No. _____

In The
Supreme Court of the United States

♦

GAVIN B. DAVIS,

Applicant,

v.

UNITED STATES,

Respondent.

♦

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

♦

RULE 22 APPLICATION FOR AN EXTENSION OF TIME

♦

Gavin B. Davis, Pro Per (#00197510)
Applicant
6245 Waldon Walk
San Antonio, TX 78261
GBDLegal@Yahoo.com
210.560.2767

QUESTION PRESENTED

Is the timely and proper movement before the trial court for production and inspection of grand jury proceedings available for interlocutory appellate review; or, solely relegated as an issue available for direct appeal?

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PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b)(i), the Parties as follow:

Applicant, Mr. Gavin B. Davis, is an individual that is presently a resident of the State of Texas and a citizen of the United States of America. He holds a Bachelor of Science degree from Cornell University. Applicant was unlawfully detained from May 10, 2022 to Dec. 6, 2023[1]; ultimately, being released on Sep. 10, 2024, for

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[1] On Sep. 5, 2024, subsequent to modification of the terms and conditions of pretrial release, the District Court acknowledges the unlawful detainment of the Applicant to prior counsel John F. Carroll in its colloquy, "Mr. Carroll, you pointed out, it's been 28 months, and we could have done this 27 months ago." (22-219, Transcript, Dkt. 286, pg. 24, ln 14-15). Applicant was fully entitled to his timely release in May 2022 pursuant to 18 U.S.C. § 3142 (b); or, in the alternative, 18 U.S.C. § 3142 (c)(1)(B). Note: according to uscourts.gov, caseload statistics data tables, for the most recent 12-mo reporting period ending Sep. 30, 2024, Table H-3, indicates that the Department of Justice in the Western District of Texas seeks to detain approximately 19-out-of-20 persons, approximately 4.66x as punitive as the United States in aggregate and the most punitive district in the United States across 93 districts. (The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious crimes (*U.S. v. Salerno*, 481 U.S. 739, 747, 107 S. Ct. 2095 95 L. Ed. 2d 697 (1987)). 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 (9th Cir. 1990)). The juxtaposition of historic and precedential case law, such as *Salerno*, with the government's own particular data lay bare what is actually occurring in the United States of America by the Department of Justice in aggressively and punitively seeking pretrial detention far in excess of reason and law. (cf. *U.S. v. Bigelow*, 544 F.2d 904 (6th Cir. 1976), *Carbo v. United States, supra, United States v. Gilbert, supra.* As Mr. Justice Douglas was careful to emphasize, "Denial of bail should not be used as an indirect way of making a man shoulder a sentence for unproved crimes." 82 S.Ct. at 667. Application for review of order denied. *Carbo v. United States*, 369 U.S. 868, 82 S.Ct. 1137, 8 L.Ed.2d 274 (1962). In *Stack v. Boyle*, 342 U.S. 1, 4, 72 S.Ct. 1, 3, 96 L.Ed. 3 (1951), the Supreme Court said: From the passage of the Judiciary Act of 1789, 1 Stat. 73, 91, to the present Federal Rules of Criminal Procedure, Rule 46(a)(1), federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. See *Hudson v. Parker*, 156 U.S. 277, 285, 15 S.Ct. 450, 453, 39 L.Ed. 424 (1895). Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.) Presuming one is actually provided the effective assistance of counsel as to that with which is guaranteed under the Sixth Amendment, only then thereafter, if the Constitutional safeguards of Due Process, each of procedurally and substantively, as set forth under the Fifth Amendment and statutorily, are upheld, does an accused have any chance of avoiding injustice, harm and injury that invariably coincide with either revocation of one's liberty or substantial curtailment thereof. Initiatives and efforts such as those of the Institute to End Mass Incarceration Clinic, a research and advocacy program at Harvard Law School; or the End Mass Incarceration initiative of the Brennan Center for Justice, a nonpartisan law and policy institute that works with the New York University Law School, exist at our nation's most prestigious universities for the precise reasons as brought forth in the Applicant's cross-action against the United States of America—where persons under color of power, ascribed and misused, continue to egregiously violate an individual's Constitutional and fundamental rights, prima facie.

allegedly causing three of his fraternity brethren[2] "substantial emotional distress"[3]. Applicant was once again detained by U.S. Pretrial Services on Oct. 24, 2024 for

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[2] Applicant has civil litigation against one or more of the fraternity members, which was dismissed forum non-convens (*Davis v. Adler et. al.*, USDC SD Cal, 19-834); while the defendants therein, do not deny the facts, factual allegations or claims; itself, evidentiary, and held as circumstantial and constructive to additional claims of Deceit, Fraud, Fraudulent Deceit and otherwise. (as the Supreme Court explained more than 60 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions; and, whereby the continued direct and/or indirect actions by the defendants, such as those giving rise to USDC WD TX, 22-219, are precisely such worsening of conditions) (compare, for instance, the instant controversy; and, a reasonable response to potentially irritating contact / outreach: whereby, Applicant previously had a civil protective order against him in the Superior Court of California, Los Angeles County, case no.: 18STRO8633, which was (i) fully abided by and also (ii) expired and was not renewed (upon Applicant's movement, the District Court took Judicial Notice of 18STRO8633 on Feb. 19, 2025). On Dec. 4, 2018, Mr. Jason M. Adler (Hollywood, CA) sought a CIVIL Temporary Restraining Order of Mr. Davis. A hearing was set for Dec. 26, 2018, and Mr. Davis could not attend because he was in Texas for the winter holidays. Mr. Adler's Declaration states, "Ultimately I have refrained from issuing an RO b/c I was afraid of "kicking the hornets nest" and essentially riling him up. I figured if I ignored his emails and beat him in court (which I did) it would eventually end. Well it hasn't And I worry that giving him notice of a RO would give him the ability to dodge service, and possibly infuriate him to the point where he could become a threat." Mr. Adler's Declaration is evidentiary in multiple capacities including but not limited to: (i) acknowledging ignoring emails; (ii) is civil in nature; (iii) acknowledges that Mr. Davis is not actually a threat. As it relates to the underlying District Court case against the Applicant, USDC WD TX, 22-219, all that was necessary, were reasonable actions by either the alleged victim witnesses or the Department of Justice and Federal Bureau of Investigation. Applicant's first Notice, as unreasonable, and alleged as, separately, unlawful and in violation of Applicant's rights in one or more capacities, was the May 2022 22-219 indictment—in turn, leading to his unlawful detention of, initially, 28 months.

[3] In its case, 22-219, the Department of Justice has presented no evidence, whatsoever, as to the alleged "substantial emotional distress" caused to the three (3) alleged victim witnesses (e.g. evidence of psychological / counseling required; an increase in the amount of Tissues purchased while the alleged victim witnesses, curled up in the fetal position, cry themselves to sleep at night; etc.) (should 22-219 reach trial, Applicant fully expects the Department of Justice to produce witnesses with passive aggressive behaviors and training in theatre arts, such as each of Mr. Jason M. Adler and alleged victim witness P.M.) Also, as pertinent, the Department of Justice is willfully withholding discovery (see e.g. 22-219, Jun. 13, 2024 Transcript, Dkt. 245, pg. 33, ln 16-24, prosecutor Bettina Richardson, "Here's one of my concerns about that and one of the reasons that the government has held those until closer in time, is because they involve the relationship between the defendant and the fraternity brothers. I don't want to pour gasoline on the fire because there is a pending release order that he could -- he could comply with. And if he does, I'm nervous about turning over those materials to [prior defense counsel] Mr. Moore, that if Mr. Moore copies them and gives them to Mr. Davis, that then he's going to retaliate.") (see e.g. 18 U.S.C. § 3142 (j)) ("[t]he duty of disclosure effects not only the prosecutor, but the Government as a whole, including its investigative agencies". *United States v. Bryant*, 439 F.2d 642, 658 (DC Cir. 1971); the Texas State Bar Rules require a prosecutor in a criminal case to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense, and in connection with sentencing, disclose to the defense and the tribunal all unprivileged mitigating information known to the prosecutor...." Rule 3.09(d), Article 10, Section 9, State Bar Rules.) (also see e.g. ABA Rule 3.8, Special Responsibilities of a Prosecutor, subsection (d), states that a prosecutor shall, "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of

posting something to Twitter / X that was allegedly not related to stock trading.[4] Applicant has not been provided counsel as guaranteed under the Sixth Amendment[5] and has alleged constructive denial of counsel throughout the entirety of the underlying proceeding.

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the accused or mitigates the offense"; and, ABA Rule 3.4, Fairness to Opposing Party & Counsel) The Department of Justice is purposefully withholding discovery in the case and controversy favorable to the accused, prima facie—and, whereby, such information is alleged to be defamatory, libelous and evidentiary and also alleged to be criminal in nature. In addition, in an email from B. Richardson to former defense counsel, Thomas P. Moore, on May 28, 2024, she indicates, on behalf of the United States of America, express knowledge that "all of [Davis'] communications are shared amongst the fraternity brothers"; which is held, by the Applicant, as evidence of express knowledge of the claims as set forth in USDC SD Cal, 19-834 (see e.g. Doc. 1, ¶¶ 1-6, 20); and, could be part of joint Conspiracy, prima facie (*Id.* at pg. 11, ¶ 6; pg. 32-44).

[4] See e.g. 22-219, Dkt. 313, representing as unconscionable and a bona fide Abuse of Process (federal statute dictates that, "the term "abuse or threatened abuse of the legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action." The key elements of abuse of process is the malicious and deliberate misuse of regularly issued civil or criminal court process that is not justified by the underlying legal action, and that the abuser of process is interested only in accomplishing some improper purpose similar to the proper object of the process. Abuse of process is an intentional tort. Abuse of process encompasses the entire range of procedures incident to the litigation process such as discovery proceedings, the noticing of depositions and the issuing of subpoenas) (also as evidentiary, again on Feb. 19, 2025, U.S. Pretrial Services filed a PS-8 seeking revocation of Applicant's pretrial liberty, and was summarily denied; see Transcript, Dkt. 478, pg. 39-52) Applicant notes that U.S. Pretrial Services, an arm of the U.S. Government, the adversarial party in the proceeding; where 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)), continues unlawfully seeking to confiscate his liberty interests in violation of his rights. Also, Applicant notes that according to uscourts.gov, caseload statistics data tables, for the most recent 12-mo reporting period ending Sep. 30, 2024, Table H-3, indicates that U.S. Pretrial Services recommends pretrial release for approximately 1-in-6 persons, ranking in the worst decile of the 93 districts reported (across the 93 districts, the average reported by district is 43.6% of persons are recommended by U.S. Pretrial Services for Release). It is each of unconscionable and evidentiary that persons rated Low Risk, such as the Applicant, by U.S. Pretrial Services National Pretrial Risk Assessment Tool (PTRA), a robust multi-variate regression analysis tool based on over five hundred thousand case records in its original development, are not provided recommendations for release pursuant to either 18 U.S.C. §§ 3142 (b), or (c)(1)(B). Rather than acting as clerical and social workers, U.S. Pretrial Services has attempted to revoke the Applicant's liberty no less than five (5) times since release; in each instance, bona fide Abuse of Process – while – separately seeking to substantially neuter his rights of autonomy.

[5] See e.g. 5CCA 25-50050, ECF 15, Feb. 13, 2025; also, 5CCA 25-50476, ECF 2, Jun. 16, 2025; also, USDC WD TX, 25-cv-1106, Dkt. 1; also, SCOTUS, 25A213, Main Document.

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, Amy Walker, 601 N.W. Loop 410, Suite 600, San Antonio, TX 78206, waived service of process on Oct. 22, 2024.

PROCEEDINGS DIRECTLY RELATED

U.S. v. Davis, No. 22-cr-219-FB, U.S. District Court for the Western District of Texas. Decision of Jul. 29, 2025 (Dkt. 643) denying Applicant's Motion for Production and Inspection of Grand Jury information (Dkt. 641, Jul. 28, 2025)

U.S. v. Davis, No. 25-50619, 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 Nov. 5, 2025 granting Appellee's Motion to Dismiss (ECF 71, Oct. 28, 2025) for lack of jurisdiction. Applicant did not file for reconsideration; as there is an existing circuit court split: the Fifth Circuit Court of Appeals sits in opposition to the Supreme Court of the United States of America on the matter as briefed.

Rule 14.1(b)(iii)

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INTRODUCTION

Applicant, Mr. Gavin B. Davis, brings this Rule 22 Application to the Circuit Justice for the Fifth Circuit Court of Appeals, the HON. SAMUEL A. ALITO, JR., respectfully requesting a sixty (60) day extension of time (Rule 13.5) to file a petition for a writ of certiorari from case no.: 25-50619, or treat this Application as such petition. As the Fifth Circuit Court of Appeals declined jurisdiction on an interlocutory basis in error to review his timely request for the production of Grand Jury information from the underlying proceeding, no other court but our highest court can provide adequate relief.[6] The Applicant is without the assistance of counsel, as guaranteed under the Sixth Amendment[7]; and, separately has filing deadlines, each of which justify granting a reasonable extension of time as respectfully requested.

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[6] 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.")

[7] See also, e.g., counsel's duty to file writ of certiorari. Despite counsel's desire not to file petition for writ of certiorari which has no reasonable chance of success, Plan adopted by the Fifth Circuit Court of Appeals, pursuant to Criminal Justice Act, requires that counsel do so when requested in writing by client.(*United States v. James*, 990 F.2d 804, 1993 U.S. App. LEXIS 9992 (5th Cir. 1993), cert. denied, 511 U.S. 1034, 114 S. Ct. 1546, 128 L. Ed. 2d 197, 1994 U.S. LEXIS 2932 (1994), remanded, 103 F.3d 125, 1996 U.S. App. LEXIS 35316 (5th Cir. 1996))

Applicant is unable to seek certiorari before this Court without the Court first raising the question of jurisdiction of the court below.[8] The Court's opinion, as solicited by the Applicant, in resolving the inconsistent and chaotic existing circuit court split regarding interlocutory appellate review of the timely production and inspection of Grand Jury information is therefore clearly in aid of its appellate jurisdiction.[9], [10]

Applicant was originally (unlawfully) detained on May 10, 2022 subject to an indictment[11] by a grand jury; whereby, such indictment alleges that Applicant

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[8] 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))

[9] 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."

[10] 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))

[11] USDC WD TX, 22-219-FB, Dkt. 3; as latter modified on May 15, 2024, with the addition of a latent Ct. 5, adding one (1) 18 U.S.C. § 115 (a)(1)(B), influencing federal official by threat allegation. Applicant has never physically harmed another individual. (see also e.g., *U.S. v. Kaquatosh*, 227 F. Supp. 2d 1045, 2002 U.S. Dist. LEXIS 20483 (E.D. Wis. 2002); charge of forcible assault upon or resisting officer of the U.S. was properly severed by magistrate from two counts of assault with intent to kill, since elements were quite different) (The information adding Count 5 in Dkt. 210 is insufficient (FRCrP 7(c)(1)); and, evidences prosecutorial misconduct and/or bad faith. Applicant has shown that (a) the information related to Count 5 from Jan. 14, 2021 was (i) known; and, separately, (ii) readily available to the prosecution when it brought the four-count indictment on May 4, 2022 (Dkt. 3) (evidentiary, directly, circumstantially and constructively). The prosecution is unable to prove that the increase in charge was justified by any objective change in circumstances or in the state of evidence that influenced the original charging process. (see e.g. *U.S. v. Leach*, 613 F. 3d 1295, 1980 U.S. App. LEXIS 19588 (5th Cir. 1980); bad faith on part of government in bringing superseding indictment). The addition of Count 5, therefore, also fails the 30-day maximum for indicting (18 U.S.C. § 3162(a)(1)) on this charge (see also e.g. *United States v. Cobb*, 975 F.2d 152 (5th Cir. 1992), cert. denied, 507 U.S. 965, 113 S. Ct. 1397 (1993). *United States v. Pikus*, 39 F.4th 39 (2d Cir., 2022) (evidentiary, directly, circumstantially and constructively) (in May 2024, the prosecution offered the Applicant a written plea agreement of Time Served (24m) and Supervised Release (36m) contemporaneous to the superseding indictment. The prosecution improperly utilized the Grand Jury via superseding indictment to prepare potential sentencing (e.g. if under plea, see e.g. FRCrP 11, 32) (see e.g., as persuasive, *State v. Francis*, 897 A.2d 388 (N.J. Super 2006), it is improper to use the grand jury to prepare for the penalty phase of a case; also, *Bishop v. Caudill*, 87 S.W.3d 1 (Ky. 2002), appellate court remanded case for hearing to determine dominant purpose of grand jury inquiry; see also, e.g. Dkt. 641, 643, 644) (in addition, the superseding indictment with the addition of one count, also constitutes a constructive amendment to the original May 2022 indictment (Dkt. 3)) (also, "[a]n accused, such as the Defendant, may be given the opportunity by the grand jury to appear before it. (*Handbook for Federal Grand Jurors*, HB-101, Published by the Administrative Office of the United States Courts (Washington, D.C., 2011), pg. 5 at 4, ¶ 2) (22-219, Dkt. 647 at ¶ 5); i.e. such requires bona fide Notice, a right of due process protected by the Fifth Amendment – this is particularly and acutely important in superseding indictment situations, as with the improprieties in the instant case)

"engage[d] in a course of conduct that caused, attempted to cause, and would be reasonably expected to cause substantial emotional distress"[12] to three (3) of his

[12] Counts 1-3, 18 U.S.C. § 2261A(2)(B), Cyberstalking and Count 4, 18 U.S.C. § 875(c), each require criminal intent. The definition of criminal intent is defined by the Supreme Court in *Elonis v. U.S.*, 575 U.S. 723 (2015) as closely related to mens rea knowledge. The Court stated, "[w]e have repeatedly held that "mere omission from a criminal enactment of any mention of criminal intent" should not be read "as dispensing with it." *Morissette v. United States*, 342 U.S. 246, 250, 72 S.Ct. 240, 96 L.Ed. 288 (1952). This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal." *Id.*, at 252, 72 S.Ct. 240 . As Justice Jackson explained, this principle is "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id.*, at 250, 72 S.Ct. 240. The "central thought" is that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as mens rea, scienter, malice aforethought, guilty knowledge, and the like. *Id.*, at 252, 72 S.Ct. 240; 1 W. LaFave, Substantive Criminal Law § 5.1, pp. 332–333 (2d ed. 2003). Although there are exceptions, the "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." *United States v. Balint*, 258 U.S. 250, 251, 42 S.Ct. 301, 66 L.Ed. 604 (1922). We therefore generally "interpret [ ] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." *United States v. X–Citement Video, Inc.*, 513 U.S. 64, 70, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994). The familiar maxim "ignorance of the law is no excuse" typically holds true. Instead, our cases have explained that a defendant generally must "know the facts that make his conduct fit the definition of the offense," *Staples v. United States*, 511 U.S. 600, 608, n. 3, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994), even if he does not know that those facts give rise to a crime. This Court rejected that interpretation of the statute, because it would have criminalized "a broad range of apparently innocent conduct" and swept in individuals who had no knowledge of the facts that made their conduct blameworthy. *Id.*, at 426, 105 S.Ct. 2084 The "presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct. .. a "reasonable person" standard is a familiar feature of civil liability in tort law, but is inconsistent with "the conventional requirement for criminal conduct—awareness of some wrongdoing." *Staples*, 511 U.S., at 606–607, 114 S.Ct. 1793 (quoting *United States v. Dotterweich*, 320 U.S. 277, 281, 64 S.Ct. 134, 88 L.Ed. 48 (1943); emphasis added). Having liability turn on whether a "reasonable person" regards the communication as a threat—regardless of what the defendant thinks—"reduces culpability on the all-important element of the crime to negligence," *Jeffries*, 692 F.3d, at 484 (Sutton, J., dubitante), and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes," *Rogers v. United States*, 422 U.S. 35, 47, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975) (Marshall, J., concurring) (citing *Morissette*, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288). See 1 C. Torcia, Wharton's Criminal Law § 27, pp. 171–172 (15th ed. 1993); *Cochran v. United States*, 157 U.S. 286, 294, 15 S.Ct. 628, 39 L.Ed. 704 (1895) (defendant could face "liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind"). Also, the Supreme Court found that "[t]he jury was instructed that the Government need prove only that a reasonable person would regard Elonis's communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding "took deep and early root in American soil" and Congress left it intact here: Under Section 875(c), "wrongdoing must be conscious to be criminal." *Morissette*, 342 U.S., at 252, 72 S.Ct. 240. Our holding makes clear that negligence is not sufficient to support a conviction under Section 875(c), contrary to the view of nine Courts of Appeals. Pet. for Cert. 17" (emphasis added) (also, the FBI's Notes show that they were originally investigating the Defendant under 875(b), as evidentiary). In *Elonis*, the Circuit Justice for the Fifth Circuit Court of Appeals, the Hon. Samuel A. Alito Jr., indicated that, "This Court has not defined the meaning of the term "threat" in § 875(c), but in construing the same term in a related statute, the Court distinguished a "true 'threat' " from facetious or hyperbolic remarks. *Watts v. United States*, 394 U.S. 705, 708, 89 S.Ct. 1399, 22

Cornell University fraternity brethren identified as "H.P." "S.K." and "P.M."[13]. The trial case and controversy lay bare the dangers of utilizing the secretive[14] grand jury proceedings for non-serious[15] allegations based on subjective intent[16]: allowing for

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L.Ed.2d 664 (1969) (per curiam). In my view, the term "threat" in § 875(c) can fairly be defined as a statement that is reasonably interpreted as "an expression of an intention to inflict evil, injury, or damage on another." Webster's Third New International Dictionary 2382 (1976). Conviction under § 875(c) demands proof that the defendant's transmission was in fact a threat, i.e., that it is reasonable to interpret the transmission as an expression of an intent to harm another. In addition, it must be shown that the defendant was at least reckless as to whether the transmission met that requirement. My analysis of the mens rea issue follows the same track as the Court's, as far as it goes. I agree with the Court that we should presume that criminal statutes require some sort of mens rea for conviction. See ante, at 2008 – 2011. I agree with the Court that we should presume that an offense like that created by § 875(c) requires more than negligence with respect to a critical element like the one at issue here. See ante, at 2010 – 2012."

[13] The identities of the three (3) fraternity members were disclosed by the prosecution in Dkt. 677 and are not protected information.

[14] With respect to the Grandy Juries, prosecutorial conduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with the prosecutor's office, but also because of the factfinding facilities presumably available to the office. Remarks calculated to evoke bias or prejudice should never be made in a court by anyone, especially the prosecutor. Where the jury's predisposition against some particular segment of society is exploited to stigmatize the accused or the accused's witnesses, such argument clearly trespasses the bounds of reasonable inference or fair comment on the evidence. There are many cases in which courts have reversed convictions as the result of inflammatory remarks made by a prosecutor containing references to the defendant's race, religion, or ethnic background. (STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION, Standard No. 3-5.8 (AM. BAR ASS'N 3d ed. 1993)) (misconduct by prosecutors in closing argument occurs with 'disturbing frequency' in criminal trials, and this problem has commanded the close attention and frustration of the appellate courts." (CASSIDY, supra note 26; see also, Candice D. Tobin, Misconduct During Closing Arguments in Civil and Criminal Cases: Florida Case Law, 24 NOVA L. REV. 35 (1999) (discussing misconduct that occurs during closing arguments). (the ABA Standard also provides that the prosecutor should not make arguments calculated to appeal to the prejudices of the jury" nor should the prosecutor make "argument[s] which would divert the jury from its duty to decide the case on the evidence." (STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION, Standard No. 3-5.5 (AM. BAR ASS'N 3d ed. 1993 at Standard No. 3-5.8(d)) (the rule that an attorney must refrain from inflammatory argument has special importance when applied to the prosecutor. The importance of these rules are explained in the commentary to the standards. Unlike most attorneys, the prosecutor serves as a representative "of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all." (*Berger v. United States*, 295 U.S. 78, 88 (1935)))

[15] e.g., no minimum sentence; five (5) year maximum sentence; non 18 U.S.C. § 3142 (e) allegations.

[16] As an affirmative defense, Applicant sought to challenge the statute and 22-219 allegations under Void-for-Vagueness Doctrine (the Cyberstalking statute (Counts 1 -3) was intended in its design as the application of Technology to Stalk; and, no evidence of Stalking of any of the three (3) alleged victim witnesses has been established or exists. The District Court lacks jurisdiction regarding Counts 1-3; see e.g. "[j]urisdiction, it has been observed is a word of many, too many, meanings." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90 (1998) (quotation marks omitted). The Court was potentially poised to resolve the split on whether constitutional challenges to a criminal statute of conviction were "jurisdictional" when it granted review in *Class v. United States*, 138 S. Ct. 798 (2018). The underlying concern of the void for vagueness doctrine is the core due process requirement of adequate notice. In

the instant case, the accusatory pleading is insufficient as proper notice; and, separately, the intention of the statute (Counts 1-3) is for the actual Stalking of an individual. The government is accused, in part, of overreach and misapplication of this vague statute in the instant case. Applicant clearly is not and was not Stalking the alleged victim witnesses. (also, a law failing to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited violates due process Constitution) (see e.g. that the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. *Connally v. General Const. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127, 70 L. Ed. 322 (1926)) (a statute may be challenged as being unconstitutionally vague in the pretrial phase of the prosecution, because "a court lacks jurisdiction to proceed to trial under a facially unconstitutional statute") In the instant case, there was no criminal intent; and, separately, there was no Stalking of the alleged victim witnesses, prima facie. Conduct prosecuted as criminal must be specifically defined in advance. A judicial doctrine known as the "void for vagueness" doctrine has developed nullifying statutes that are not sufficiently clear based on the due process clause of the Fifth Amendment of the United States Constitution. Two distinct values are recognized as protected by the void-for-vagueness doctrine. First, no person should be expected to obey laws so poorly articulated that doubt remains as to what conduct is prohibited. Counts 1-3 were enacted as bona fide Stalking statutes, and the application of Technology thereto; the indictments and evidence provide no evidence of Stalking of the alleged victim witnesses; nor does any exist. Applicant's outreach was <u>not</u> criminal in nature; could have easily and reasonably been dealt with in a direct or indirect manner without escalation. Federal cases involving this statute set forth numerous actions of Stalking by a defendant of a target—none exist in the instant case. Applicant was (and is) being stonewalled regarding a civil dispute (i.e. USDC SD Cal, 19-834, dismissed forum non-covens; the prosecution's discovery includes twenty (20) copies of the 19-834 complaint). A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential element of due process of law" (*Connally v. General Const. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926)). Justice Holmes described the doctrine in the following terms: "[I]t is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear" (*McBoyle v. U.S.*, 283 U.S. 25, 27, 51 S. Ct. 340, 75 L. Ed. 816 (1931)). The May 2022 indictment constitutes Notice; and, all actions thereafter ceased. A civil protective order was and is sufficient regarding any concerns that each of the three (3) alleged victim witnesses may have. The second important value served by the void-for-vagueness doctrine is that the law must not be so loosely worded as to encourage arbitrary and discriminatory enforcement. "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application" (*Kolender v. Lawson*, 461 U.S. 352, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)) (A statute will also violate due process when the court unforeseeably expands its scope to prohibit conduct not prohibited at the time of the defendant's acts (*Giaccio v. State of Pa.*, 382 U.S. 399, 402, 86 S. Ct. 518, 15 L. Ed. 2d 447 (1966)). "[A] deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language" (*Bouie v. City of Columbia*, 378 U.S. 347, 354, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964) (South Carolina's interpretation of trespass law to cover the act of remaining on the premises of another after being asked to leave was unforeseeable and could not be applied retroactively)). It is also applicable when a statute leaves the trier of fact free to decide, without any legally fixed standards, what is prohibited and what is not prohibited in particular cases (*Giaccio v. State of Pa.*, 382 U.S. 399, 402, 86 S. Ct. 518, 15 L. Ed. 2d 447 (1966)). With respect to Counts 1-3, Applicant had no criminal intent; a required element of the charge. (see also Affidavit of Nov. 2022, as attached at 22-219, Dkt. 307-5)

bona fide one-sided storytelling in the absence of concrete evidence regarding each element of a criminal allegation – as with the instant case and controversy.

OPINIONS BELOW

U.S. v. Davis, No. 25-50619, U.S. Court of Appeals for the Fifth Circuit, Nov. 5, 2025, ECF 79, granting Appellee's Motion to Dismiss (ECF 71, Oct. 28, 2025) on jurisdictional grounds. Applicant had submitted his Opening Brief (ECF 34) on Aug. 27, 2025. The parties continue advancing an illegal proceeding, e.g., in violation of the Fifth, Sixth and Seventh Amendments, prima facie; while, separately, Applicant's fundamental rights have also been unlawfully confiscated.

JURISDICTION (Rule 14.1(e))

The Fifth Circuit Court, in error, declined jurisdiction in case no.: 25-50619, Applicant notes that a United States court of appeals has entered such decision in conflict with the decisions of other United States courts of appeals[17] (i.e. circuit court split) on the same important matter: "[t]he power of a court to disclose proceedings of the grand jury is within the trial court's discretion under Fed.R.Crim.P. 6(e). See *Menendez v. United States*, 393 F.2d 312, 316 (8th Cir. 1968). Other indications of such discretionary authority is fully documented in the language of the rule, since that rule empowers a court to grant disclosure "preliminary to", as well as "in connection with", a judicial proceeding. This power or preliminary disclosure was recognized by the United States Supreme Court in *Dennis v. United States*, 384 U.S. 855, 870, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966)" (5CCA 25-50619, ECF 34 at ¶ 9 cf. 22-219, Dkt. 641, ¶ 6) – as to call for an exercise of this Court's supervisory power.

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[17] See e.g. "[u]nder applicable decisions, before granting disclosure, there is no requirement that a "particularized need" be shown. See *Allen v. United States*, 390 F.2d 476 (D.C. Cir. 1968), Suppl. by 404 F.2d 1335, *Schlinsky v. United States*, 379 F.2d 735 (1st Cir. 1967), and *Cargill v. United States*, 381 F.2d 849 (10th Cir. 1967) (compare to, *Pittsburgh Plate Glass Co. v. U.S.*; *U.S. v. Rubin*, 559 F.2d 975, reh. den., 564 F.2d 98, 572 F.2d 320 (5th Cir. 1977), vac'd, 99 S.Ct. 67 (1978), on remand, 591 F.2d 278 (1979))" (5CCA 25-50619, ECF 34 at ¶ 10 cf. 22-219, Dkt. 641, ¶ 7)

(see Rule 10(a)) (also, as the lower court declined jurisdiction in clear error; where such error is not harmless, mandamus may be an appropriate and timely remedy[18]; see e.g. Rule 20.3(a)) Jurisdiction is conferred properly conferred under the All Writs Act, Rule 10, the Court's inherent powers and the original jurisdiction of the underlying proceedings.

PRIMARY FEDERAL PROVISIONS INVOLVED (Rule 14.1(f))

The primary constitutional provisions, treaties, statutes, ordinances, and regulations involved in this case are: Due Process Clause of the Fifth Amendment, the Confrontation Clause of the Sixth Amendment, and 28 U.S.C. § 1291.

STATEMENT OF CASE (Rule 14.1(g))

Applicant was temporarily detained on May 10, 2022 in USDC WD TX, 22-219-FB on a four (4) count indictment for allegedly causing three (3) of his Cornell University fraternity brothers "substantial emotional distress," as disputed. On May 20, 2022, Applicant was detained without bond based on: (i) false, partial, and misleading information of the prosecution and Federal Bureau of Investigation Agent Charles Davidson; and (ii) grossly inaccurate information in a non-consensual U.S. Pretrial Services Report[19],[20]. None of the 22-219 allegations are 18 U.S.C. § 3142 (e) charges.[21] The 22-219 allegations carry no minimum sentence and a five (5) year

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[18] See e.g. *Ex Parte Bradley*, 74 U.S. 364, 19 L. Ed. 214, 1868 U.S. LEXIS 1014 (1869)

[19] Note: on Sep. 5, 2024, Applicant, having been in custody for twenty-eight (28) months, appearing for a bond modification hearing, the trial judge indicates to prior defense counsel, John F. Carroll, that such hearing could have occurred twenty-seven (27) months prior (see Transcript near end) lending evidentiary support as to the bona fide illegality of Applicant's pretrial detention. (see also e.g., evidentiary contentions put forth (and also not disputed) in Dkt. 307 at Exhibit A, Petition, *Davis et. al. v. Molly Roth*, Bexar County, Texas, case no.: 2024CI23269, Legal Malpractice and Negligence; see also, e.g. 18 U.S.C. § 3006A (g)(3))

[20] 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 Applicant alleges has and is occurring in this case and controversy.

[21] None of the 22-219 allegations in the Indictment fall under 18 U.S.C. § 3142 (2)(3); and, therefore, the Applicant cannot be legally detained; and, also, 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, should have been timely vacated (see e.g. *U.S. v. LaLonde*, 246 F. Supp. 2d 873 (S.D. Ohio 2003), irrespective of a criminally accused purported or actual dangerousness to the community or to specific others, if none of the 3142 (f)(1) or (2) conditions are met, a defendant cannot be detained)

maximum sentence. In May 2024, the prosecution offered the Applicant a written plea offer of twenty-four (24) months Time Served and Three (3) Years Supervised Release. Applicant reasonably requested each of (i) clarification of terms and conditions of such bona fide offer and (ii) an attorney for such express purposes (i.e. to intelligently review such offer). On May 28, 2024, AUSA B. Richardson sent an email to former senior AUSA and then standby counsel to Applicant in 22-219, Mr. T. Moore, which indicated a Sentencing Range (U.S.S.G.) of fifteen (15) to twenty-one (21) months regarding the five (5) count superseding indictment.[22]

Applicant has alleged prosecutorial misconduct; and, separately, has intended such as constructive and elemental to his defense; while, the prosecution has made inflammatory statements in the proceedings. Applicant is not required to show a particularized need for Grand Jury information; and, timely sought such information, as denied at the trial court; and, with the appellate court declining interlocutory jurisdiction.

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[22] Applicant moved for dismissal of belatedly added, Count 5, "as the information related to Count 5 from Jan. 14, 2021, was (i) known; and, separately, (ii) readily available to the prosecution when it brought the four count indictment on May 4, 2022 (dkt. 3). The prosecution is unable to prove that the increase in charge was justified by any objective change in circumstances or in the state of evidence that (legitimately) influenced the original charging process. (see e.g. *U.S. v. Leach*, 613 F. 3d 1295, 1980 U.S. App. LEXIS 19588 (5th Cir. 1980); bad faith on part of government in bringing superseding indictment). The addition of Count 5, therefore, also fails the 30-day maximum for indicting (18 U.S.C. § 3162(a)(1)) on this charge (see also e.g. *United States v. Cobb*, 975 F.2d 152 (5th Cir. 1992), cert. denied, 507 U.S. 965, 113 S. Ct. 1397 (1993). *United States v. Pikus*, 39 F.4th 39 (2d Cir., 2022)" (Dkt. 396 at ¶ 3)" (Notice of Appeal, 22-219, Dkt. 463)

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

I. THERE IS AN IMPLICIT REQUIREMENT THAT ALL ISSUES INVOLVING USE OF THE GRAND JURY PROCESS BE RESOLVED PRIOR TO TRIAL AND IS AVAILABLE FOR INTERLOCUTORY REVIEW.

Under the Supreme Court decision in *United States v. Mechanik*, 475 U.S. 66, 106 S.Ct. 938 (1986), there is an implicit requirement that all issues involving use of the grand jury process be resolved prior to trial. Appellate review of Orders denying forms of relief that do not interrupt Grand Jury proceedings and inquiry are appropriate on an interlocutory basis. In *Perlman v. United States*, 247 U. S. 7 (1918) at fn. 5, the Supreme Court cites to *Burdeau v. McDowell*, 256 U. S. 465 (1921), and indicates that "action of the district court was treated as final, and hence subject to [appropriate interlocutory] review" In the instant case, the Grand Jury proceedings are final; the action of the District Court (Dkt. 643) violates precedential authority brought forth in the Motion (Dkt. 641).

II. EVERY DEFENDANT HAS A RIGHT TO GRAND JURY INFORMATION WITHOUT HAVING TO SHOW A NEED.

"Under applicable decisions, before granting disclosure, there is no requirement that a "particularized need" be shown. See *Allen v. United States*, 390 F.2d 476 (D.C. Cir. 1968), Suppl. by 404 F.2d 1335, *Schlinsky v. United States*, 379 F.2d 735 (1st Cir. 1967), and *Cargill v. United States*, 381 F.2d 849 (10th Cir. 1967) compare to, *Pittsburgh Plate Glass Co. v. U.S.*; *U.S. v. Rubin*, 559 F.2d 975, reh. den., 564 F.2d 98, 572 F.2d 320 (5th Cir. 1977), vac'd, 99 S.Ct. 67 (1978), on remand, 591 F.2d 278 (1979))" (Dkt. 641, ¶ 7). The Court has ruled in favor of a defendant's rights to access grand jury proceeding information; resolution of the Circuit Court split serves a broader interest of justice than the instant case.

CONCLUSION

For the reasons stated herein, and in the interests of justice, the Court should (i) grant Applicant an extension of time to file a petition for a writ of certiorari (or mandamus as the case may be) that appropriately addresses the Constitutional issues involved – where Circuit Court split exists; and / or, (ii) treat this Application as such petition for a writ of certiorari[23] as the Court may deem such relief, or any other relief, appropriate in the interests of justice.

Respectfully submitted on this day, December 31, 2025

/s/ Gavin B. Davis

Mr. Gavin B. Davis, Pro Per
APPLICANT

[23] See footnote 8-10.

No._____

In The
Supreme Court of the United States

GAVIN B. DAVIS,
Applicant,
v.
UNITED STATES,
Respondent,

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1 (h), I certify that the Rule 22 Application for an Extension of Time contains 8,666 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 December 31, 2025.

/s/ Gavin B. Davis
GAVIN B. DAVIS, Pro Per
Applicant

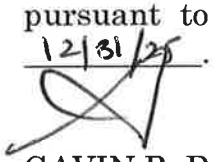
No._____

In The
Supreme Court of the United States

GAVIN B. DAVIS,
Applicant,
v.
UNITED STATES,
Respondent.

CERTIFICATE OF SERVICE

As required by Supreme Court Rules 39.2, 22.2, 29.5 (c), Proof of Service, I certify that one (1) copy each of: Rule 22 Application, was completed via U.S. Mail to Respondent, United States of America, Solicitor General of the United States at Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington D.C. 20530-0001. The aforementioned is declared under penalty of perjury as true and correct pursuant to 28 U.S.C. § 1746. Executed on 12/31/25.



GAVIN B. DAVIS, Pro Per
Applicant

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 5, 2025
Lyle W. Cayce
Clerk

No. 25-50619

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GAVIN BLAKE DAVIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:22-CR-219-1

UNPUBLISHED ORDER

Before SOUTHWICK, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellee's motion to dismiss the appeal for lack of jurisdiction is GRANTED.

IT IS FURTHER ORDERED that Appellee's alternative motion to extend the time by 30 days upon the denial of the motion to dismiss is DENIED AS MOOT.

Additional material from this filing is available in the Clerk's Office.