

ORIGINAL

24-5088

No. \_\_\_\_\_

FILED  
APR 19 2024

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SUPREME COURT, U.S.

In The  
Supreme Court of the United States



IN RE GAVIN B. DAVIS,

Petitioner.



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



RULE 20 PETITION FOR A  
WRIT OF MANDAMUS



GAVIN B. DAVIS (#00197510), Pro Per  
*Petitioner & Federalist*  
KCDF  
810 Commerce Street  
Karnes City, TX 78118

## QUESTIONS PRESENTED

(1) Is a decision regarding an 18 U.S.C. § 3164 Motion for Pretrial Release immediately appealable interlocutory (e.g. 28 U.S.C. § 1291; collateral order doctrine) as held in persuasive opinions by the Tenth and Eleventh Circuit courts in contrast to the Fifth Circuit (i.e. circuit court split)?

(2) Subsequent to (a) the denial of a motion for pretrial release under 18 U.S.C. § 3164; and, thereafter, (b) a defendant obtaining pretrial release under separate authority (e.g. 18 U.S.C. § 3142 and its progeny), presuming the Tenth and Eleventh Circuit courts are, in fact, properly upholding Congressional intent with respect to pretrial release as codified under the Speedy Trial Act, is appellate review and relief under § 3164 moot?

Rule 14.1 (a)

## **PARTIES TO THE PROCEEDING**

Pursuant to Rule 20.3(a) and Rule 14.1(b)(i), the Parties are as follow:

**Petitioner, Mr. Gavin B. Davis, is an individual that is presently a citizen of the United States of America. He holds a Bachelor of Science degree from Cornell University.<sup>1</sup> Petitioner has been unlawfully detained from May 10, 2022, to Dec. 6, 2023<sup>2</sup> for allegedly**

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<sup>1</sup> Petitioner may be one of the only college graduates currently detained pretrial in the United States at the whim of the government. Further, level of education has the highest positive correlative value with respect to court appearance utilizing multi-variate regression analysis. Petitioner believes that his level of education has been, and still may be, purposefully omitted from U.S. Pretrial Services Pretrial Risk Assessment in which he is rated as a "Low" Risk.

<sup>2</sup> Subsequent to moving in propria persona (out of vital necessity) on Sep. 5, 2023 in USDC WD TX, 22-219, Petitioner took the exact steps related to seeking his pretrial liberty that he timely requested that each of the prior four (4) defense attorneys take and was GRANTED conditional release; though, on terms and conditions that remain as punitive, oppressive, inflexible, highly restrictive and unlawful, *prima facie*. Such terms and conditions of the Dec. 6, 2023 Release Order (Dkt. 173, 175) collectively constitute, in no uncertain terms, a "virtual prison" (None of the proposed terms and conditions on form AO199B of the Dec. 6, 2023 Release

causing three of his fraternity brethren  
“substantial emotional distress”.<sup>3</sup>

**Respondent, United States of America,**  
with service of process on the Solicitor General  
of the United States at Room 5614, Department  
of Justice, 950 Pennsylvania Ave., N.W.,  
Washington D.C. 20530-0001. (Rule 29.4 (a))

**Respondent, United States of America,**  
with service of process on Assistant U.S.  
Attorney, Bettina “Karen” J. Richardson, 601  
NW Loop 410, Suite 600, San Antonio, TX  
78206.

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Order: are (i) related to a (a) legitimate government interest; or, separately (b) justified as such; (ii) if potentially having legitimate purpose, are the least restrictive and most flexible respective term or condition as there are, in each instance, a multitude of less restrictive more flexible alternatives; and, (iii) such ready alternatives have *deminimus* costs, respectively).

<sup>3</sup> USDC WD TX, 22-219-FB-HJB, Indictment, Dkt. 3

**Respondent, United States Court of Appeals, Fifth Circuit, with service of process on the Clerk, Mr. Lyle W. Cayce, 600 S. Maestri Pl., Suite 115, New Orleans, LA 70130.**  
(Rule 20.3(a))

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#### PROCEEDINGS DIRECTLY RELATED

*U.S. v. Davis*, No. 22-cr-219-FB-HJB, U.S. District Court for the Western District of Texas. Decision of Nov. 1, 2023<sup>4</sup>, denying Petitioner's 18 U.S.C. § 3164 Motion for Pretrial Release.<sup>5</sup> Also Petitioner's Motion for Reconsideration<sup>6</sup> denied via text order on Nov. 17, 2023.

*U.S. v. Davis*, No. 23-50812, U.S. Court of Appeals for the Fifth Circuit, a 28 U.S.C. § 1291 interlocutory appeal from WD TX 22-219. Decision entered on Feb. 7, 2024, declining jurisdiction (Appendix A); and, also of Feb. 21, 2024, denying FRAP 40 rehearing (Appendix B, C). This Petition and contemporaneous movement before the Supreme Court is timely brought in relation to 23-50812.

Rule 14.1(b)(iii)

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<sup>4</sup> 22-219, Dkt. 148, Nov. 1, 2023 Transcript at pg. 4, ln 11-12, 13-18; at pg. 5, ln 4-14; see also, Petitioner's Notice of Appeal, 22-219, Dkt. 149, Nov. 9, 2023

<sup>5</sup> 22-219, Dkt. 139, Oct. 30, 2023

<sup>6</sup> 22-219, Dkt. 155, Nov. 13, 2023

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## INTRODUCTION

Pursuant to Rule 20, Petitioner brings this Petition as authorized by 28 U.S.C. § 1651(a) (Rule 20.1) for an Extraordinary Writ of Mandamus<sup>7</sup>. Federal Courts of Appeals disagree about whether decisions regarding 18 U.S.C. § 3164 pretrial release are available for interlocutory appellate review. Exceptional circumstances warrant the Court exercising its discretionary supervisory powers – for in the absence of utilizing a case and controversy, such as that brought forth by the Petitioner, to resolve the circuit court split, an unconscionable number of persons, such as the Petitioner, will continue to suffer undue and oppressive pretrial incarceration through the *de facto* misappropriation of their due process right to interlocutory appellate review of 18 U.S.C. § 3164 pretrial release decisions.

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<sup>7</sup> Under Rule 20, the Court is *not* solely limited to writs of mandamus or prohibition—the express delineation of such writs under Rule 30(a) does not, in any capacity, preclude the wide breadth of writs available to the Court to aid, in its sound discretion and appellate jurisdiction,

Essential to the Speedy Trial Clause of the Sixth Amendment, and with the Congressional passing of the Speedy Trial Act of 1974 (18 U.S.C. § 3161 et. seq.) the rights conferred there within, which have been purposefully designed with more exactitude and stringency, is the notion of judicious diligent expediency.

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fashioning appropriate remedies and relief to achieve the ends of justice entrusted to it. Rule 20 movement is authorized by 28 U.S.C. § 1651(a), The All Writs Act; which, is purposefully *broad* in scope to allow the Supreme Court to issue a wide variety of types of writ (see e.g. *Adams v. U.S.*, 317 U.S. 269, 63 S. Ct. 236, 87 L. Ed. 268, 1942 U.S. LEXIS 1 (1942), reh'g denied, 317 U.S. 713, 87 L. Ed. 568 (1943); this Court may avail itself of all auxiliary writs as aids in performance of its duties when use of such aids is calculated in its sound judgment to achieve the ends of justice entrusted to it.) Also, the word "necessary" in 28 U.S.C. § 1651(a) is not given narrow interpretation (*Whittel v. Roche*, 88 F. 2d 366, 1937 U.S. App. LEXIS 3128 (9<sup>th</sup> Cir. 1937)) Also, under 28 U.S.C. § 1651(a), Supreme Court has authority to grant interim relief in order to preserve jurisdiction of full court to consider Petitioner's claim(s) on the merits. (*Kimble v. Swackhamer*, 439 U.S. 1385, 99 S. Ct. 51, 58 L. Ed. 2d 225, 1978 U.S. LEXIS 4309 (1978)).

As the Fifth Circuit Court of Appeals declined jurisdiction on an interlocutory basis in case no. 23-50812 to review the denial of an 18 U.S.C. § 3164 decision, no other court but our highest court can provide adequate relief.<sup>8</sup>

Petitioner is unable to seek certiorari before this Court without the Court first raising the question of jurisdiction of the court below.<sup>9</sup> Petitioner, therefore, is moving under Rule 20 for this Court via order, grant or as otherwise appropriate, to compel the lower court to exercise its authority when it is its duty to do so.<sup>10</sup>

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<sup>8</sup> See e.g. *Rogers v. Grewal*, 140 S. Ct. 1865, 1875, 207 L. Ed. 2d 1059 (2020) (Thomas, J., dissenting from the denial of certiorari) (“This case gives us an opportunity to provide lower courts with much-needed guidance, ensure adherence to our precedents, and resolve a Circuit split. Each of these reasons is independently sufficient to grant certiorari.”)

<sup>9</sup> Before considering questions raised for certiorari, Supreme Court may raise the question of jurisdiction of court below (i.e. Fifth Circuit), on which Supreme Court’s own jurisdiction depends. (*Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 60 S. Ct. 44, 84 L. ed. 85, 1939 U.S. LEXIS (1939))

<sup>10</sup> See e.g. *Platt v. U.S.*, 319, 376 U.S. 240, 84 S. Ct. 769, 11 L. Ed. 2d 674, 1964 U.S. LEXIS 1654 (1964))

The Court's opinion, as solicited by the Petitioner, in resolving the inconsistent and chaotic existing circuit court split regarding interlocutory appellate review of 18 U.S.C. § 3164 decisions is therefore clearly in aid of its appellate jurisdiction.<sup>11</sup>

#### OPINIONS BELOW

(Rule 14.1(d))

*U.S. v. Davis*, No. 23-50812, 5<sup>th</sup> Cir., Feb. 7, 2024, ECF 93, denying<sup>12</sup> Petitioner's (as Appellant) 28 U.S.C. § 1291 interlocutory

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<sup>11</sup> See e.g., *Braxton v. United States*, 500 U.S. 344, 347, 111 S. Ct. 1854, 114 L. Ed. 2d 385 (1991) “A principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law.” Although this movement is brought under Rule 20, it is more appropriate in priority, for the Court to reach jurisdiction via a special writ, where by analog, the same argument and authority holds true.

<sup>12</sup> Fifth Circuit Court indicates that: (i) 18 U.S.C. § 3164 is “ineffective” citing to *U.S. v. Krohn*, 558 F. 2d 390, 393 (8<sup>th</sup> Cir. 1977) and 18 U.S.C. § 3163 (c); and (ii) that they lack jurisdiction to consider interlocutory appeals of denials of Speedy Trial Act rulings citing to *U.S. v. Crawford Enters.*, 754 F. 2d, 1272, 1273 (5<sup>th</sup> Cir. 1985), a corporate case (versus an individual), where pretrial liberty or liberty are not considered (i.e. misapplication)

appeal of the District Court's denial <sup>13</sup> of Petitioner's 18 U.S.C. § 3164 Motion for Pretrial Release of Oct. 30, 2023. <sup>14</sup> (unpublished) (Appendix A)

*U.S. v. Davis*, 5<sup>th</sup> Cir., 23-50812, ECF 100, Feb. 21, 2024, denying Petitioner's FRAP 40 Petition for Rehearing. (unpublished) (Appendix B)

## JURISDICTION

(Rule 14.1(e))

Petitioner brings this Petition under Rule 20. As the Fifth Circuit Court, in error, declined jurisdiction in case no.: 23-50812, Petitioner notes that a United States court of appeals has entered such decision in conflict with the decisions of other United States courts of appeals<sup>15</sup> (i.e. circuit court split) on the same

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<sup>13</sup> 22-219, Dkt. 148, Nov. 1, 2023 Transcript at pg. 4, ln 11-12, 13-18; at pg. 5, ln 4-14; also, Petitioner's Notice of Appeal, 22-219, Dkt. 149, Nov. 9, 2023

<sup>14</sup> Appendix E

<sup>15</sup> See e.g. *U.S. v. LevAslan Dermen*, 779 Fed. Appx. 497 (10<sup>th</sup> Cir. 2019) ("Orders denying pretrial release under §

important matter: the Constitutional right to pretrial liberty – as expressly codified within the Speedy Trial Act and the *separate*<sup>16</sup> release provisions of 18 U.S.C. § 3164 – as to call for an exercise of this Court’s supervisory power.

(see Rule 10(a); also, Rule 20.1)

On Feb. 21, 2024<sup>17</sup>, the Fifth Circuit Court denied Petitioner’s FRAP 40 Petition for Rehearing of the Fifth Circuit’s Order<sup>18</sup> of Feb. 7, 2024<sup>19</sup>, denying Petitioner’s 28 U.S.C. § 1291 interlocutory appeal (case no.: 23-50812) of the District Court’s<sup>20</sup> denial<sup>21</sup> of Petitioner’s 18

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3164 (c) are akin to those denying reductions {779 Fed. Appx. 504} in bail and satisfy the three-part collateral-order test for the same reasons non-reduction orders do...”); See also, e.g. *U.S. v. Gates*, 935 F. 2d 187, 188 (11<sup>th</sup> Cir. 1991) (recognizing that “an interlocutory appeal or a motion to this court is the only means by which a defendant can seek review of an order denying a § 3164 (c) motion and that disallowing such appeals would defeat the purpose of the statute”)

<sup>16</sup> Emphasis added.

<sup>17</sup> Rule 14.1(e)(ii)

<sup>18</sup> 5<sup>th</sup> Cir. 23-50812, ECF 93. Appendix A.

<sup>19</sup> Rule 14.1(e)(i)

<sup>20</sup> *U.S. v. Davis*, USDC WD TX, SA-22-cr-219-FB-HJB (“22-219”) (Petitioner was detained on May 10, 2022 and charged with: (a) three (3) counts of 18 U.S.C. §§ 2261 (A)(2)(B) (Cyberstalking) which indicate that Petitioner

U.S.C. § 3164 Motion for Pretrial Release<sup>22</sup>.  
(Rule 14.1(e)(iv))

In this case and controversy, a writ of mandamus is an appropriate and timely<sup>23</sup>

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caused his three (3) fraternity brothers from Cornell University “substantial emotional distress”; and, (b) one (1) count of 18 U.S.C. § 875 (c) (Interstate communication threat to injure; stemming from one brief phone call on Dec. 24, 2020, or twenty-nine months prior to being charged) (see Indictment, 22-219, Dkt. 3). These are not crimes were an accused is normally denied their Constitutional right to pretrial liberty. (“Courts should *rarely* detain defendants charged with non-capital offenses; doubts regarding propriety of release should be resolved in favor of the defendant. (*U.S. v. Townsend*, 897 F. 2d. 989 (9<sup>th</sup> Cir. 1990))” as cited in 23-50812, FRAP 9 Motion for Release, pg. 11 of 27, ¶ 11))

<sup>21</sup> Also, including denial (see 22-219 docket, text order of Nov. 17, 2023) of Petitioner’s Motion for Reconsideration (Dkt. 155, Nov. 13, 2023)

<sup>22</sup> See 22-219, Dkt. 139, Oct. 30, 2023 (Appendix E)

<sup>23</sup> Emphasis added. Relief in this type of case must be speedy if it is to be effective. (*Stack v. Boyle*, 342 U.S. 1 (1951)) See also, due process and other concerns stemming from unlawful pretrial detention; e.g. *U.S. v. Goodson*, 204 F. 3d 508 (4<sup>th</sup> Cir. 1999) citing *Smith v. Hooey*, 393 U.S. 374, 378, 21 L. Ed. 607, 89 S. Ct. 575 (1969), quoting *U.S. v. Ewell*, 383 U.S. 116, 120, 15 L. Ed. 2d 667, 86 S. Ct. 773 (1966)) Also, in *U.S. v. Salerno*, the Supreme Court found that “the maximum length of pretrial detention is limited by the stringent time limitations of the Speedy Trial Act.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); there exists a Constitutionally protected interest in avoiding physical (and other) restraints of liberty) Fundamental liberties protected by the Due Process

remedy given the lower court's legal error in not reaching jurisdiction in 23-50812 in direct opposition (i.e. circuit court split) to persuasive opinions of the Tenth and Eleventh Circuit courts. The Fifth Circuit Court's error is of constitutional proportion <sup>24</sup> and affects Petitioner's fundamental rights – the right to pretrial liberty on the least restrictive and most flexible terms and conditions. The Court has an

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clause include most of the rights enumerated in the Bill of Rights and certain personal choices to individual dignity and autonomy. (citation omitted) Also, unlike in ordinary appeal, in detention appeals, [a] court of appeals is free in determining appropriateness of order below as well as to consider materials not presented. (*U.S. v. Tortora*, 922 F. 2d 880 (1<sup>st</sup> Cir. 1990))

<sup>24</sup> Given the Fifth Circuit Court's error, the Court could also consider a writ of error coram nobis. The scope of writ of coram nobis is broad enough to encompass not only errors of fact that affect validity or regularity of legal proceedings but in addition legal errors of constitutional or fundamental proportion. (see e.g. *U.S. v. Wickham*, 474 F. Supp. 113, 1979 U.S. Dist. LEXIS 12068 (C.D. Cal 1979). Also, *Byrnes v. U.S.*, 408 F. 2d 599, 1969 U.S. App. LEXIS 13403 (9<sup>th</sup> Cir.) cert. denied, 395 U.S. 986, 89 S. Ct. 2142, 23 L. Ed. 2d 775, 1969 U.S. LEXIS 1254 (1969)) (also, the finality rule is not so inflexible that it trumps each and every competing consideration; [ ] a writ of coram nobis can issue to redress a fundamental factual or legal error. Further, in criminal cases, coram nobis may function as a step in the process in difference to civil cases. (*U.S. v. Denedo*, 556 U.S. 904 (2009))

opportunity with this case and controversy to issue a super precedential opinion and definitively end any controversy over interlocutory appeals of 18 U.S.C. § 3164 pretrial release motions and orders.

As the lower court declined jurisdiction, mandamus may be an appropriate and timely remedy<sup>25</sup> – if the Court chooses to compel<sup>26</sup> the Fifth Circuit to reach jurisdiction and opine on its own accord<sup>27</sup>, as respectfully requested.

(Rule 20.3(a))

#### OTHER PERTINENT FILINGS

(Rule 14.1(i)(vi))

*U.S. v. Davis*, No. 23-50812, 5<sup>th</sup> Cir., Petitioner's (Appellant) FRAP 40 Petition for

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<sup>25</sup> See e.g. *Ex Parte Bradley*, 74 U.S. 364, 19 L. Ed. 214, 1868 U.S. LEXIS 1014 (1869)

<sup>26</sup> See e.g. *In re Grossmayer*, 177 U.S. 48, 20 S. Ct. 535, 44 L. Ed. 665, 1900 U.S. LEXIS 1772 (1900); see also, e.g. *Bancohio Corp. v. Fox*, 516 F. 2d 29, 1975 U.S. App. LEXIS 14769 (6<sup>th</sup> Cir. 1975)

<sup>27</sup> Petitioner, as Appellant in 23-50812, had a pending FRAP 9 Motion for Release and Motion to Appoint Counsel.

Rehearing of the Circuit Court's Feb. 7, 2024 denial of his appeal. (Appendix C)

*U.S. v. Davis*, 22-219-FB-HJB, USDC WD TX, Petitioner's Nov. 13, 2023 Motion for Reconsideration<sup>28</sup> of the District Court's Nov. 1, 2023 (oral) denial of his Oct. 30, 2023 18 U.S.C. § 3164 Motion for Pretrial Release.

(Appendix D)

*U.S. v. Davis*, 22-219-FB-HJB, USDC WD TX, Petitioner's Oct. 30, 2023 18 U.S.C. § 3164 Motion for Pretrial Release. (Appendix E)

## **PRIMARY FEDERAL PROVISIONS**

### **INVOLVED (Rule 14.1(f))**

The primary constitutional provisions, treaties, statutes, ordinances, and regulations involved in this case are: Speedy Trial Act (18 U.S.C. §§ 3161–3174); a priori, pretrial release under 18 U.S.C. § 3164; and, also, the Sixth, Eighth and Fourteenth Amendments.

(see Appendix F)

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<sup>28</sup> District Court denied Petitioner's Motion for Reconsideration via text order on Nov. 17, 2023.

**STATEMENT OF CASE (Rule 14.1(g))**

Defendant has been unlawfully detained in violation of his Constitutional and substantive rights since May 10, 2022<sup>29</sup>,<sup>30</sup> despite: (a) the allegations carrying no

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<sup>29</sup> Denial of bail should not be used as an individual way of making a man shoulder a sentence. (*Carbo v. U.S.*, 82 S. Ct. 662 (1962)) As Petitioner alleges has and is occurring in this case and controversy. Also, none of the four (4) 22-219 criminal allegations in the Indictment (Dkt. 3) fall under 18 U.S.C. § 3142 (e)(3) – and therefore, the Defendant cannot be legally detained; and, (ii) none of the requisite six (6) conditions of 18 U.S.C. §§ 3142 (f)(1) or (2) are present; and, therefore, the original Detention Order of May 20, 2022 must be timely Vacated (see e.g. *U.S. v. LaLonde*, 246 F. Supp. 2d 873 (S.D. Ohio 2003); “the magistrate’s detention order was vacated, as the statute did not permit the detention of the defendant who did not satisfy any of the conditions of a subsection of the statute regardless of his dangerousness to the community or to specific others” (LEXIS case overview))

<sup>30</sup> Also, note: on Oct. 31, 2023, appearing for a Docket Call before the Hon. Fred Biery, the Court indicated that, “in reviewing the file .. the maximum punishment on these counts [(Indictment, Dkt. 3, Counts 1-4)] is five [(5)] years. [Defendant] does not have any significant prior [criminal] record. Even if a jury were to convict [the Defendant], my educated guess is that you have already served the time that you would be assessed under the [sentencing] guidelines. And the Court has no reason to believe that the guidelines would not be followed” (22-219, Oct. 31, 2023 Transcript as filed Dec. 8, 2023, Dkt. 169, at pg. 5, ln 2-9).

minimum sentence and a five (5) year maximum; (b) such allegations are not 18 U.S.C. § 3142 (e) charges; and, (c) Petitioner being rated by U.S. Pretrial Services<sup>31</sup> as a “Low” risk. Petitioner has had to terminate four (4) defense attorneys for cause: e.g. inertness, deficient performance, lack of competence reasonably expected of professional defense counsel – thereafter, moving in propria persona on Sep. 5, 2023 – in order to, a priori, regain his pretrial release, a Constitutional right. In November 2023, USDC WD TX, did not reach the merits of Petitioner’s 18 U.S.C. § 3164 Motion for Pretrial Release or reconsideration thereof. Petitioner timely moved for interlocutory appellate review to the Fifth Circuit who declined jurisdiction in February 2024.

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<sup>31</sup> U.S. Pretrial Services, is an arm of the U.S. Government – the adversarial party in the proceeding. Such adversary cooperates with the U.S. Attorney (see e.g. 18 U.S.C. § 3154 (8), (10)) and works under the auspices of the Administrative Office of the U.S. Courts (see 18 U.S.C. § 3152 (a))

**REASONS FOR TIMELY GRANTING RELIEF**  
**(Rule 14.1(h))**

Petitioner Notes, in part, that in the recent past, the Supreme Court has denied all<sup>32</sup> Applications for Bail, itself, generally due to such being untimely (i.e. post-conviction). However here, Petitioner, in part, timely and respectfully seeks the Supreme Court's Opinion and certain relief with respect to a most fundamental Constitutional right, that of *pretrial*<sup>33</sup> liberty, where a circuit court split regarding interlocutory appellate review of 18 U.S.C. § 3164 pretrial release decisions exists. The Court should recognize this opportunity for that which it is, despite a layperson (or perhaps more importantly so) seeking equitable redress and comity.

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<sup>32</sup> Based on Petitioner's research; and, separately, seemingly in contrast to applications for bail brought before the Court pre-1984.

<sup>33</sup> Emphasis added.

**I. CONGRESS' INTENT IN ENACTING 18  
U.S.C. § 3164 (C) WOULD BE FRUSTRATED  
IF AN APPEAL COULD BE TAKEN ONLY  
AFTER THE JURY HAD RENDERED A  
VERDICT**

Held as self-evident. Petitioner prays that the Court definitively resolve the existing circuit court split utilizing this case and controversy.

**II. DEFENDANT'S RIGHT TO PRETRIAL  
RELEASE IS AN IMPORTANT ISSUE  
COMPLETELY SEPARATE FROM THE  
MERITS OF THE ISSUES TO BE TRIED**

“[O]rders denying pretrial release under § 3164 (c) are akin to those denying reductions {779 Fed. Appx. 504} in bail and satisfy the three-part collateral-order test for the same reasons non-reduction orders do: they conclusively resolve the question of the defendant's right to pretrial release.”

“The fact that § 3164 (c) motions are rooted in alleged speedy trial violations does not make them more like a non-appealable order denying a motion to dismiss an indictment on speedy trial grounds than an immediately appealable order denying a reduction in bail. A court in an ordinary post-judgment appeal can vacate a conviction and order dismissal of the underlying charges if it finds a speedy trial violation, but there is no meaningful post-judgment remedy for an erroneous denial of a motion for pretrial release, and Congress' intent in enacting § 3164 (c) would be frustrated if an appeal could be taken only after the jury had rendered a verdict.” (*U.S. v. LevAslan Dermen*, 779 Fed. Appx. 497 (10<sup>th</sup> Cir. 2019))

“The traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless the right to bail before trial is preserved, the presumption of innocence, secured only after

centuries of struggle, would lose its meaning.”  
(citation omitted)

**III. EVEN IF PRETRIAL LIBERTY IS  
EVENTUALLY GAINED VIA SOME  
AVENUE<sup>34</sup>, APPELLATE REVIEW IS NOT  
MOOT SO LONG AS THERE REMAINS  
COGNIZABLE COLLATERAL  
CONSEQUENCES. WITH RESPECT TO  
PRETRIAL LIBERTY, A ROCK-BED OF OUR  
SOCIETY, ANY INFRINGEMENT UPON A  
PERSON'S LIBERTY, AUTONOMY OR  
DIGNITY IN DIFFERENCE TO A FREEMAN,  
IS RIPE FOR REVIEW**

“Mootness is a question of law and applies only when intervening circumstances render the court no longer capable of providing meaningful relief to the movant. Any legally

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<sup>34</sup> Although Petitioner, acting in propria persona after moving to terminate four (4) prior defense attorneys for cause, did ultimately obtain a pretrial release order under 18 U.S.C. § 3142 on Dec. 6, 2023, such order remains unlawful and in violation of Petitioner's substantive rights, *prima facie*.

cognizable collateral consequence preserves a live controversy. Even if there is “lack of need”, legally cognizable collateral consequences do not render an action as moot.” (citation omitted)

Also, the Due Process clause of the Fourteenth Amendment<sup>35</sup> includes “the right to be free from continued detention after it was or should have been known that the detainee was entitled to release.”<sup>36</sup> As put forth, timeliness is therefore critical – it is not sufficient to summarily foreclose one’s due process right to interlocutory appellate review of a § 3164 decision relying on some other avenue for release – whether a man takes the highway or

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<sup>35</sup> The Fourth Amendment guarantees a right to pre-liberty. The Eighth Amendment guarantees a right to non-excessive or punitive terms and conditions of bail. The misuse of bail and pretrial custody is a matter of national and state importance. Since *Schlib v. Kuebel*, 404 U.S. 357 (1971), the Eighth Amendment protection against excessive (and punitive) bail has been assumed to apply through the Fourteenth Amendment (due process). USDC WD TX, 22-219, Dkt. 171, Defendant’s Motion for Release for the Dec. 6, 2023 Bond Hearing (pg. 14, ¶ 9)

<sup>36</sup> *Campbell v. Johnson*, 586 F. 3d 835, 840 (11<sup>th</sup> Cir. 2009). Also, continued detention is taken to mean any infringement on an accused pretrial rights in difference to that of a freeman.

the road to the city from the country – such liberty in choosing the route to reach the destination is his own to decide and is more often than not based on speed.<sup>37</sup> (also, there exists a due process limit on the duration of preventive detention, which requires assessment on a case-by-case basis – in determining whether due process has been violated, court considers not only factors relevant in the initial detention decision ... but also additional factors such as the length of detention that has in fact occurred or may occur in the future, the non-speculative nature of future detention .." (*U.S. v. Hare*, 873 F. 2d. 796 (5<sup>th</sup> Cir. 1989))<sup>38,39</sup>

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<sup>37</sup> By analog, Petitioner demonstrates why adequate, in this case 'timeliness' inherent and central to the issue at hand: liberty, cannot be obtained through any other form or from any other court.

<sup>38</sup> The fundamental liberties protected by the Due Process clause include most of the rights enumerated in the Bill of Rights and certain personal choices central to individual dignity and autonomy.

<sup>39</sup> See also e.g., *Spencer v. Kemna*, 523 U.S. 1 (1997) citing to *Sibron v. New York*, 392 U.S. 40, 55-56, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968); *Pollard v. U.S.*, 352 U.S. 354, 1 L. Ed. 2d 393, 77 S. Ct. 481 (1957); *Evitts v. Lucey*,

### CONCLUSION

For the reasons stated herein, and in the interests of justice, the Court should grant a writ providing relief, which appropriately addresses the existing circuit court split regarding interlocutory appellate review of 18 U.S.C. § 3164 pretrial release orders utilizing this case and controversy to as the lens through which to do so. The Court should grant any other relief that it deems appropriate.

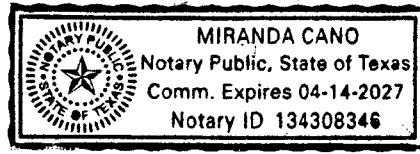
Respectfully submitted, on this day, July 9, 2024, nunc pro tunc to the earliest possible time.

*1118 CT*

/s/ *Gavin B. Davis*

GAVIN B. DAVIS, PRO PER

PETITIONER



*M. Cano*  
7/9/24

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469 U.S. 387, 83 L. Ed. 2d 821, 105 S. Ct. 830 (1985) (req' for restoration of rights); *Benton v. Maryland*, 395 U.S. 784, 790-791, 23 L. Ed. 2d 707, 89 S. Ct. 2056 (1969); also, *Vitek v. Jones*, 436 U.S. 407 (1978) (recall of lower court mandate); *Carafas v. LaVallee*, 391 U.S. 234 (1968)

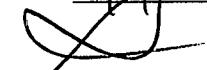
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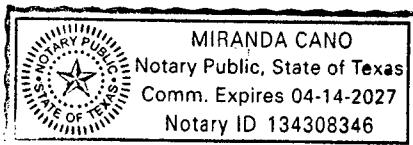
In The  
Supreme Court of the United States

◆  
IN RE GAVIN B. DAVIS,  
Petitioner.

◆  
CERTIFICATE OF COMPLIANCE

◆  
As required by Supreme Court Rule 33.1 (h), I  
certify that the Rule 20 Petition for Mandamus  
and/or Other Relief contains 6,663 words,  
excluding the parts of the document that are  
exempted by Rule 33.1 (d). The aforementioned  
is declared under penalty of perjury as true and  
correct pursuant to 28 U.S.C. § 1746. Executed  
on 7/9/24 11:45 CT

  
GAVIN B. DAVIS (#00197510), Pro Per  
*Petitioner & Federalist*



*mc 7/9/24*