being released on bail. (Exhibit E, at 26). Pappas also noted his compliance with his conditions of supervised release after his release in 2019, early termination, and that the relationship with his probation officer was great and that he would make surprise visits on Pappas with no issues ever arising. (Exhibit E, at 26-27).

Pappas concluded by making it clear that he knows he has a responsibility to deal with the allegations against him and fully intends to, but also noted that the newly proposed bail package in conjunction with Pappas' due process right to not lose his property based on a case he is presumed innocent of, all warranted a finding that the proposed combination of conditions would reasonably assure his appearance and the safety of the community. (Exhibit E, at 27-28).

At the conclusion of Pappas' rebuttal, the court said it took notes during the hearing, reviewed the docket, listened to the parties carefully and thanked "both parties for providing concise, coherent arguments that really focused on what they are trying to show the Court." (Exhibit E, at 28). The court then summarized the notes it took during the hearing, (Exhibit E, at 28-30), and noted Pappas':

> "...creative suggestion regarding starting at a halfway house with the most stringent conditions and then allowing the Court to consider stepping down some of the conditions or relaxing some of those conditions should the Court set them."

(Exhibit E, at 29).

After noting all that the parties had gone back and forth about, including the legitimacy of Pappas' businesses, the court concluded:

> *"Having considered all of those things and having carefully and completely considered the record in this case, the Court has found the following to be most compelling. Driving away from the police during a motor vehicle stop in order to avoid a search suggests that the person fleeing knows they are breaking the law by possessing something illegal and that they are trying to prevent their arrest. It's also reasonable to believe that a person trying to avoid arrest also will try to avoid prosecution. Mr. Pappas, your decision to drive away from a motor vehicle stop at the time that the police appeared to be about to use a dog to sniff the vehicle, strongly suggests that you similarly present a risk of flight from your prosecution in this case."*[4]

(Exhibit E, at 30-31). (Emphasis supplied).

The court acknowledged a viable Fourth Amendment issue with the February 2, 2023 motor vehicle stop and added that had Pappas not taken off and had his vehicle been searched and something illegal been found, that Pappas might have been successful in moving to suppress any evidence that would have been found. (Exhibit E, at 31). The court then added in explaining its decision:

> *"However, even in an unreasonable police search or detention does not excuse a subsequent crime such as your flight from the police stop. For example, people are not permitted to physically resist even an unlawful arrest, as explained by Section 53A-23 of Connecticut's General Statutes, Connecticut Criminal Jury Instruction 4.3-1, and the Connecticut State Appellate Case of State versus Sitaras 106 Conn. App. 493 at page 508. It's a 2008 case. In this case, flight from a motor vehicle stop strongly suggests that Mr. Pappas presents a high risk of flight to avoid prosecution, and even more strongly so when considering additional factors, such as the defendant's exposure as presently charged, the weight of the evidence against him such as wiretap evidence, and documented communications with codefendants, and a felony criminal record that includes a lengthy prior federal sentence and convictions relating to a retaliation against a*

[4] It is important to note that no dog was ever visible to Pappas, was not visible in the video, and Pappas was not told in his discussion with Tpr. Pagoni that a dog was being brought over to sniff Pappas' vehicle. (Exhibit D, at 2-5)

government witness. Mr. Pappas is codefendant 12 in this case that clearly has several people who possibly could wind up testifying against him should he pursue his right to a trial. Additionally, the government explains that the investigation into Mr. Pappas at the time of his stop went far beyond moving violations and instead involved significant drug activity even after the arrest of Willis Taylor, a codefendant. The government suggests that if released, Mr. Pappas would continue in illegal drug activity and it raises concerns over the legitimacy of his businesses as previously mentioned. Taking together, these factors present public safety risks as well. Accordingly, the government provided sufficient facts and evidence amounting to a preponderance of the evidence that Mr. Pappas presents a risk of flight. And it's shown by clear and convincing evidence that Mr. Pappas presents a danger to others and to the community. The bond package presented by the defendant does not rise to the level of a drastically different one than the one already presented to and carefully considered by Judge Spector, but the Court does acknowledge that there were some additional suggestions presented today. The Court finds that the proposed package is insufficient and concludes that there are no conditions nor combination of conditions that reasonably will assure the safety of the community nor this defendant's appearance at trial. Electronic monitoring will be ineffective in the face of Mr. Pappas' flight from his motor vehicle stop, therefore he shall remain in custody pending trial and his motion for revocation of the detention filed at ECF No. 108 is denied."

(Exhibit E, at 32-34). (Emphasis supplied).

The Court then asked if parties had anything further to which Pappas said, "A quick further objection, Your Honor." (Exhibit E, at 34). Pappas stated:

> "...I do want to note it appeared that Your Honor was reading a prepared statement as you were making your findings, so it seems as though the decision was made before we had the argument. So I do want to have that noted for the record as well for purposes of appeal."

(Exhibit E, at 34-35). The court responded:

> "As someone who clearly comes prepared yourself, sir, I'm sure you can appreciate I don't just wing it when I get up here. And while I certainly could have taken a recess, I think my remarks in total show my attention to you, to the government, to the arguments that were raised on the papers and here today. And, yes, I take notes while I'm listening, while I'm reading, and I reflected on those. And in the beginning of my remarks, which I did not

> know before you came up here and made them, to the extent you are arguing that the Court prejudged you, the record shows otherwise. Carry on."

(Exhibit E, at 35). Pappas continued:

> "I just also want to have the record reflect that for my argument portion here, I did use the 30 minutes that the Court allotted, so I would not have been able to present the witnesses which apparently would have been relevant to your decision because you have now made filings [should say, findings] that are relevant to the issues that I would have had those witnesses testify to, including my PTSD and including the allegation and the complaints [should say, allegations in the complaint] that the Court has now found against me. So those witnesses would have been relevant to the Court's decision, so I just want the record to further reflect that and further reflect my objection to not being given sufficient time to call those witnesses as well as make my argument. My understanding of how 3145B [18 U.S.C. § 3145(b)] works is that it is a de novo hearing in which I get the full panoply of rights, such as the calling of witnesses and presentation of evidence, which the Supreme Court specifically outlined in this [should be, the] Salerno decision where it upheld the act [should be, Act] and the procedure of the act [should be, Act] in that context where they specifically noted you get the opportunity to present this, present this evidence [should be, present witnesses and evidence]. So I want to just have the record be clear that I further object, and that objection seems well-taken because Your Honor did make findings against me, but that those witnesses would have been relevant too."

(Exhibit E, at 35-36). The court concluded with:

> "Well, with respect to the timing, the Court made clear the reason for the length of time. The Court has also made clear that it has carefully reviewed the record. Your own filings have conceded that the Court is free to consider that entire record. Your objection is noted. But as I said at the outset of this hearing, I allotted you time, I didn't cut you off, I allowed you to use it as you wish and you did so."

(Exhibit E, at 36).

Subsequent to the hearing the court below denied Pappas' oral request for a copy of the transcript of the June 7th hearing, (Doc. 142), and denied Pappas' further written request for an expedited transcript to enable the sort of expeditious review of bail decisions envisioned by 18 U.S.C. § 3145(c). (Doc. 149 and Doc. 159).

STANDARD OF REVIEW

In reviewing a detention challenge, this Court examines the district court's factual determinations for clear error. *See, United States v. El-Hage*, 213 F.3d 74, 79 (2d Cir. 2000). The clear error standard applies not only to the court's specific predicate factual findings but also to its overall assessment as to the risk of flight or danger presented by defendant's release. *See, United States v. Berrios*, 791 F.2d 246, 250 (2d Cir. 1986). When a defendant argues a denial of procedural due process, this Court reviews that legal question *de novo*. *El-Hage*, 213 F.3d at 79.

ARGUMENT

I. A REMAND WITH INSTRUCTIONS TO SET CONDITIONS OF RELEASE IS WARRANTED BECAUSE THE DISTRICT COURT'S STRICT TIME LIMITATION WAS A DE FACTO OR FUNCTIONAL EQUIVILANT OF A DENIAL OF PAPPAS RIGHT TO CALL WITNESSES RELEVANT TO MATERIAL FACTS IN ISSUE REGARDING FLIGHT/DANGEROUSNESS AND THE COURT'S REFUSAL TO ENABLE THE IMMEDIATE REVIEW BY THIS COURT PROVIDED FOR IN THE BAIL REFORM ACT RENDERS THE ACT UNCONSTITUTIONAL AS APPLIED TO PAPPAS

A. Applicable Law

In *United States v. Salerno*, 481 U.S. 739, at 751-52, (1987), the Supreme Court was called upon by the government to review this Court's holding that the Bail Reform Act of 1984 (the "Act") was facially unconstitutional. Two issues controlled the ultimate decision. "First, [the respondents relied] upon the [Second Circuit's] conclusion that the Act exceeds the limitations placed upon the Federal Government by the Due Process Clause of the Fifth Amendment. Second, they contend that the Act contravenes the Eighth Amendment's proscription against excessive bail." 481 U.S., at 746.

In rejecting the due process claim the Court noted the rights afforded defendants at a hearing under the Act, which include: (a) the factors that have to be considered, (b) an opportunity for the defendant to present and cross-examine witnesses and present evidence, (c) a standard of proof that must be met as to the issues of risk of flight and dangerousness,

(d) the requirement of written decision, and (e) the availability of "immediate" review. *Salerno*, 481 U.S., at 751-52.

B. Discussion

The *Salerno* Court expressly left open whether the Act might be unconstitutional as applied in a particular case and thus violate due process. *Id.* 481 U.S., at 745 ("The fact that the Bail Reform Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid[.]"). This issue presents such a case and because this issue is one of law review is *de novo*. *El-Hage*, 213 F.3d at 79.

The facts in the record here amply demonstrate that the Act is in fact unconstitutional as applied to Pappas. That is so because he was deprived of the precise procedural protections granting him a right to call witnesses and a right to immediate review by this Court, that the Supreme Court held in *Salerno* inoculated the Act from being ruled facially unconstitutional. *Salerno*, 481 U.S., at 751-52. The record of the June 7th hearing, set forth *supra* at 7-13, shows:

1) Neither the district court nor the government disputed that Pappas was entitled to call witnesses at the hearing. Indeed, the government arranged for the presence of the two law enforcement witnesses.
2) Neither the district court nor the government disputed that the offer of proof Pappas submitted as to what each witness would testify to demonstrated anything irrelevant to the issues the court below needed to decide for the purpose of bail. In fact, Pappas made his offer of proof in response to the government stating its position that any testimony should be tailored specifically to the issues the court needed to decide per the Act, and the government did not express any objections after it heard Pappas' offer of proof.
3) Neither the district court nor the government disputed that 30 minutes was an insufficient amount of time for Pappas to call his witnesses and make his argument to tie everything together to make a coherent pitch for bail. In fact, the district court

expressed that 30 minutes likely would not be enough time to even get all the witnesses in.

Nevertheless, the district court maintained its 30 minute limitation even after Pappas specifically objected and noted he would not have enough time to call the witnesses and tie everything together through argument, and he sought a modification.

The district court's comparison of its limit of 45 minutes for closing arguments after a complete trial, itself, demonstrates that 30 minutes was insufficient time to make a case for bail per the right to call witnesses provided for by the Act. That is so because the district court's comparison fails to recognize that a limit to 45 minutes after a complete trial where the rights attendant with a trial have presumably been afforded, does not support a limit on time to both exercise the rights provided for in the Act and make a coherent argument after that information is before the court as to why that information supports the position argued for. If anything the district court's analogy supported Pappas' request to modify the time limit by not starting it until after the witnesses testimony was completed.

Further supportive of the need for the testimony Pappas sought to present, is the district court's basis noted in its decision to deny bail, which was essentially a reiteration of the findings of the magistrate judge under review, (*compare*, Exhibit A, at 44-51, *with,* Exhibit E, at 30-34), and which the witnesses were being called to specifically address as Pappas stated in making his further objection to not being able to call the witnesses after the court read its decision. (Exhibit E, at 34-35).

While it is indeed true that the district court made it abundantly clear that it was not denying Pappas an opportunity to call witnesses and that he was free to use his 30 minutes however he wanted, that does not diminish the fact that 30 minutes was not enough time, which neither the government or the district court contested, to call two law enforcement witnesses and one lay witness for testimony on the specific issues that needed to be addressed. Indeed, the district court commended both parties on presenting clear, concise arguments, and Pappas noted that in doing so he consumed the entire 30 minutes so it would have been impossible to call witnesses.

Thus, the decision of the court below imposing a strict 30 minute limitation for Pappas to make his case for bail was a *de facto* or functional equivalent of a denial of Pappas' right to call witnesses at the hearing, and amounts to an unconstitutional application of the Act.

The district court's lack of regard for the due process written into the Act is further illustrated by the court ignoring the "immediate review" required by *Salerno,* that Pappas relied on to get this appeal before this Court as soon as possible by seeking an expedited transcript orally at the hearing, (Exhibit E, at 34), and later in writing, (Doc. 149), both of which the court below denied. (Doc. 142 and Doc. 159). That additional due process violation and the need for a remedy in the form of substantive relief via granting pretrial release is not foreclosed by this Court's decision in *United States v. Hill*, 462 Fed. Appx. 125 (2d Cir. 2012)(district court's failure to promptly determine appeal to it from magistrate judge's order based on an administrative oversight did not warrant substantive relief of grant of bail to defendant). In *Hill* the violation was unintentional. Here, the district court intentionally denied Pappas' oral and written requests to expedite the June 7th hearing transcript and such had the effect of delaying Pappas' appeal despite Pappas citing the "immediate review" requirement of *Salerno*, and the "determined promptly[,]" language of 3145(c). (Doc. 149, at 1). The combined due process violation in depriving Pappas of the ability to call his witnesses and in failing to facilitate the expeditious appeal envisioned by § 3145(c), warrants the substantive relief sought of a remand with instructions to set conditions of release.

Nevertheless, even if that due process violation is factored out, the *de facto* or functional equivalent of a denial of Pappas' right to call witnesses is a sufficient enough deviation from the procedural due process the *Salerno* Court specifically relied on to save the Act from wholesale invalidation, and gives rise to the propriety of this Court finding that the Act is in fact unconstitutional as applied to Pappas by the district court in applying an unreasonable time restriction and review delay, and justifies a remand with instructions to set conditions of pretrial release.

II. A REMAND WITH INSTRUCTIONS TO SET CONDITIONS OF RELEASE IS APPROPRIATE BECAUSE THE DISTRICT COURT DID NOT RECONCILE DUE PROCESS CONCERNS RAISED BY PAPPAS OR OTHERWISE SUFFICIENTLY ADDRESS WHY THERE WERE NO CONDITIONS OR COMBINATION OF CONDITIONS, INCLUDING WHAT THE COURT ACKNOWLEDGED WERE "CREATIVE" CONDITIONS PROPOSED BY PAPPAS AT THE HEARING, TO "REASONABLY" ASSURE PAPPAS' APPEARANCE IN COURT AND THE SAFETY OF THE COMMUNITY

A. Applicable Law

In upholding the Act, the *Salerno* Court interpreted the standard on dangerousness as requiring the government to prove "by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community," then and only then may a court "disable the arrestee from executing that threat." *Salerno*, 481 U.S., at 751.

In assessing conditions of release, there is no requirement that the conditions absolutely assure a defendant's appearance in court and the safety of the community. The standard is whether proposed conditions can "reasonably assure" a defendant's appearance and the safety of the community. 18 U.S.C. § 3142(e)(1).

B. Discussion

This issue is grounded in how the Act implements due process and is a question of law. Review is thus *de novo*. *El-Hage*, 213 F.3d at 79.

Pappas' submits that the above language from *Salerno* as to "an identified and articulable threat" means the due process implemented through proper application of the Act requires that there be some proof of an actual threat the government can specifically identify that a defendant would follow through on, not just a general assertion invoking the language of the Act with no real, non-speculative, actual "articulable threat," such as what the government did here, and which was adopted by the magistrate judge and the district judge, *i.e.,* that Pappas will commit further unidentified crimes and thereby endanger the community. Notably, the government has not been able to articulate precisely what it believes Pappas to have actually been involved in. It has indeed charged Pappas in two

drug conspiracies in this case which reference various types and quantities of controlled substances. However, the government has not firmly stated what type or quantity it believes Pappas to have been involved in, or how he was involved.

Additionally, the government has attacked Pappas' businesses as being illegitimate in some way but it has not specifically identified in what way. The government has liberally used terms such as "financial investigation" and "money laundering" in its attacks on the legitimacy of Pappas' businesses but there has not yet been charges brought to that effect for Pappas to answer to so he can demonstrate the incorrect nature of the government's ill-taken position in that regard.

Those voids of specificity in the actual case against Pappas thus far, have produced a like void on the issue relevant here as to what specific threat Pappas' release would pose within the meaning of how the future dangerousness aspect of the Act is to be applied per the *Salerno* requirement that there be an "identified and articulable threat to an individual or the community," posed by Pappas' release that the proposed layers of conditions he submitted at the June 7th hearing would not "reasonably" mitigate. (Quoting *Salerno*, 481 U.S., at 751).

Pappas' call for proof of a specific, rather than general, nature is supported by *Salerno* where the Court said in finding sufficient due process implemented through the Act established that the Act was not "by any means a scattershot attempt to incapacitate those who are merely suspected of" the category of offenses identified in 18 U.S.C. § 3142(f), and emphasized that the government's proof on dangerousness required clear and convincing proof that no condition or combination of conditions could "*reasonably*" assure the safety of a person or the community when the arrestee "*presents a demonstrable danger to the community*." That is the "narrow circumstances" under which it is appropriate to override Pappas' "strong interest in liberty." 481 U.S., at 750. (Emphasis supplied). What was done here was precisely a scattershot effort offensive to due process to incapacitate and put Pappas at a strategic disadvantage as the government has not presented a coherent, demonstrable threat by Pappas.

Instead the government relied heavily on its general claim that its investigators uncorroborated interpretations of historical wiretap recordings generally supports that Pappas was engaged in drug activity, and that such activity continued on February 2, 2023, which event that day the government relied on heavily as meaning Pappas' fled from Tpr. Pagoni's stop to hide drugs, and which the court below subscribed to. To avoid lengthening this filing, Pappas respectfully asks that this Court review Exhibit D, at 5-15, for a full and thorough discussion as to why the February 2nd event is subject to an interpretation different from what the government has put forth and the court below has found, as that event itself raises more questions than it answers for the government's overall case, which points were not addressed by the government or the district court (other than the district court's allusion to the viable Fourth Amendment issue arising from Tpr. Pagoni's stop and detention, Exhibit E, at 31), at the June 7th hearing.

In any event, everything the government discussed from the beginning of the investigation through February 2, 2023 relates to historical information. There was simply no clear presentation of a demonstrable future threat of flight or criminal activity posed by Pappas' if he is released. Indeed, the government made the arrest in this case via criminal complaint on March 28, 2023. That's almost two months after the February 2, 2023 event that the government claims involved illegal activity of some sort by Pappas. There has been no claim of any illegal activity by Pappas between February 2, 2023 and March 28, 2023, nor has there been any dispute that Pappas was in fact aware that he was the target of a federal investigation as of February 2, 2023. Because that is so, there is no actual support for the proposition that Pappas' release poses a risk of flight to avoid a prosecution he was aware was coming, or a threat that he will commit some unidentified crime.

The government and both judges below relied on historical information that does not overwhelmingly indicate guilt of Pappas as to the charges in issue in the indictment here. More importantly, no evidence or argument was presented by the government from which the district court could credit the proposition that Pappas had some special ability to somehow evade the restrictive conditions and technology associated with the layered

pretrial release he proposed, and thus be enabled to flee to avoid prosecution or engage in criminal conduct.

Couple that with Pappas' argument that the February 2nd event should not be viewed as indicative that Pappas would not make his court appearances in this case and that it should not be deemed prohibitive to exploring conditions of release, because a similarly (or worse) situated defendant than Pappas, who fled a stop/detention where a gun was found that resulted in a federal prosecution and who made no effort to turn himself in as Pappas did here, was granted bail on certain conditions and made his court appearances with no indication that he engaged in any further crimes, thus indicating the conditions of release served the intended purpose. (Exhibit D, at 6); *United States v. Patterson,* 25 F.4th 123, 2022 U.S. App. LEXIS 14 (2d Cir. 2022)(noting district court granted bail to defendant who fled scene of a vehicle stop/detention where a firearm was found, based on the court's suppression of key evidence that weakened the case against the defendant— after this Court reversed on appeal Judge Seibel still continued bail on conditions of 24/7 GPS monitoring and home detention, *see,* Docket of S.D.N.Y. Case No. 19-CR-231(CS), May 18, 2022 Minute Entry)

Here, there was no reconciliation by the court below as to why the conditions of house arrest with 24/7 GPS monitoring in that case where there was actual evidence recovered in the stop of that defendant, and who like Pappas also had a criminal record, were sufficient, but the more onerous, layered, conditions proposed by Pappas here where the government has not been able to identify any contraband recovered as to Pappas were not sufficient.

Couple that with additional case comparisons submitted by Pappas, (Exhibit B, at 9-11), such as *United States v. Mattis*, 963 F.3d 285 (2d Cir. 2020) in particular, where the defendants were charged with setting a police car on fire and there was no dispute as to their guilt even at the bail stage, yet they were granted pretrial release. Setting a police car on fire in a case where guilt is not contested is surely more serious than what Pappas did here in pulling off from the scene of a police stop in a case where guilt is strongly contested.

And couple all of that with the fact that other defendants in this very case who face penalties greater than what Pappas is facing, and who were allegedly found in possession of large quantities of drugs, were granted pretrial release with no restrictive conditions at all being imposed.

While it may be true that none of the other defendants in this case left the scene of a traffic stop, it is undisputed that Pappas was heading to turn himself in. Whether that is because Pappas fled to hide something as the government claims (without independent support and which Pappas strongly contests), or whether it was for the reasons Pappas has stated that do not relate to hiding anything, is actually irrelevant to the main point, which is that Pappas was being responsible and going to turn himself in. That strongly indicates Pappas is someone who will appear in court to answer to charges against him, yet the district court gave that fact no weight at all, nor did it explain why that fact did not weigh in Pappas' favor.

Moreover, the record fairly supports that the government did not argue that the conditions added by Pappas at the hearing could not reasonably assure his appearance in court and the safety of the community. To be sure, the government did maintain its general position that Pappas should be detained and it rested on its submissions, which obviously did not address the conditions added by Pappas at the hearing. But, the government offered no specific argument as to why any particular condition or combination of conditions Pappas proposed at the hearing would not reasonably assure Pappas' appearance in court or the safety of the community. In fact, the AUSA's statement that a bail hearing wasn't the proper forum to negotiate release conditions among the court, probation and the government, and that "These things have to be investigated and carefully thought out[,]" (*supra* at 9), suggests that the government did not actually take a position against what the district court described as "creative" conditions that Pappas proposed at the hearing.

Although the desire for a little more notice by Pappas in that regard is understandable then airing the new conditions for the first time in open court, a bail hearing is the precise forum through which such issues should be debated as it is through the mechanism of a bail hearing that the parties positions on any particular conditions can be

aired for further refinement if necessary and considered by the court. As such, the lack of any challenge by the government to the conditions themselves when it surely had the opportunity to challenge them if it wanted to, is fairly viewed as the government having no specific objection to articulate as to why any of what Pappas proposed at the hearing could not "reasonably" assure his appearance in court or assure the safety of the community.

The record also reveals that the court below did not offer any specific basis for a finding that the additional "creative" conditions proposed by Pappas would not reasonably assure Pappas' appearance or the safety of the community. Indeed, the district court spoke in generalities and offered nothing more than a formulaic invocation of the statutory language rather than an actual finding based on something other than empty generalities and the sort of speculation the language from *Salerno* discussed *supra* at 18, indicates would give rise to a due process violation when relied on to imprison a defendant pretrial.

In fact, even though it is undisputed that Pappas was on his way to turn himself in, the government's investigators were able to locate Pappas and intercept him, via the GPS tracking they had on Pappas' phone. As such, how would it not be "reasonable" to expect that an ankle bracelet actually attached to Pappas wouldn't be sufficient to know where he is at all times. If Pappas were to leave the area he was required to be in at any particular time, someone would be alerted. How is it that such technology (which was not required as to any of Pappas' released codefendants who face greater penalties than Pappas) can be found to "reasonably" assure the appearance of the defendant in the *Patterson* case, *supra*, who ran from the police during a stop/detention where a gun was found that led to federal charges and had to be pursued and apprehended, but that same technology not be sufficient to enable Pappas pretrial release even though no contraband was recovered and he was undisputedly on his was to turn himself in when he was intercepted. Again, Pappas was intercepted by police because the investigators relied on GPS tracking to locate Pappas, the same sort of GPS tracking Pappas proposed be attached to him so his location is known at all times to ensure he is where the court has authorized him to be, and where he can be visited by surprise at any time by law enforcement.

Fair consideration of the record supports that Pappas is not going to flee or engage in illegal activity if released based on: (a) the non-overwhelming nature of the case against him as it is based entirely on self-serving, uncorroborated, government interpretations of calls and events it was not a party to and is thus cannot take such positions at a trial with absolute certainty and indeed may not even be enough to get the case to a jury; (b) Pappas unprecedented making amends with the witness who helped the government obtain a prior lengthy sentence that took over two decades of freedom from Pappas, which demonstrates a level of growth and responsibility all who work for the criminal justice system should be applauding; (c) Pappas undisputed effort to turn himself in after fleeing the scene of the February 2nd stop by Tpr. Pagoni; and (d) Pappas knowledge as of February 2, 2023 of a federal investigation against him with no effort to leave the jurisdiction to avoid the charges he was aware were coming and which were ultimately brought against him almost two months after he first became aware of the federal investigation.

Because that is so and because there is not enough in the record from either the government's arguments or the district court's findings to support the requirement of *Salerno* that there be something specific, something more than argument or speculation not actually supported by something of substance, when there are plausible counterpoints to everything argued by the government and found by the district court without reconciliation as to why Pappas' counterpoints are not valid; subjecting Pappas to extended pretrial imprisonment violates due process warranting a remand with instructions to set conditions of release.

III. REASSIGNMENT TO A NEW JUDGE FOR ALL FURTHER PROCEEDINGS AS TO PAPPAS ON REMAND IS WARRANTED BECAUSE: (A) THE COURT BELOW PREJUDGED THE MATTER OF PRE-TRIAL DETENTION VIA A DECISION PREPARED PRIOR TO THE HEARING, AND (B) THE COURT SPECIFICALLY MADE A FINDING OF GUILT PER APPLICATION OF STATE LAW AS TO THE KEY ISSUE RELIED UPON BY THE GOVERNMENT FOR DETENTION WHICH CAN FAIRLY BE VIEWED AS AN INTENT TO PUNISH PAPPAS FOR THE STATE LAW VIOLATION VIA PRE-TRIAL DETENTION; THUS GIVING RISE TO A LEGITIMATE CONCERN REGARDING THE APPEARANCE OF JUSTICE

A. <u>Applicable Law</u>

"Reassignment of a case 'is an extreme remedy, rarely imposed . . . but occasionally warranted, even in the absence of bias, to avoid an appearance of partiality.'" *Ketcham v. City of Mount Vernon*, 992 F.3d 144, 152 (2d Cir. 2021)(quoting *United States v. City of New York*, 717 F.3d 72, 99 (2d Cir. 2013)).

The Second Circuit assesses three factors to determine if reassignment is warranted: "(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness." *Id.* (quoting *Gonzalez v. Hasty*, 802 F.3d 212, 225 (2d Cir. 2015)).

B. <u>Discussion</u>

Each of the three factors identified above relative to reassignment of a case to a new judge on remand is addressed here in turn.

1. Previously-expressed views

The record reflects that Judge Williams decided the issue of bail prior to the hearing even getting underway. Although Judge Williams did in fact read off the information stated in court during the hearing in summary fashion reflecting that he did take notes as to what was being discussed, the part of the record reflecting his decision emphasized *supra* at 10-11, was a full decision denying bail that was already prepared prior to the hearing which Judge Williams read into the record, with minor alteration as to the part where he acknowledged Pappas' conditions proposed at the hearing, (Exhibit E, at 34 ("...but the Court does acknowledge that there were some additional suggestions presented today.")).

The fact that the Court offered no specific reason why those conditions would not reasonably assure Pappas' appearance in court or that he would not commit future crimes when it did acknowledge those conditions, and instead offered nothing more than the formulaic incantation, (Exhibit E, at 34 ("...there are no conditions nor combination of

conditions that reasonably will assure the safety of the community nor this defendant's appearance at trial.")), of the applicable standard in its decision obviously prepared prior to the hearing further demonstrates prejudgment as the decision did not account for the new conditions proposed by Pappas at the hearing.

Because the record reflects prejudgment on the issue of bail as to Pappas by Judge Williams, it is fair to conclude that because the issue of bail was already prejudged that it will be again on remand, and that there will be further prejudgment as to other important issues at later stages of the case.

Moreover, the record strongly indicates that Judge Williams has already completely discounted Pappas' position regarding why he left the scene of Tpr. Pagoni's stop, without seeing or hearing all of the actual evidence from both sides on that issue, and formed an opinion that Pappas is guilty of drug activity in this case based on Pappas leaving the stop. That finding, relied on to keep Pappas imprisoned, is fairly viewed as an intent by Judge Williams to punish Pappas based on his finding that Pappas is guilty of the charges in this case, and guilty of perceived violations of state law, on a standard less than reasonable doubt, rather than making findings of the nature required to support the sort of non-punitive detention envisioned by the *Salerno* Court.

Such is fully supported by the district court's citation to a Connecticut statute it appears to have found applicable to (and actually applied against) Pappas' leaving the scene of Tpr. Pagoni's stop, apparently as a response to Pappas' position that he left the stop due to his PTSD (which wasn't raised as any sort of affirmative defense but rather was set forth as an explanation of the conduct Pappas admitted was wrong). Researching to find applicable state law and applying it against Pappas in the way that Judge Williams did, fairly evinces an intent to punish based on historical information and events, rather than imposing legitimate pretrial detention in response to any future threat of flight posed by Pappas' release on bail in this matter.

In prejudging the issue of pretrial detention, and making the finding as to Pappas violating state law without hearing all the evidence as to that issue, there is a fair view that Judge Williams intended his decision to serve as punishment without Pappas being

convicted on proof beyond a reasonable doubt of any offense at all. It is hard to see how any human being, and judges are indeed human, would be able to un-believe what they have already demonstrated they believe as to a particular issue and/or person, and even if such were possible subjectively, objectivity is necessary to…

2. The appearance of justice

Continuing from what was just said, the bail hearing was a public proceeding and disinterested members of the public, in addition to Pappas' family and supporters, were present that day. Everyone saw Judge Williams read the decision that was obviously prepared prior to the hearing as he began reading that decision immediately following Pappas' conclusion of his rebuttal argument. The public then heard Pappas point out what everyone saw as to the prepared nature of the decision, and heard Judge Williams say he had in fact come prepared and could have taken a recess before delivering his decision, implying he could have hidden the fact that he prepared his well-worded, and well thought out, opinion in issue that also contained citations to a state case and statute, prior to the hearing.

Anyone objectively looking at all of the facts as to what happened in court on June 7th is reasonably going to have questions of whether Judge Williams has any ability to be fair to Pappas at all and question whether future decisions will be the product of fair and reasoned consideration or be no more than rubber-stamped decisions based on similar pre-judgment of issues.

Thus, with all due respect, the appearance that justice will not be served in this matter if Judge Williams remains assigned to this case, is amply apparent from the record of the June 7th hearing.

3. Waste and duplication

There has been no substantial movement in the case. In fact the case is still relatively new and some of the discovery was only provided shortly before the June 7th hearing. Substantive motions have not yet been filed, litigated, or decided so there would be no waste or duplication of litigation of a nature that could be perceived as prohibitive to, or weighing against, reassignment of this case to a new judge as to Pappas at this

juncture. In fact, per the present trial schedule set by Judge Williams, motions are not even due until mid-October and jury selection is set for April of next year.

Moreover, given that there are fourteen defendants in this case, and the government has taken the position that this case is very complex in seeking and obtaining a trial date towards the middle of next year, and involves voluminous discovery, it is likely going to be necessary to break the trial into separate groups and result in more than one trial anyway. Indeed, this Court has expressed concern and provided guidance about lengthy trials involving multiple defendants. *See e.g., United States v. Casamento*, 887 F.2d 1141 1151-52 (2d Cir. 1989)(noting that although there may be advantages to the judicial system in consolidating multiple defendants into a single trial, there are also disadvantages that provoked this Court to establish the need for a case-by-case balancing to determine whether "the fair administration of justice will be better served by one aggregate trial of all indicted defendants or by two or more trials of groups of defendants.")

Thus, there would be no waste or duplication if this case were reassigned as to Pappas at this juncture.

Because that is so, and in light of the two additional matters addressed above as to Judge Williams previously expressed views and the need to preserve the appearance of justice, this is one of those "few instances [where] there [are] unusual circumstances where both for the judge's sake and the appearance of justice [ ] an assignment to a different judge is salutary and in the public interest, especially if it minimizes even a suspicion of partiality[.]" *United States v. Robin,* 553 F.2d 8, 9-10 (2d Cir. 1977)(*en banc*)(Internal quotation marks and citations omitted).

CONCLUSION

"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Salerno, 481 U.S., at 755. That observation is true as to all Americans charged with criminal offenses, including Pappas, and because proper due process was not afforded to Pappas in the bail stage of this case, he has been treated in an un-American way. For the foregoing reasons, Pappas respectfully submits that this Court

should remand with instructions to set bail conditions and release Pappas, and order reassignment to a new judge for all further proceedings as to Pappas.

Dated: August 18, 2023

Respectfully submitted,

Markos Pappas
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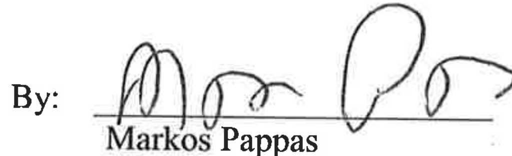
Markos Pappas 12622014 in subject line)

CERTIFICATE OF SERVICE

I hereby certify that this filing was emailed to stand-by counsel through the system for emailing documents to attorneys in place at the Donald Wyatt Detention Facility, and that stand-by counsel, Jeremiah Donovan, will be filing this document electronically on my behalf. All parties will thus be served through the Court's notification system regarding electronic filings.

By: 
Markos Pappas

CERTIFICATE OF COMPLIANCE

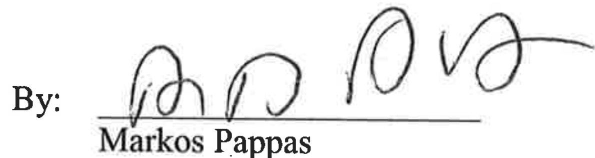
1. This memorandum is not in compliance with the type-volume limitation of Fed.R.App.P. 27 because:

    - This brief contains 10,408 words. A motion seeking leave to file an oversized memorandum is submitted herewith.

2. This brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the style requirements of Fed.R.App.P. 32(a)(6) because:

    - This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Times New Roman font.

Dated: August 18, 2023

By: 
Markos Pappas

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Appendix B

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GOVERNMENT'S BRIEF

UNITED STATES OF AMERICA, Appellee,

No. 23-6762

-v-

MARKOS PAPPAS, Defendant-Appellant.

GOVERNMENT'S OPPOSITION TO MOTION FOR RELEASE AND TO REMAND TO A NEW DISTRICT JUDGE

The Government respectfully submits this opposition to defendant-appellant Markos Pappas's motion for pretrial release and to remand the case to a new judge. The district court soundly concluded that no combination of conditions could reasonably assure Pappas's presence at trial or the safety of the community. Accordingly, the district court's June 7, 2023 order should be affirmed and Pappas's motion for release should be denied. In addition, because there is no evidence of the district judge's bias or partiality, this Court should deny the motion to remand this case to a different judge.

Background

The offense conduct. This case stems from a Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI) wiretap

investigation into the manufacturing and distribution of counterfeit Oxycodone tablets (containing fentanyl) and counterfeit Adderall tablets (containing methamphetamine) and the distribution of cocaine.

The investigation revealed that Pappas was a close associate of Willis Taylor who manufactured the counterfeit pills. The intercepted calls revealed that Pappas would drop off drugs to Taylor to process. Taylor was then intercepted dropping the finished drugs off at Discount Auto & Cycle (DAC), one of Pappas's businesses. *See* Dkt. 1-1, ¶¶71-80.[1]

Following Taylor's arrest in November of 2022 with large amounts of fentanyl, methamphetamine, cocaine and heroin, Pappas began reaching out to alternate drug sources. On February 2, 2023, Pappas picked up a suspected kilogram of cocaine from codefendant Lisa Fausel at a motel in Milford. *Id.* at ¶¶110-113. Investigators then attempted to stop Pappas with a marked Connecticut State Police vehicle. While Pappas initially stopped, he then fled the traffic stop, driving away at a high rate of speed. At the same time, the wiretap revealed Pappas called a codefendant to tell him "Aight, I'm taking off," and that Pappas needed to "give you

[1] All citations to "Dkt." refer to entries on the district court docket in No. 3:23cr62(OAW).

something real quick," which investigators understood to be Pappas handing off the drugs that Pappas had just picked up. *Id.* at ¶117. A search of Fausel's motel room shortly thereafter revealed 832.5 grams of cocaine, $94,500 cash, and hundreds of counterfeit Oxycodone, containing over 200 grams of fentanyl. *See id.* at ¶125.

The initial appearance and proposed bond package. On March 28, 2023, Pappas was arrested pursuant to a criminal complaint. The Government moved for detention, which the district court (Spector, M.J.) granted on Pappas's consent. A bond hearing was scheduled for April 3, 2023. Pappas's proposed bond package, *see* Dkt. 16, included, *inter alia*, the following proposals:

- Third party custodians of his sister; son, and fiancé; and
- Six individuals to sign $100,000 non-surety bonds.

Pappas's package attached several documents to show that his businesses, Pappas Tire and DAC, were ongoing concerns. *See* Dkt. 16-2. However, those documents raised significant questions. For example, one document from Liberty Mutual Insurance for DAC stated that the insurance policy had been cancelled for non-payment as of March 1, 2023. *See id.* at 6.

The April 3, 2023 bond hearing. On April 3, 2023, the Court held a bond hearing. Magistrate Judge Spector allowed the parties significant time to present their evidence and arguments. *See* GA9-43. Pappas indicated that he had witnesses but ultimately did not call any. Instead, he directly addressed the Court himself. The Government argued that Pappas was a danger to the community, citing the questions surrounding his businesses, his structured cash deposits, his association with gangs, and his criminal record. GA21-26. In addition, the Government emphasized that Pappas was a flight risk because he had, in fact, taken off during the traffic stop in February 2023. GA24-25.

Magistrate Judge Spector denied Pappas's motion. He explained his concern that Pappas was released from federal supervision in 2020 and then, by 2022, was involved with individuals like Willis Taylor who were trafficking large quantities of drugs.

Magistrate Judge Spector further explained that when the police arrested Taylor in November of 2022 with drugs, that should have been a signal to Taylor's associates, like Pappas: "It's when the people that are involved stop. It's the wakeup call." GA47. Pappas, however, was meeting

with Lisa Fausel less than three months later in a motel room with significant quantities of drugs and cash. And after leaving that motel room, as Magistrate Judge Spector noted:

> [Y]ou fled from the Connecticut State Police . . . So you were right to suspect that something was going on. The problem is you made a decision that is a really big issue for the Court. You know, when you take off at that point, you know, that's again a second time where law enforcement is -- it's a clear message to you that you're being investigated, you're being -- this is a serious investigation and your choice at that point, you know, that was two months ago.

GA47-48.

The following day, Judge Spector issued his written ruling, which focused on the concerns about Pappas's history and activities, particularly after his most recent release from federal custody:

> First, the defendant served over 22 years in federal prison for serious felony offenses that included the distribution of controlled substances and the assault of a federal witness. He was released from this sentence in 2019, and his supervised release term was terminated in 2020, well before its expiration. In support of his request for early termination of supervised release, the defendant set out plans for his future employment which he described as a "well paying career" in "the combat sports industry." As detailed in the complaint affidavit in this case, however, the government gathered evidence during a lengthy wiretap investigation indicating that the defendant returned to the

business of selling controlled substances in 2022. Despite the fact that the law enforcement officers conducted numerous arrests and drug seizures in this investigation in November 2022, it appears that the defendant remained undeterred and continued buying and re-selling drugs using an alternative source. As detailed in the complaint affidavit, in February 2023, after intercepted telephone calls and surveillance revealed that the defendant had purchased a kilogram quantity of a controlled substance from a co-defendant in a motel room (a room which was search hours later and found to contain significant quantities of controlled substances and cash), the investigators requested assistance from the Connecticut State Police, which stopped the defendant's vehicle. Despite the presence of the troopers and the traffic stop, the defendant decided to drive away and avoid the impending search and arrest. Intercepted telephone calls reveal that he chose to meet another co-defendant to provide him with contraband, before eventually turning himself in at the police station. Though the defendant insists that the information in the complaint affidavit about his alleged drug dealing activity is either inaccurate or incomplete, the particular facts set forth in the affidavit about the attempted February 2023 traffic stop appear not to be in dispute and raise significant concerns. In addition, though the defendant, in his request for release, relies heavily on his businesses and his employment, the information in the complaint affidavit reveals significant, structured cash deposits into his business account which coincide with suspected drug transactions. Moreover, the Court was advised by both sides during the hearing that there are no federal tax returns and no records with the Connecticut Department of Labor regarding these businesses. The Court was also advised

> that the original bank that held the defendant's business account closed the account based on concerns about structured transactions. For these reasons, the Court must deny the defendant's request for release.

Dkt.18.

The April 4, 2023 indictment. On April 4, 2023, a grand jury returned an indictment charging Pappas and 13 others. *See* Dkt. 21. Pappas is charged with conspiracy to possess with intent to distribute fentanyl, methamphetamine, and cocaine, *see* 21 U.S.C. §§ 841(b)(1)(C) and 846, and with conspiracy to possess with intent to distribute 40 grams or more of fentanyl and 500 grams or more of cocaine, *see* 21 U.S.C. §§ 841(b)(1)(B)(vi), 841(b)(1)(B)(ii) and 846.

Pappas proceeds *pro se* and moves for revocation of the detention order. On May 2, 2023, the Court (Williams, J.) granted Pappas's motion to proceed *pro se*. Dkt. 107. That same day, Pappas moved for the revocation of Magistrate Judge Spector's detention order under 18 U.S.C. § 3145(b). That motion did not meaningfully alter the prior bond proposal except to add that Pappas would "provide equity in a home owned by Pappas' son and sister" without further details. The motion largely focused on Pappas's belief that he was being unfairly targeted for

criminal prosecution by the U.S. Attorney's Office, and that the case against him was incredibly weak. Dkt. 108 at 2-15. The Government opposed the motion. Dkt. 118. Pappas then filed a lengthy reply arguing that the traffic stop that led to his flight was "subject to suppression," and stating his desire for a government witness to answer a series of questions about "whether the stop and everything after it needs to be suppressed on the 4th Amendment grounds thus substantially weakening the overall case against Pappas and thereby increasing the propriety of releasing him[.]". Dkt. 135 at 5-14.[2]

The second detention order. On June 7, 2023, the Honorable Omar A. Williams, United States District Judge, held a bond hearing.[3] Prior to the hearing, Judge Williams issued an order setting a 30-minute time limit per party and noted that the Court had reviewed the transcript

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[2] For example, Pappas proposed asking whether agents "at the moment of surveillance on Feb 2nd have any way of knowing whether or not there was anything other than a Valentine's Day gift for Pappas' fiancé and/or a birthday gift for Pappas' sister (whose birthday is Feb. 2nd) in the bag, or in Pappas' pockets, that may have been delivered by a third party to either Lisa Fausel or the person in the room across the hall with one or both serving as the point(s) of contact for whomever brought the gift or gifts to the motel?" Dkt. 135 at 7.

[3] The Court had originally scheduled the hearing for May 15, 2023 but continued that hearing when it learned that Pappas had not had time to view the video from his traffic stop. Dkt. 120.

of the April 3, 2023 hearing, the bodyworn camera video of the February 2023 traffic stop, and the parties' "substantial filings." Dkt. 140.

At the outset of the hearing, Pappas asked the Court for a modification of the 30 minute time limit. Pappas explained that he wanted to call the officer from the traffic stop "relative to discussions" after the incident concerning Pappas's self-reported PTSD. Pappas stated that he then wanted to call an FBI agent to get into matters alleged in the criminal complaint. And Pappas stated that he wanted to call Robert Ruiz, who was alleged to have been involved in a transaction during the wiretap investigation "so he can shed some light on all of that." GA59-60. Judge Williams, noting that Pappas had previously had a hearing with Magistrate Judge Spector where he was given "all the time you need" to present evidence, stated that Pappas was limited to the 30 minutes per his previous order and Pappas "could use it how you wish." GA61.

Pappas continued to press that he wanted more time but then elected not to call any witnesses. GA61-62. He argued that the case was "very debatable as to guilt," and that he was "only being targeted for detention so that the government can gain an unfair advantage of me . . . I'm someone who was the victim of government misconduct." GA63-64.

Pappas stated that he was a "different person" than he was during his prior federal case. GA66. Finally, Pappas argued that he was being treated differently than his codefendants. GA68-69.

With respect to his flight from law enforcement, Pappas argued that he "recognized I was wrong and I went to turn myself in." GA70. He then suggested that if there was a concern on the Court's part, "maybe we can add a couple [of conditions] since me driving away seems to be a major factor[,]" suggesting that he could have one of the proposed sureties drive him or adding "video reporting" to the Probation. Pappas even suggested that "maybe we would do 30 days halfway house placement" and then have a relaxation of conditions, stating that the FBI could then "do periodic checkups on me." GA72.

The Government cited the Court to the voluminous filings in the case and briefly addressed Pappas's points. As to the codefendants in the case, the Government noted that four had been detained, so that Pappas's argument that he was being treated differently missed the mark. The Government also noted the ongoing investigation into Pappas's businesses. GA74-76

Pappas then had an opportunity to respond to the Government's presentation. GA77-79.

Judge Williams reviewed his notes and then proceeded to articulate his decision, noting that he had "prepared for this hearing, reviewed the docket, and listened carefully to the evidence of both party's arguments[.]" GA80. He summarized his understanding of both parties' positions. GA80-82. Judge Williams then explained:

> Driving away from the police during a motor vehicle stop in order to avoid a search suggests that the person fleeing knows they are breaking the law by possessing something illegal and that they are trying to prevent their arrest.
>
> It's also reasonable to believe a person trying to avoid arrest also will try to avoid prosecution.
>
> Mr. Pappas, your decision to drive away from a motor vehicle stop at the time that the police appeared to be about to use a dog to sniff the vehicle, strongly suggests that you similarly present a risk of flight from your prosecution in this case.
>
> Had you remained at the scene of your motor vehicle stop, which you were told was for, at the time you were told was for straying from the road's traveling lane, you could have raised the argument that a canine sniff in your case was unreasonable.
>
> ***
>
> However, even in an unreasonable police search or detention does not excuse a subsequent crime such

as your flight from the police stop. For example, people are not permitted to physically resist even an unlawful arrest, as explained by [Connecticut law]. In this case, flight from a motor vehicle stop strongly suggests that Mr. Pappas presents a high risk of flight to avoid prosecution, and even more strongly so when considering additional factors, such as the defendant's exposure as presently charged, the weight of the evidence against him such as wiretap evidence, and documented communications with codefendants, and a felony criminal record that includes a lengthy prior federal sentence and convictions relating to a retaliation against a government witness.

***

Additionally, the government explains that the investigation into Mr. Pappas at the time of his stop went far beyond moving violations and instead involved significant drug activity even after the arrest of Willis Taylor, a codefendant.

The government suggests that if released, Mr. Pappas would continue in illegal drug activity and it raises concerns over the legitimacy of his businesses as previously mentioned.

Taking together, these factors present public safety risks as well. Accordingly, the government provided sufficient facts and evidence amounting to a preponderance of the evidence that Mr. Pappas presents a risk of flight. And it's shown by clear and convincing evidence that Mr. Pappas presents a danger to others and to the community.

The bond package presented by the defendant does not rise to the level of a drastically different one than the one already presented to and carefully

> considered by Judge Spector, but the Court does acknowledge that there were some additional suggestions presented today.
>
> The Court finds that the proposed package is insufficient and concludes that there are no conditions nor combination of conditions that reasonably will assure the safety of the community nor this defendant's appearance at trial. Electronic monitoring will be ineffective in the face of Mr. Pappas' flight from his motor vehicle stop[.]

GA82-86.

On June 11, 2023, Pappas filed an interlocutory appeal of the district court's June 7, 2023 order. Dkt. 147.[4]

Governing Law

Jurisdiction. The district court's June 7, 2023 order is appealable to this Court. *See* 18 U.S.C. § 3145(c); 28 U.S.C. § 1291; *United States v. Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004).

Risk of flight and dangerousness. Under 18 U.S.C. § 3142(e), if a judicial officer concludes after a hearing "that no condition or combination of conditions will reasonably assure the appearance of the person as

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[4] After this appeal was initiated, Pappas was indicted by a grand jury in a second indictment for a conspiracy involving stolen motor vehicles. *See United States v. Jones and Pappas*, 3:23cr107(OAW).

required and the safety of any other person and the community," the judicial officer "shall order the detention of the person before trial." Under 18 U.S.C. § 3142(g), the judicial officer "shall" consider the following factors in evaluating the defendant's risk of flight and dangerousness:

> (1) the nature and circumstances of the offense charged, including whether the offense . . . involves . . . a controlled substance . . . ;
>
> (2) the weight of the evidence against the person;
>
> (3) the history and characteristics of the person, including—
>
> > (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
> >
> > (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
>
> (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

In seeking pretrial detention based on risk of flight, the Government "must establish by a preponderance of the evidence that a defendant, if released, presents an actual risk of flight" and "that no condition or combination of conditions could be imposed on the defendant that would reasonably assure his presence in court." *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007). In seeking pretrial detention based on dangerousness, "it is the Government's burden to prove to the judicial officer by clear and convincing evidence that 'no condition or combination of conditions will reasonably assure the safety of any other person and the community.'" *United States v. Watkins*, 940 F.3d 152, 158-59 (2d Cir. 2019) (quoting 18 U.S.C. § 3142(f)).

The rebuttable presumption. Under 18 U.S.C. § 314(e)(3)(A), a rebuttable presumption for pretrial detention arises "if the judicial officer finds that there is probable cause to believe that the person committed . . . an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.) . . . ." This rebuttable presumption recognizes that "the harm to society caused by narcotics trafficking" constitutes a danger to the community within the meaning of the Bail Reform Act of 1984. *United States v.*

Leon, 766 F.2d 77, 81 (2d Cir. 1985). It also presumes that "no condition of release will prevent a defendant's flight . . . if there is probable cause to believe that the defendant has committed certain narcotics and arms offenses." *United States v. Martir*, 782 F.2d 1141, 1143-44 (2d Cir. 1986).

"[T]he presence of an indictment returned by a duly constituted grand jury conclusively establishes the existence of probable cause for the purpose of triggering the rebuttable presumptions set forth in § 3142(e)." *United States v. Contreras*, 776 F.2d 51, 55 (2d Cir. 1985). However, the rebuttable presumption "places on the defendant only the burden of coming forward with evidence to rebut it. The government retains the burden of persuasion." *Martir*, 782 F.2d at 1144. If the defendant carries his burden of production, "it does not follow that the . . . presumption disappears[.]" *Id.* Instead, the judicial officer weighs the presumption along with the other relevant factors. *See United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir. 1991) ("Once a defendant introduces rebuttal evidence, the presumption, rather than disappearing altogether, continues to be weighed along with other factors to be considered when deciding whether to release a defendant.").

The standard of review. This Court reviews a district court's bail determination deferentially "and will not reverse except for clear error." *United States v. Zhang*, 55 F.4th 141, 146 (2d Cir. 2022) (internal quotations omitted)). "This clear error standard applies not only to the court's specific predicate factual findings but also to its overall assessment, based on those predicate facts, as to the risk of flight or danger presented by the defendant's release." *Abuhamra*, 389 F.3d at 317. Put differently, this Court applies "deferential review to a district court's order of detention and will not reverse except for clear error, *i.e.*, unless on the entire evidence we are left with the definite and firm conviction that a mistake has been committed." *Sabhnani*, 493 F.3d at 75 (internal quotation marks omitted).

Discussion

The district court committed no error—and certainly no clear error—in denying Pappas's motion for release on bond. Both Magistrate Judge Spector and Judge Williams had ample evidence to conclude that the § 3142(g) factors weighed overwhelmingly in favor of detention:

- **The nature and circumstances of the charged offense.** The charges are serious and carry a mandatory minimum penalty. The charges involve multiple individuals, large quantities of seized drugs disguised as prescription pills and substantial sums of cash.

- **The weight of the evidence**. As Magistrate Judge Spector noted, the criminal complaint contains "serious allegations in a 60-some-page affidavit that are quite specific." GA27. The investigation involved a lengthy wiretap investigation and had significant seizures of fentanyl, methamphetamine, cocaine, and heroin.

- **The history and characteristics of Pappas**. Pappas has a prior federal conviction for conspiracy to possess with intent to cocaine, conspiring to retaliate against a witness, and retaliation against a witness. *See United States v. Lauria and Pappas*, 3:96cr185(PCD). While he argued that he ran two successful businesses, the investigation, and Pappas's own submissions, reveal significant concerns about the legitimacy of those operations.

- **Dangerousness.** Pappas's criminal history, combined with his flight during the February 2023 traffic stop, show that he poses a substantial danger to the community. Pappas's conduct shows that he prioritizes his own interests above the safety and well-being of others, including law enforcement. And Pappas's ability to make a quick call, mid-flight, to an associate to hand-off drugs shows that he has a network of trusted associates who put Pappas's interests above the law.

On this record, Pappas offered very little to rebut the overwhelming force of the § 3142(g) factors. For example, Pappas used large swaths of his pleadings to allege that the U.S. Attorney's Office was unfairly targeting him. Yet Pappas never presented to the district court, and does not present to this Court, any evidence that his proposed custodians had

sufficient financial backing for the bond or were suitable custodians.[5] Similarly, while Pappas argued that, if released, he would return to running his businesses, he never addressed the significant red flags surrounding those entities. *See, e.g.,* Dkt. 16-2 (document showing that insurance policy for DAC had been cancelled for non-payment as of March 1, 2023).

On appeal, Pappas raises three challenges to Judge William's detention order. All of those arguments fail.

First, Pappas argues that he was deprived of his right to call witnesses because Judge Williams limited the parties to 30 minutes each for presentations at the second detention hearing. Def. Br. 14-16. But Pappas was in no way restrained from calling witnesses, either before Magistrate Judge Spector or Judge Williams. Pappas had unlimited time to do so before Magistrate Judge Spector, and had an additional 30 minutes allotted by Judge Williams. Judge Williams made clear that the parties could use their time during the second detention hearing "how you wish."

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[5] All three were close family members—his son, his sister, and fiancé. The Government proffered that Pappas's fiancé was intercepted on the wiretap alerting Pappas to possible police surveillance, even attempting to chase down the officer. Dkt. 115 at 21.

G61. Pappas choose to use his time to reargue points that he had previously made in his extensive briefing instead of calling witnesses, but this was his own choice, not a course mandated by the district court. Indeed, Congress did not intend hearings under the Bail reform Act "to resemble mini-trials," but instead "the thrust of the legislation is to encourage informal methods of proof." *Martir*, 782 F.2d at 1144-45; *United States v. El-Hage*, 213 F.3d 74, 82 (2d Cir. 2000) (per curiam) ("A detention hearing need not be an evidentiary hearing. . . . [E]ither party may proceed by proffer and the rules of evidence do not apply.").

On appeal, Pappas does not explain how the additional time he sought would have changed the outcome of the detention hearing and it is clear that it would have had no effect. For example, Pappas proffered that the state trooper involved in the traffic stop would corroborate that Pappas told him, after the incident, that he had PTSD. But Pappas was able to make this point repeatedly before Magistrate Judge Spector and Judge Williams. *See, e.g.*, GA34, 59, 87. In addition, Pappas stated that he wanted to call an FBI agent so he could ask a litany of questions about the nature of the Government's proof concerning Fausel's motel room.

But a detention hearing is not "a discovery tool for the defendant[,]" *Martir*, 782 F.2d at 1145, and Pappas freely articulated possible innocuous reasons why he might be at the motel without needing to call a witness. GA35-36. Finally, Pappas chose not to call Robert Ruiz, who he proffered would dispute the Government's characterization of a drug deal at DAC, but neither Magistrate Judge Spector not Judge Williams relied upon that alleged event in reaching their decisions.

To the extent that Pappas argues that the Bail Reform Act is unconstitutional as applied to him under *United States v. Salerno*, 481 U.S. 739 (1987), his argument is misplaced. *Salerno* involved a facial challenge to the constitutionality of the Bail Reform Act and did not reach an as-applied challenge, indeed declining the appellants' request to do so. *See id.* at 745, n.3. Instead, the Court concluded that the Bail Reform Act passed due process scrutiny because it was regulatory in nature, not punitive; it limited pretrial detention "to the most serious of crimes[;]" it afforded the defendant a prompt detention hearing; and it limited pretrial detention to the "stringent limitations of the Speedy Trial Act." *Id.* at 747-748.

Pappas's *second* challenge is that the district court intentionally denied his right to "immediate review" of the detention order when it refused to provide an expedited transcript of the June 7, 2023 hearing. Def. Br. 16. But this is a mischaracterization of the record. After Pappas filed his motion for an expedited transcript, Dkt. 149, the district court noted that Pappas had not cited any authority "mandating the expedited manner in which he seeks," but nonetheless instructed the court reporter to "initiate the process of completing the transcript, and then (upon completion) to notify the Second Circuit and immediately file it with the Clerk of the Court." Dkt. 159. On appeal, Pappas cites no authority that a transcript must be produced immediately, nor does he dispute that the transcript of the hearing was prepared promptly. In fact, Pappas does not argue that anything related to the transcript preparation impaired his ability to file or perfect this appeal.

Third, Pappas argues that neither the Government nor the district sufficiently articulated how he was a risk of flight or how he presented a danger to the community. Def. Br. 17-23. But this argument simply ignores the voluminous presentations made by the Government. It ignores Judge Williams's detailed ruling, where he discussed the circumstances

of the traffic stop and concluded that it was "reasonable to believe a person trying to avoid arrest also will try to avoid prosecution[,]' and that "flight from a motor vehicle stop strongly suggests that Mr. Pappas presents a high risk of flight to avoid prosecution[.]" GA84. Similarly, Judge Williams amply explained his conclusion that Pappas presented a danger to the community, noting "the defendant's exposure as presently charged, the weight of the evidence against him such as wiretap evidence, and documented communications with codefendants, and a felony criminal record that includes a lengthy prior federal sentence and convictions relating to a retaliation against a government witness." GA84. In addition, Judge Williams noted that the "significant drug activity even after the arrest of Willis Taylor, a codefendant[]" and "concerns over the legitimacy of [Pappas's] businesses" present public safety risks as well." GA85.

Pappas's reliance on other cases involving pretrial detention and release, *United States v. Patterson*, 25 F.4th 123 (2d Cir. 2022) and *United States v. Mattis*, 963 F.3d 285 (2d Cir. 2020) (Def. Br. 20), does not require a different result. *Patterson* did not even involve the Bail Reform Act but was an appeal from a suppression order. *Mattis* involved the Government's unsuccessful appeal of a release order for two defendants

without criminal records with established ties to the community. Notably, *Mattis* did not involve any allegations of flight.

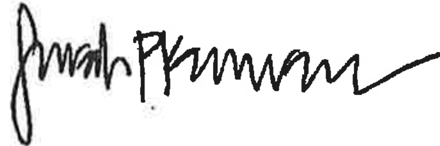
Finally, Pappas argues that this matter should be reassigned to a different district judge. He alleges that Judge Williams "decided the issue of bail prior to the hearing even getting underway." Def. Br. 24. This is simply not true. In fact, Pappas raised this concern directly to the district court, stating "I do want to note it appeared that Your Honor was reading a prepared statement as you were making your findings, so it seems as though the decision was made before we had the argument." GA86-87. Judge Williams firmly rejected this suggestion, stating "I'm sure you can appreciate I don't just wing it when I get up here . . . I think my remarks in total show my attention to you, the government, to the arguments that were raised on the papers and here today . . . to the extent you are arguing that the Court prejudged you, the record shows otherwise." GA87. "Whether to remand a case to a new district judge is a fact specific determination that we believe to be an extraordinary remedy to be reserved for the extraordinary case." *United States v. Jacobs,* 955 F.2d 7, 10 (2d Cir. 1992) (citations and quotations omitted). There is simply no basis to

suggest that Judge Williams prejudged Pappas or did anything other than carefully follow the law.

Dated: September 8, 2023

Respectfully submitted,

VANESSA ROBERTS AVERY
UNITED STATES ATTORNEY



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Federal Rule of Appellate Procedure 26.1 Disclosure Statement

In this criminal case, there are no organizational victims.

/s/ Sarah P. Karwan

SARAH P. KARWAN
ASSISTANT U.S. ATTORNEY

Federal Rule of Appellate Procedure 32(g) Certification

This is to certify that the foregoing motion complies with the 5,200-word limitation of Federal Rule of Appellate Procedure 27(d)(2)(A), in that the motion is calculated by the word processing program to contain approximately 5165 words, excluding the Rule 26.1 Disclosure Statement, and the certifications.

/s/ *Sarah P. Karwan*

SARAH P. KARWAN
ASSISTANT U.S. ATTORNEY

CERTIFICATE OF SERVICE

This is to certify that on September 8, 2023, a copy of the foregoing motion and memorandum of law was filed electronically and served by first-class United States mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

In addition, a copy was sent via U.S. Mail to:

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/s/ Sarah P. Karwan

SARAH P. KARWAN
ASSISTANT U.S. ATTORNEY

****

Appendix C

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PAPPAS' REPLY BRIEF

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 23-6762

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

MARKOS PAPPAS,

Defendant-Appellant.

DEFENDANT-APPELLANT MARKOS PAPPAS' REPLY TO THE GOVERNMENT'S OPPOSITION TO PAPPAS' MOTION FOR REMAND TO SET CONDITIONS OF PRETRIAL RELEASE AND REASSIGNMENT TO A DIFFERENT JUDGE

PRELIMINARY STATEMENT

Markos Pappas, Defendant-Appellant *pro se*, respectfully replies to the government's opposition to Pappas' appeal seeking a remand with instructions to set conditions of pretrial release, and directing reassignment to a different judge. For the reasons already set forth in Pappas' initial filing, and herein, a remand with instructions to set conditions of pretrial release for Pappas, and directing reassignment of this case to another judge for all further proceedings, is appropriate and warranted under the circumstances. [1]

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[1] Cites preceded by "Gov. Opp." are to the government's September 8, 2023 opposition. Cites preceded by "Doc." are to documents in the docket of D.Conn. No. 23CR0062(OAW), and cites preceded by "Pappas Mem." are to Pappas' memorandum of law in this appeal, and cites preceded by "Pappas Ex." are to the exhibits attached to Pappas' memorandum of law.

REPLY ARGUMENT

A. The government's factual misstatements and submission of incomplete facts creates flaws in its legal argument in this Court and exposes the weaknesses of its overall case against Pappas (reply to Gov. Opp., 2-13 and 17-19)

Pappas begins by pausing to note that the allegations against him are just that, allegations. Nevertheless, as reflected throughout the government's fact position, (Gov. Opp., at 2-12), (and an arguable due process problem in and of itself), the government portrays the allegations against Pappas as though they are facts already proven to a jury, rather than allegations in the pre-trial phase.

With that being said, regarding the government's four bullet points, the first two, (Gov. Opp., at 17-18 ("The nature and circumstances of the charged offense" and "The weight of the evidence"), are nothing more than an effort to portray the government's uncorroborated allegations as to Pappas as stronger than they actually are but that effort certainly will not make it reality as the government will see when this case gets to trial that it never should have charged Pappas in this case, and those mistaken positions are irrelevant for purposes of what is in issue in this appeal in any event.

As to the second two bullet points, *i.e.,*, "The history and characteristics of Pappas[]" and "Dangerousness[,]" (Gov. Opp., at 18), the government's position is both incomplete and misleading, and also irrelevant for purposes of what is in issue in this appeal.

Nevertheless, it is worth discussing as to "history and characteristics" that Pappas argued he was being treated unfairly, inter alia, in relation to his codefendants, some of whom have a much greater weight of evidence against them and some who have more serious charges who face greater sentences than Pappas, yet they were all released on varying sums of unsecured bonds either by their own

signatures on the unsecured surety or a family member's or spouse's signature on an unsecured surety. (Pappas Ex., E, at 16-17). Nevertheless, the government argues as to Pappas that he didn't prove "his proposed custodians had sufficient financial backing for the bond or were suitable custodians." (Gov. Opp., at 18-19). First, Pappas' offered to secure the bond via real property owned by his family in addition to the unsecured sureties. (Pappas Ex., B, at 16, Proposed Condition No. 5).

Second, and how the government proves Pappas' point about disparate treatment between his codefendants and him, the government advanced no such argument about unsecured sureties as to the codefendants released who have a greater weight of evidence and face greater charges than Pappas. Those codefendants were released the same morning of arrest so either pretrial services moved lightning fast to get the government the information as to the codefendants released that it argues is lacking for Pappas, or the government did not make an issue of it as to those codefendants.

Moreover, none of Pappas' proposed sureties have criminal records and they all have jobs, one of whom, Pappas' fiancé, is a healthcare superhero who makes a very high wage at the hospital she is employed at, and the same is true as to Pappas' sister who owns property and earns a high wage via her more than 20 year career in maintenance at Yale University, all of which the government could have easily confirmed if financial solvency of Pappas' proposed sureties and custodians was truly a matter of concern for the government rather than just a factually unsupported excuse and misrepresentation to this Court as well as the judges below. Thus, the unfairness of the government's position as to Pappas in relation to how his codefendants have been treated is evident.

Demonstrating further unfairness and possible discrimination by the government is where the government notes it "proffered that Pappas's fiancé was intercepted on the wiretap alerting Pappas to possible police surveillance, even

attempting to chase down the officer." (Gov. Opp., at 19 n. 5). It is shocking that the government would seek to mislead both the district court and this Court on that matter as: (1) there has been no showing that the call in issue fell within the scope of the offenses specified by the government in seeking authorization for interception, meaning that call should have been minimized and shouldn't be being used by the government in this case for any reason; and (2) the government neglects to mention that this person it claims was law enforcement was in an unmarked vehicle, wearing plain clothes, looking very suspicious as though he was a thief doing recon of Pappas' mother's home, and at that time Pappas' mother (86 years old at that time) was very sick and in a frail physical state thus raising concern by Pappas' fiancé as to the stranger on her future mother-in-law's property.

Furthermore, that person never identified himself as law enforcement and when he saw Pappas' spouse see him he abruptly and suspiciously got in his vehicle without looking her way and took off. Because the government leaves out those highly relevant facts it also does not explain why anyone, especially a family member, knowing the circumstances of the elderly, sick, frail, occupant whose property the suspicious stranger was on without consent, wouldn't be concerned at that point and follow the suspicious stranger to get a plate number or location as to where they were going. There is nothing in the call between Pappas and his spouse reflecting that they thought this person was law enforcement and the government's misrepresentation of that matter is reflective of the nature of the entire case so Pappas would invite the Court to get the recording of that intercepted call from the government and listen to it and if this Court can fairly discern some belief by Pappas and his spouse that the stranger on Pappas' mother's property was law enforcement and report such to Pappas, then Pappas will concede to a withdrawal of this appeal.

In the government's view, a latin woman such as Pappas' fiancé, and a person of color such as Pappas, should assume any caucasion they observe on property

belonging to one of their family members or loved ones is law enforcement and go on about their business without question, even if that person flees suspiciously when they observe us seeing them. That is a highly offensive proposition this Court should surely not endorse.

Also regarding the government's history and characteristics position, Pappas submitted that if the court intended to consider Pappas' history, it should also consider his growth demonstrated by his making amends with the main witness that resulted in his prior federal conviction and sentence, (Pappas Ex. E, at 13-15), as well as the government's negative history of misconduct against Pappas established before the Honorable Robert Chatigny in 2019 that resulted in Pappas' immediate release after the government was left with no valid option but to concede Pappas had served more than four years beyond the maximum sentence applicable to him based on government lapses (misconduct is what is was but Pappas is mindful no one likes that term) that provoked a non-correction of the sentence sooner. (Pappas Ex. B, at 12-15; Pappas Ex., D, at 15-19).

Regarding the government's argument that Pappas "never addressed" the government's concerns that his businesses were not legitimate, first, isn't that what a trial is for? Second, it is shocking the government takes that position as it knows Pappas intended to question FBI Agent Ryan Halpin on that issue had he been allowed enough time to call Agent Halpin as a witness at the June 7th hearing. Pappas gave Agent Halpin the courtesy of informing him at the aborted May 15th hearing, which government counsel should have been aware of as she was in earshot of that conversation which took place in the courtroom prior to Judge Williams coming out, that Pappas intended to call Agent Halpin as a witness, in part, regarding his review of information in Pappas' hard copy and computer records seized from Pappas' business on March 28, 2023, the same day Pappas was arrested, which supports that Pappas was in fact running a legitimate business. Third, the government seized

Pappas hard copy and computer records and presumably have reviewed them and thus do now see that there was in fact legitimate activity going on at Pappas' business, which it has a problem with Pappas having at all. Because the government is tainted with ill-thought when it comes to Pappas because of his history that the government refuses to acknowledge isn't reflective of the man Pappas is today, it likewise refuses to believe Pappas can be released from his prior sentence after serving such a long time in federal prison and actually work hard and do the right thing to attain some legitimately earned success in life. Shame on the government for that.

As to the government's "Dangerousness" bullet point, the government again argues Pappas' criminal history "combined with his flight during the February 2023 traffic stop, show that he poses a substantial danger to the community." (Gov. Opp., at 18). Again, that argument overlooks and does not reconcile the fact that Pappas made amends with the witness he was convicted of retaliating against in 1996. No one disputes that Pappas and that witness have in fact made amends, yet the government acts as though it's still 1996 when that case took place and there has been no growth or maturity in Pappas at all when the real world facts show otherwise. Pappas has said before and will say again here, the government should be applauding Pappas' accomplishment in that regard instead of trying to detain him on this weak case it has chosen to bring against him. The government should also be more honest as to its own negative history with Pappas as the same office now prosecuting him misled the Honorable Peter C. Dorsey on applicable facts and law, which he accepted as would likely any judge not wanting to believe the government would misstate facts and law to produce wrongful imprisonment, yet the government did do that as to Pappas resulting in him spending four years and eight months longer in federal prison than the maximum provided for by law. That important truth definitely should not be ignored or deemed irrelevant for present purposes,

especially since the government has been asking each court this case lands in front of (first Judge Spector, then Judge Williams, now this Court), to accept its allegations against Pappas that it portrays as proven fact, even though the government itself cannot truthfully represent to this Court with certainty that its interpretations of phone calls and events its investigators have observed actually mean what the government portrays them to mean, or that there is independent corroboration of the same.

Furthermore, on the issue of Pappas' flight from the scene of the stop by Connecticut State Police on the highway, if for arguments sake we eliminate the disputed PTSD issue from Pappas' side of the argument and the from the government's side we remove the disputed and unsupported claim that Pappas fled to hide illegal drugs, the only truly relevant matters arising from that event that relate to the Bail Reform Act ("the Act") factors of flight and dangerousness are: (1) that after Pappas left the stop it is undisputed he went to get codefendant Julio Echevarria (to drive him to the state police barracks and arrange for a bail bondsmen) and was heading to turn himself in which demonstrates general acceptance of responsibility when Pappas is wrong on something and clearly demonstrates that he would also show up to court in this matter; (2) that while Pappas was on his way to turn himself in, investigators tracked his movement via court ordered GPS tracking on his phone and located him (thus demonstrating that GPS location monitoring attached to Pappas' body will work); and (3) that there is no real evidence other than self-serving government fact engineering that is not based in actual reality, that Pappas gave anything illegal to Echevarria (who is only charged in this matter based on that event even though nothing was found in the search of his room).

B. The government has waived its arguments raised for the first time in this appeal that Pappas could or should have called the witnesses he sought to call at the June 7th hearing at the April hearing, and that Pappas has not shown a different outcome if the witnesses were called (reply to Gov. Opp., 19-21)

The government's attempt at sleight of hand as to the denial of Pappas' right to call witnesses at the June 7th hearing is reflective of the overall nature of the case against Pappas. What Pappas means by that is, although the denial of witness issue Pappas raised in this appeal is specifically limited to the June 7th hearing, (Pappas Mem., at 14-15, and the record and exhibits cited to therein), the government seeks to evade the consequences of the error by faulting Pappas for not calling witnesses at the earlier hearing in April before Judge Spector. (Gov. Opp., at 19-20).

Moreover, other than seeking to limit Pappas' presentation of the witnesses to issues that related to the application of the Act standards, (Pappas Ex. E, at 6), after which Pappas made an offer of proof that the government did not follow up with any objection to Pappas calling the witnesses nor did it challenge the offer of proof as to the issues Pappas said the witnesses would be relevant to. (Pappas Ex. E, at 6-10; Pappas Mem., at 14-15). In fact, is should be recalled that the government specifically arranged for the two law enforcement witnesses to be present in court at Pappas' request. (Pappas Mem., at 5-6).

Because the government did not advance any challenge to Pappas' right to call witnesses at the June 7th hearing, and because it did not raise any argument or objection as to the initial offer of proof Pappas made as to the relevance of the witnesses, or to his subsequent argument after the Court read its ruling where Pappas specifically pointed out that the witnesses he was deprived an opportunity to call would have been relevant to the precise points the Court based its denial of bail on, (Pappas Mem., at 15; Pappas Ex. E, at 34-35), the government should not now for the first time in this appeal be heard to complain that Pappas' witnesses should have

either been called at the April hearing before Judge Spector, and/or that the witnesses testimony would have been irrelevant to the ultimate determination. *See, United States v. Braunig*, 553 F.2d 777, 780 (2d Cir. 1977) ("The law in this Circuit is clear that where a party has shifted [its] position on appeal and advances arguments available but not pressed below, and where that party has had ample opportunity to make the point in the [court below] in a timely manner, waiver will bar raising the issue on appeal." (internal citations omitted)).

A good example on the specific point of government waiver of an argument is *United States v. Griffiths*, 47 F.3d 74 (2d Cir. 1995). In *Griffiths*, the district court suppressed evidence seized from the defendant. The government argued on appeal that the search of the defendant's duffel bag was justified as a "search incident to arrest." This Court, however, rejected the government's argument, without passing upon it, on the ground that "the government failed to pursue it below." 47 F.3d at 77. The same is true here and per that same reasoning and holding, the government's new positions in this appeal that Pappas could or should have called the witnesses at the April hearing before Judge Spector, and that Pappas has not explained how the calling of the witnesses would have changed the outcome, should be rejected.

Even if the government didn't waive its arguments, the arguments are flawed as the witnesses were relevant to, and were being called to address, the precise points in issue arising from Judge Spector's decision that was the subject of review at the June 7th hearing so it makes no logical sense that Pappas would have called witnesses to address issues at the April hearing that did not manifest until the decision rendered after that hearing. In any event, the true nature of Pappas claim is that in denying him an opportunity to call witnesses, the court below created an issue that the Act is unconstitutional as-applied to Pappas, which the government drops the ball on in its opposition because...

C. The government's inaccurate representation of what is said in a citation it makes to *United States v. Salerno*, 481 U.S. 739 (1987) demonstrates the lack of merit in the government's argument regarding Pappas' claim that the Act is unconstitutional as-applied by the district court (reply to Gov. Opp., 21)

Pappas' actual claims regarding: (1) the *de* facto or functional equivalent of a denial of his right to call witnesses provided for in 18 U.S.C. § 3142(f), and (2) the district court's intentional delay of Pappas' right to the "immediate appellate review" *Salerno* 481 U.S., at 752 said is required by 18 U.S.C. § 3145(c); is that the Act is unconstitutional as-applied to Pappas by the court below. (Pappas Mem., at 13-16). Nevertheless, the government seeks to evade consequences for the unconstitutional application of the Act by attempting to suggest that the law does not recognize a claim that the Act can be unconstitutional as-applied to an individual.

Specifically, the government argues that Pappas' argument that "the Act is unconstitutional as-applied to him under [*Salerno*], [] is misplaced" because "*Salerno* involved a facial challenge to the constitutionality of the Act and did not reach an as-applied challenge, indeed declining the appellants' request to do so." *See,* Gov. Opp., at 21 (citing *Salerno,* 481 U.S., at 745, n. 3).

First, the government was the petitioner (appellant) in *Salerno* and the criminal defendants were the respondents (appellees) in that Supreme Court case. Second, the government is mistaken as to the proposition is says *Salerno* stands for in its citation to 481 U.S., 745, n. 3, because that footnote actually supports Pappas' position as to the viability of as-applied challenges in individual cases such as what Pappas brings here, and does not in any way stand for the proposition that in the cited footnote the *Salerno* Court "did not reach an as-applied challenge, *indeed declining appellants' request to do so.*" (Gov. Opp., at 21 (emphasis supplied)). To be clear, 481 U.S., 745, n. 3, in full, actually says: "We intimate no view on the validity of any aspects of the Act that are not relevant to respondents' case. *Nor have*

respondents claimed the Act is unconstitutional because of the way it was applied to the particular facts of their case." (Emphasis supplied).

The government's effort to mislead this Court as to what is clearly stated in the text of a case that clearly does not stand for the proposition the government suggests it stands for is reflective of the type of case the entire case against Pappas is. Misstatements, misrepresentations, and a clear effort to deceive by manipulating the true nature of facts and the law applicable in this case, which this Court can now see for itself is present in this case via what Pappas has just exposed. Indeed that misrepresentation of what Supreme Court authority actually says is reflective of the weak foundation this entire case is built on, which weak foundation will certainly not result in a conviction of Pappas in this case, and certainly demonstrates the fallacy of the government's misrepresentation that there is "overwhelming force of the § 3142(g) factors[,]" (Gov. Opp., at 18), against Pappas in this matter. In fact, the word "overwhelming" has no place in this case on the government's side of the scale as it will be proven by Pappas later in this case to an overwhelming magnitude that the government should never have charged him in this case.

Thus, the ultimate question for this Court under the applicable *de novo* review standard since this is a question of law as it involves whether a statute is unconstitutional as-applied in this case, (Pappas Mem., at 14), which the government also fails to recognize based on its mistaken failure to recognize the existence of an as-applied challenge, is whether the Act is in fact unconstitutional as-applied to Pappas by the district court's: (1) unreasonable time limitation imposed upon Pappas that had the effect of a *de facto* or functional equivalent of a denial of Pappas' right provided for in the plain text of the Act to call witnesses; and (2) delay of this appeal by refusing to order that Pappas be provided with a transcript of the June 7th hearing on an expedited basis so he could obtain the for purposes of the prompt appeal provided by the Act, 18 U.S.C. § 3145(c), and the "immediate appellate review"

envisioned by the Act as interpreted by *Salerno*. *Id.* 481 U.S., at 751-52. (Pappas Mem., at 13-16).

The government's opposition does not recognize that the right to call witnesses under 18 U.S.C. § 3142(f), and the "immediate" review requirement of *Salerno*, were among the several due process protections specifically relied on by the *Salerno* Court to repel the facial challenge at issue in that case. *Id.* Because the government fails to acknowledge that, it misses the mark in contesting Pappas' as-applied challenge. In fact, the government has made nothing more than a cursory argument that Pappas has mischaracterized the record on the point that the slowing down of Pappas' appeal was an intentional maneuver by the district court that distinguishes this matter from *United States v. Hill*, 462 Fed. Appx. 125 (2d Cir. 2012), rather than offer this Court a viable explanation for the extended delay in getting this appeal moving in this Court based on the district court's slowing down of the record. *Compare,* Pappas Mem., at 16; *with*, Gov. Opp., at 22. Indeed, this Court's own Case Initiation Team had to contact the district court on more than one occasion to get this appeal moving forward. Nor does the government make an effort to contest Pappas' argument that *Hill* does not foreclose Pappas claim here. (*Compare,* Pappas Mem., at 16, *with*, Gov. Opp., at 22).

Accordingly, the government's misrepresentation as to what is actually said in *Salerno* as to the viability of an as-applied challenge in a particular case such as this one demonstrates the lack of merit in the government's overall position since it has attempted to mislead this Court on the point of what applicable case law actually says, which the government previously did to Pappas successfully before Judge Dorsey resulting in Pappas spending four years and eight months longer in federal prison than he would have spent absent the government's misrepresentation and failure to correct the same when it could have. Pappas respectfully requests that this

Court not allow history to repeat itself, and per the proper application of *Salerno*, remand with instructions to set conditions of release.

D. The government still has not explained specifically why there are no conditions or combination of conditions to "reasonably" assure Pappas' appearance in court and the safety of the community (reply to Gov. Opp., 22-24)

A fair comparison between the argument Pappas has already put before this Court on this issue and what the government has submitted demonstrates that the government still has not put forth any specific information as to why the conditions proposed by Pappas would not "reasonably" assure his appearance in court or the safety of the community. (*Compare*, Pappas Mem., at 17-23, *with,* Gov. Opp., at 22-23).

At no point in the court below, nor now in this Court, has there been an argument or specific finding based on some articulable, actual factual basis that, for example, GPS location monitoring in combination with house arrest and a specific time span for movement out of the house, along with periodic video check-ins with pretrial services and unannounced in person visits wherever Pappas is at a given time, would not reasonably assure Pappas' appearance in court and the safety of the community. For example, is Pappas a technological wizard capable of in some way rendering GPS monitoring a nullity? Does Pappas possess some special skill that would enable him to create the illusion of him being where he is supposed to be at any given time of day when pretrial services requires him to check-in or when he is given a surprise visit at locations he is supposed to be at?

Furthermore, in this appeal Pappas has specifically argued that the government provided no information or specific argument to the court below "that the conditions added by Pappas at the hearing could not reasonably assure his appearance in court and the safety of the community." (Pappas Mem., at 21). While

the government does in this appeal maintain its general position that Pappas shouldn't be released, it has not disputed Pappas specific argument quoted above in its opposition, and still has not offered any specific basis to support a finding that the proposed conditions would not "reasonably" work. (Gov. Opp., at 22-23).

Pappas has argued that the standard of review as to this issue is *de novo* as it is based on how due process is implemented through the Act, (Pappas Mem., at 17), and the government has argued as though clear error is the proper standard. (Gov. Opp., at 17). Pappas maintains that *de novo* is the proper standard of review for the reasons stated in his initial filing but submits that regardless of what standard this Court applies, the result should be the same, a remand with instructions to set conditions of release.

E. The government fails to adequately contest the reality that the circumstances in this case do indeed warrant that this case be reassigned to a new judge on remand (reply to Gov. Opp., 24-25)

A fair comparison between the argument Pappas has already put before this Court on the matter of the need for this case to be reassigned to a new judge on remand, and what the government has submitted demonstrates that the government offers nothing more than a cursory response that does not address the specific matters Pappas carefully put before this Court, including the appearance that the court below used the Act to punish Pappas for its perceived finding that Pappas violated state law in leaving the scene of the stop initiated by the state police.[2] (*Compare*, Pappas Mem., at 23-27, *with,* Gov. Opp., at 24-25).

Pappas set forth the standard and the facts that support each part of the standard, (Pappas Mem, at 24-27), and the government has not contested any of that, which is likely due to the government realizing it is in a losing battle as to this

[2] It should be noted that the state charges brought against Pappas relative to him leaving that stop were nolled.

particular issue, thus the lack of effort in not contesting each part of the standard Pappas has specifically addressed.

Accordingly, this case should be reassigned to a new judge on remand for the reasons already stated in Pappas initial filing.

CONCLUSION

Pappas has amply established that his continued pre-trial detention based on misapplication of what due process requires cannot stand and deserves this Court's attention in the form of a remand with instructions to set conditions for Pappas' release, and direct that the case be reassigned to a new judge on remand.

Dated: September 15, 2023

Respectfully submitted,

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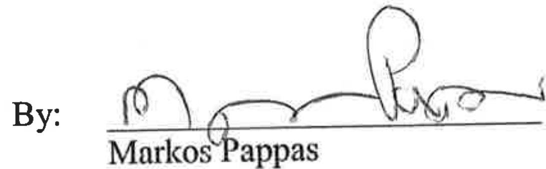
CERTIFICATE OF SERVICE

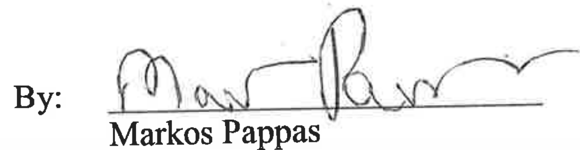
I hereby certify that a copy of the foregoing was served via prepaid, First-Class, U.S. Mail, on this 15th day of September, 2023, upon:

Sarah P. Karwan, AUSA
U.S. Attorney's Office
450 Main Street
Hartford, CT 06103

By: 
Markos Pappas

CERTIFICATE OF COMPLIANCE

This reply complies with the type style and volume requirements of FRAP 32(a)(6) and FRAP 32(a)(7)(B)(ii) because it has been prepared using 14-point Times New Roman font and contains 4,875 words.

By: 
Markos Pappas

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Appendix D

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SECOND CIRCUIT'S OCTOBER 12, 2023 DECISION

D. Conn.–New Haven
23-cr-62
Williams, J.
Spector, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of October, two thousand twenty-three.

Present:

Barrington D. Parker,
Eunice C. Lee,
*Circuit Judges.**

United States of America,

Appellee,

v. 23-6762

Willis Taylor, Aquarius Gumbs, AKA Q, AKA Ice, AKA Diamond, Sean Pepe, Gordon Lauria, Paul Paolella, Peter Ablondi-Taylor, Mark Apotrias, Thomas Joslin, David King, Richard Greatsinger, Christopher Cahill, Lisa Fausel, Julio Echevarria, AKA Warrior,

Defendants,

Markos Pappas, AKA Speedy,

Defendant - Appellant.

Appellant, proceeding *pro se*, moves for an order remanding the case with instructions to set bail and to reassign this matter to a new judge. The Government opposes. Upon due consideration,

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* Judge Sarah A. L. Merriam has recused herself from consideration of this motion. Pursuant to Second Circuit Internal Operating Procedure E(b), the matter is being decided by the two remaining members of the panel.

CERTIFIED COPY ISSUED ON 10/12/2023

it is hereby ordered that the motion is DENIED, and the district court's June 7, 2023 order remanding Appellant into custody is AFFIRMED. Appellant's motion for leave to file this motion oversized is GRANTED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

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Appendix E

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PAPPAS' MOTION FOR RECONSIDERATION

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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No. 23-6762

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

WILLIS TAYLOR, *et al.*

Defendants,

MARKOS PAPPAS,

Defendant-Appellant.

DEFENDANT-APPELLANT MARKOS PAPPAS' MOTION FOR PANEL RECONSIDERATION AND RECONSIDERATION EN BANC

PRELIMINARY STATEMENT

Markos Pappas, Petitioner-Appellant *pro se*, respectfully seeks panel reconsideration and reconsideration *en banc* regarding the October 12, 2023 panel decision without opinion affirming the district court's June 7, 2023 order denying Pappas bail.[1] That decision is attached to this motion as "Attachment A." Though

[1] Per Local Rule 40.2 this filing complies with FRAP 35 and 40 and LRs 35.1 and 40.1.

this Court rarely grants a rehearing and nearly never grants a rehearing *en banc* when filed by respected members of the Bar of this Court, and never does so in a case such as here involving an imprisoned *pro se* criminal defendant, a historical moment is upon us as if the Court assesses this filing with the blindness as to the messenger as Lady Justice would, it will be understood that a panel rehearing or rehearing *en banc* is especially warranted in this bail appeal as the panel's unexplained decision perpetuates a very clear due process violation and breaks from existing precedent of both the Supreme Court and this Court in affirming the decision of the court below, that was read into the record by the judge *who made no specific findings* after a bail hearing where Pappas was not afforded an opportunity to call witnesses whose relevance was not disputed after Pappas made an offer of proof, rendering the Bail Reform Act ("the Act") unconstitutional as applied to Pappas in this case.

All federal criminal defendants are supposed to have a due process right to a fair opportunity to contest pretrial detention with full respect for the safeguards of 18 U.S.C. § 3142(f), especially since those safeguards (which, as relevant here, include the right to call witnesses) were the saving grace that prevented the Supreme Court from finding the Act facially unconstitutional in *United States v. Salerno*, 481 U.S. 739 (1987). The court below completely ignored the requirements of § 3142(f) and *Salerno* by way of a decision the Court prepared prior to the hearing that it began reading into the record immediately after the parties concluded their arguments. Pappas pointed out that oddity on the record as soon as the court below finished reading its prepared decision reflecting pre-judgment. There is thus also present in this case a clear appearance of unfairness in the overall treatment of Pappas that runs afoul of the minimum standard of at least the "appearance" of justice required in all federal criminal proceedings. A rehearing *en banc* is warranted. At a minimum, the panel should take another look.

REASONS FOR GRANTING THIS MOTION

1. **The panel's decision is in irreconcilable conflict with *United States v. Salerno*, 481 U.S. 739 (1987), *United States v. Hogan*, 229 F.3d 1136 (2d Cir. 2000), *United States v. Davis*, 845 F.2d 412 (2d Cir. 1988), and *United States v. Berrios-Berrios*, 791 F.2d 246 (2d Cir. 1986), and such reflects a pressing need for a change in position by the panel or action by the entire Court to offer uniform guidance for future panels and the district courts within this Circuit as to due process requirements in the bail hearing context**

Pappas argued in this appeal that he was deprived of his right to call witnesses, and that such right is among the due process safeguards written into the Act in § 3142(f), that the Supreme Court expressly relied on in *Salerno* to save the Act from the facial invalidation this Court determined was appropriate in *United States v. Salerno*, 794 F.2d 64, 71-75 (2d Cir. 1986)(finding Bail Reform Act facially unconstitutional). Pappas Mem.,[2] at 13-16 (discussing the finding in Supreme Court's *Salerno* decision that the safeguards such as the right to call witnesses required by the Act inoculated the Act from facial invalidation).

Because Pappas was deprived of a right the Supreme Court expressly relied on to find that the Act provided for appropriate due process he sought relief based on the fact that the manner in which the Act was applied to him by the court below rendered the Act unconstitutional as applied to Pappas. Pappas Mem., at 13-16; Gov. Opp., at 21 (arguing there is no such thing as a claim that the Act can be unconstitutional as applied in any particular case); and Pappas Reply, at 10-13 (pointing out that the cite offered by the government to support its position says the exact opposite of what the government said it says).

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[2] Cites preceded by "Pappas Mem." are to Pappas initial filing in this appeal. Cites preceded by "Gov. Opp." are to the government's opposition in this appeal, and cites preceded by "Pappas Reply" are to Pappas' reply to the government's opposition filing.

Another panel of this Court has indeed remanded when there was non-compliance with § 3142(f). *See e.g., United States v. Hogan*, 229 F.3d 1136 (2d Cir. 2000)(summary order)(in remanding the panel noted that a defendant must be afforded an opportunity to call witnesses if he desires, citing § 3142(f)).

Additionally, Pappas argued that the court below offered nothing more than general findings with a ritualistic incantation of the detention standard rather than any specific findings as to why any condition or a combination of the strict conditions of release proposed by Pappas would not suffice to "reasonably assure" the safety of the community and Pappas' presence at trial. Pappas Mem., at 17-23.

That lapse is in direct conflict with prior, longstanding, decisions of this Court. *See e.g., United States v. Davis*, 845 F.2d 412, 415 (2d Cir. 1988)(remanding for further hearing as defendants were "entitled to specific findings" as to why there would be no conditions or combination of conditions to allow continuation of bail); *United States v. Berrios-Berrios*, 791 F.2d 246, 251 (2d Cir. 1986)(remanding for further hearing where the district court erred in "failing to consider fully and explicitly whether the government had shown that no condition or combination of conditions would 'reasonably assure'" appearance).

Thus, because the panel's decision here is in direct conflict with the Supreme Court's decision in *Salerno* as well as decisions of other panels of this Court, including, *Hogan, Davis,* and *Berrios-Berrios,* all *supra*, that all remanded for non-compliance with the due process required by § 3142(f), the panel should either reconsider and grant the relief Pappas sought in this appeal, or the Court should convene *en banc* to resolve the conflict between the panel's decision here and existing, longstanding, precedent of both the Supreme Court and this Court and thereby ensure fairness and uniformity in all of this Court's decisions that relate to the due process requirements of § 3142(f) as applied by the Supreme Court and other panels of this Court.

2. The panel's decision is in conflict with *United States v. Robin,* 553 F.2d 8 (2d Cir. 1977)(*en banc*) as Pappas established that he met all three requirements to warrant remand to a new judge and the government did not seriously contest the same

This Court, *en banc*, has made it clear that "in a few instances there may be unusual circumstances where both for the judge's sake and the appearance of justice [ ] an assignment to a different judge is salutary and in the public interest, especially if it minimizes even a suspicion of partiality[.]" *United States v. Robin,* 553 F.2d 8, 9-10 (2d Cir. 1977)(*en banc*) (Internal quotation marks and citations omitted)).

A three factor test has been established to determine when that relief is warranted in a particular case and Pappas amply explained how the unique circumstances present here where a judge read a decision into the record denying bail that was prepared prior to even hearing the positions of the parties at the hearing, satisfied all three factors. Pappas Mem., at 24-27. The government did not seriously oppose as the record is what it is on the matter and there wasn't much the government could say to change that. Gov. Opp., at 24-25; Pappas Reply, at 14-15.

Thus, the panel's decision denying this aspect of the relief Pappas sought is in direct conflict with this Court's *en banc* decision in *Robin* and the three factor test established to assess when a case should be remanded to a different judge, which the very rare situation in this matter clearly satisfies.

CONCLUSION

This appeal involves the principles that bail is an important matter affecting the liberty of a human being in a criminal case that deserves all of the due process safeguards that have been established, and that justice must satisfy the appearance of justice is a cornerstone in the American justice system. Because those important legal principles have been decided by the panel in this appeal in a manner that is in direct conflict with the governing authority of the Supreme Court and other panels

of this Court, and indeed conflicts with this Court *en banc* as to the latter issue, panel reconsideration or reconsideration *en banc* is warranted. Indeed, because there is no explanation of the basis for the decision (*see*, Attachment A), there is no indication that all relevant information was considered and such itself is a proper basis for at least a rehearing as "[t]he purpose of petitions for rehearing, by and large, is to insure that the panel properly considered all relevant information in rendering its decision." 2A Federal Procedure § 3:835 (Law. Coop. 1994).

Accordingly, Pappas humbly prays that this Court exercise its rarely granted authority and grant either panel reconsideration or reconsideration *en banc*. At a very bare minimum, it is respectfully suggested that the panel should reconsider and grant the relief sought in Pappas' papers filed in this appeal or order oral argument for further discussion on all relevant matters.

Dated: October 15, 2023
(Revised and resubmitted on October 19, 2023 per defective document notice dated October 18, 2023)

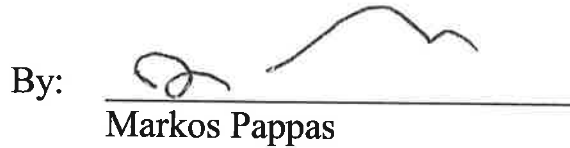
Respectfully submitted,

Markos Pappas
Petitioner-Appellant pro se
USM # 12622-014
Donald Wyatt Detention Facility
950 High Street
Central Falls, RI 02863
(Email: legalmail@wyattdetention.com Markos Pappas 12622014 in subject line)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via prepaid, First-Class, U.S. Mail, on this 19th day of October, 2023, upon:

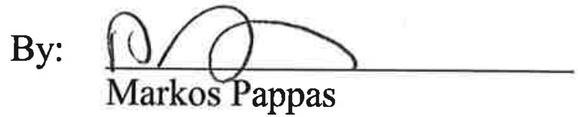
Sarah P. Karwan, AUSA
U.S. Attorney's Office
450 Main Street
Hartford, CT 06103

By: 
Markos Pappas

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the type style and volume requirements of FRAP 32(a)(6) and FRAP 32(a)(7)(B)(ii) because it has been prepared using 14-point Times New Roman font, and complies with the 3900 word type volume limitation of FRAP 35(b)(2)(A) as this petition contains only 1462 words.

I further certify that per Local Rule 40.2 this filing complies with FRAP 35 and 40 and LRs 35.1 and 40.1.

By: 
Markos Pappas

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Appendix F

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SECOND CIRCUIT'S DENIAL OF RECONSIDERATION

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of November, two thousand twenty-three.

United States of America,

Appellee,

v.

Willis Taylor, Aquarius Gumbs, AKA Q, AKA Ice, AKA Diamond, Sean Pepe, Gordon Lauria, Paul Paolella, Peter Ablondi-Taylor, Mark Apotrias, Thomas Joslin, David King, Richard Greatsinger, Christopher Cahill, Lisa Fausel, Julio Echevarria, AKA Warrior,

Defendants,

Markos Pappas, AKA Speedy,

Defendant - Appellant.

ORDER

Docket No: 23-6762

Appellant, Markos Pappas, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

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No.

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SUPREME COURT OF THE UNITED STATES

MARKOS N. PAPPAS,

Applicant,

-vs-

UNITED STATES OF AMERICA,

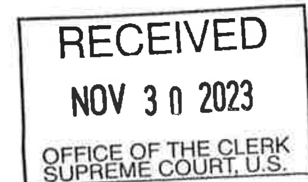
Respondent.

ON APPLICATION FOR BAIL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT RE: APPEAL NO. 23-6762

MOTION FOR PERMISSION TO PROCEED *IN FORMA PAUPERIS*

Applicant Markos N. Pappas, moves to proceed *in forma pauperis* in this Court so that all fees may be waived and declares the following in support under penalty of perjury under 28 U.S.C § 1746:

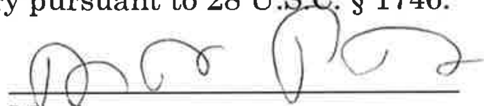
1. I was arrested on federal drug conspiracy charges on March 28, 2022 and I have remained in pretrial detention since that time.
2. Because of my pretrial imprisonment I have lost everything I had due to my inability to earn money to pay my bills.
3. My present application addressed to Justice Sotomayor as Circuit Justice for the Second Circuit relates to my pretrial detention and has merit and warrants consideration.
4. Without a grant of *in forma pauperis* status in this Court I cannot afford to pay any fees in this Court.



5. I have been granted *in forma pauperis* status in the district court and in the Second Circuit appeal (23-6762) in issue in the application I am submitting in this Court.
6. I am unable to provide a printout of my inmate account from the detention facility where I am imprisoned (Wyatt Detention Facility in Central Falls, RI) as the facility's technology has been compromised and completely inaccessible for approximately a month and staff does not have access to the computers necessary to provide me with a printout. Per discussion with staff at Wyatt Detention Facility as of the date of this filing, they have no certainty as to a date their computer access will be restored.

WHEREFORE, I respectfully request that I be granted permission to proceed *in forma pauperis* in this Court so that fees may be waived.

Executed this 22nd day of November, 2023 at Central Falls, RI, under penalty of perjury pursuant to 28 U.S.C. § 1746.

By: 

Markos Pappas
Applicant *pro se*
USM # 12622-014
Donald Wyatt Detention Facility
950 High Street
Central Falls, RI 02863

Certificate of Service

I hereby certify that a copy of the foregoing was served via pre-paid, First-Class, U.S. Mail, on this 22nd day of November, 2023, upon:

Solicitor General of the U.S.
Room, 5614, Dept. of Justice
950 Pennsylvania Ave., N W
Washington, D.C. 20530-0001

By:
Markos Pappas